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Mrs. E. Cunningham
Member for Gladstone
Parliament House,
Brisbane.

P O Box 1476,
Gladstone. 4680
28 January 2007.

Dear Mrs Cunningham,

Re: Letter from the Queensland Chief Counsel of NAB.

As you are aware the last time you wrote on my behalf to NAB was a letter addressed to the Chairman of the Board. The reply came from the Queensland Chief Counsel and was to the effect that I had been found vexatious against NAB and you should stay out of the issues.

It is now established from published information that the public interest issue of Government services reaching their intended recipients is an issue in these circumstances. Recent reports from newspapers and official advertisements reaching your electorate with regard to drought interest subsidies and exceptional circumstances payments along with the relevant information, showing NAB had through incorrect evidence before the Supreme Court and Supreme Court of Appeal between myself and NAB taken incorrectly, advantage of its credibility against a self litigant in the court, to have a favourable judgment, giving, the receipt of interest subsidies decisions to NAB.

Enclosed is a copy of a submission to Mr. John Stewart General Manager of NAB requesting a general manager's decision re. The situation between NAB and myself.

From the letter attached in reply, NAB through their solicitors, intends to take advantage of the incorrect evidence attached in the Judgment between us on the 2 November 2001 in the Queensland Supreme Court of Appeal. (I enclose the necessary parts of the judgment attached to this letter at Doc3 clause 15.

There is now a major public interest problem because I have been made vexatious in the Supreme Court with regard to S4013/98 and its appeal allegations. Subsequently NAB can take advantage of this incorrect evidence being accepted and the true facts in the Minister's Statement to Parliament of 19.11.2001 are then avoided. Clearly to leave the decision as to whether customers of the NAB receive interest subsidy payments invites the same situation as my case where the bank officer can refuse to accept the subsidy and demand moneys from the customer either for himself or the bank. This is not in the public interest.

It has long been recognised in this situation that the true facts are not given to the senior executives of the bank and in fact the published corporate culture of the NAB and public admissions by NAB all state this is a particular problem.

Therefor I respectfully request you forward the attached submission to the Chairman of NAB, representing to him the above facts and the fact NAB was relying on incorrect evidence in the Court and has been given defacto rights to refuse Drought Interest Subsidy Applications and that this is an unsatisfactory situation. I enclose at document 29 of the submission to NAB attached, the social impacts that are occurring described in a newspaper article. The impacts may be levelled at the decision of the courts based on incorrect evidence of NAB at the Trial and Appeal in S4013/98.

I also enclose a judgment of the Irish High Court that gives a succinct summary of how NAB dealt with taxation collections from bank deposits and how the sums were sent by NAB to a tax haven then returned as securities that could be drawn against, by the customer at a higher interest rate and higher fees, effectively transferring the public interest benefit to NAB. This practice attracted the interest of international terrorists in Ireland and I see the risk, the NAB continuing the practice in Australia (through interest subsidies) and it being widely known the processes in the Queensland Courts were unacceptable, may attract the same interest here. Many public servants and police can recite the happenings in the 1970s with terrorist threats, and the catalyst was mostly corporate behaviour.

The Bank has now placed itself in the same position with interest subsidies, in Australia, that is - a. It represents to the customer to apply for subsidy and the bank will support the claims, and even complete the claim forms, (Doc 2)

- b. increase the customers interest rate to the subsidy rate, (2)(5)
- c. have the customer complete any development works, (5)
- d. on completion of the works, (5)
- e. refuse subsidy and demand a lump sum payment, (5)
- f. refuse to allow the person to shift banks, (12) (3 Cl. 15)
- g. convert the debt to a Bill for ease of court process either through mediation or consultation, (3 Cl 24)
- h. refuse to accept payments, (16,12, 3 Cl 15)
- i. create false entries in accounts, and (16,17)
- j. issue formal demand with the intent of realising assets, (16)
- k. using incorrect evidence weighted in the bank's favour because of its corporate status, (16) (22) (3) (14).

As you would appreciate for many bank customers the fact the Bank refuses interest subsidies, is the last dealing they have with the bank and consequently suicide is the result or they are at least a victim of bank connivance, where NAB misuses its power for profit. If you require further proof that this is happening then I will endeavour to arrange for other victims both small business and rural to contact you.

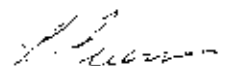
In 2001 the 'shadow ledgers' inquiry identified incorrect and misleading and deceptive banking practices when NAB was dealing with bank customers stated to be in default. As part of that inquiry a submission was made by a banking expert witness stating in Queensland Courts the NAB:

- (1) used incorrect accounting, [37] [38] [39] [40] [41]
- (2) did not discover documents [37] [38] [39] [40] [41]

- (3) did not discover documents at the relevant time but discovered documents at a later date to the advantage of the NAB, [37] [38] [39].
- (4) discovered incorrect and false documents [37] [38] [39]
- (5) bank witnesses gave incorrect evidence in the courts.[37] [38] [39](Minister's Answer to Parliament 19 November 2001.)
- (6) I have placed beside the appropriate allegation the appropriate clause number from the judgment which is now public record of the Queensland Court of Appeal QCA 329 dated 1 September 2006.
- (7) In the judgment the judges gave the heads to the Bankruptcy Trustee who gained them through a sequestration judgment, consequently the injustice argument in the 'shadow ledgers' inquiry is satisfied as NAB knowingly participated in the above practices.

A summation of the above facts remembering they are not my allegations, shows the NAB is playing a very dangerous game with public money and public policy *(it is also recognised by [39] of QCA329/06, the accounting does not show credits to accounts when paid, creating taxation benefits for NAB),* for bank profit at the expense of Australian Society and Taxpayers. I do not believe it will be very long before these deceptive practices with subsidies will be publicly identified, with the obvious fallout for NAB and Government.

Yours faithfully,



L.Freeman.

MALLESON'S STEPHEN JAQUES

Mr L. Freeman
PO Box 1476
GLADSTONE QLD 4680

2 January 2007

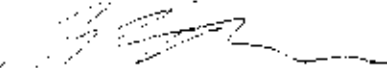
Dear Mr Freeman

Correspondence with National Australia Bank Limited ("NAB")

We are instructed that you have again written to Mr Stewart and Mr Trkulja by letter dated 14 December 2006. NAB rejects your allegations contained in that letter.

You have previously been informed that all correspondence from you on any matter concerning NAB is to be addressed to our firm. No response will be given to any further communication from you addressed direct to NAB.

Yours faithfully



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Mr. John Stewart
Chief Executive Officer
and Managing Director
National Australia Bank
Docklands,
Melbourne.

Mr. C. Trkulja
Customer Relations
Manager,
Docklands
Melbourne.

P O Box 1476,
Gladstone., 4680.
14.12..2006.

Dear Sir,

Please find attached the necessary documents for a Submission for a General Managers decision on the situation involving our dispute.

To quickly summarise the situation at the same time as your bank was manipulating Government Revenues in Ireland and charging additional fees and interest. It was virtually doing the same thing in Australia using productivity and drought interest subsidies.

In order to keep the lid on this and the 'shadow ledger' situation your bank and its representatives have manipulated evidence in various cases before the courts, between us.

The situation is broadly defined in the attached submission, the bank brought a vexatious litigation proceeding against the writer before the court of appeal hearing in the Queensland Supreme Court of Appeal in an action on deceit and abuse of process, (Document 28) and obtained the orders.

The problem for your bank, now is that the judgment in the QSCCA hearing exposes the misuse of the court procedures particularly in 'shadow ledgers'. Where at [39] the judge explains how the use of more than one set of bank statements is for taxation purposes and credits are not put to accounts. In my case the bank issued four sets, the originals for my taxation, a set of sheets in Feb, 2001 using the same sheet numbers but including interest and charges but having the debits and credits incorrect, for the period they had already issued sheets and then the Red ink Memo Account for Court. Mr. Luck in his evidence denying certain acts and then in February, 2001 supplying the second set of statements showing interest and charges and the wrong debits and credits, stating they could be brought up in the court as evidence, then issuing another set in August, 01, the debits and credits in one place being correct and not in others, and then your QC objecting to the fresh evidence. That QC no longer practices after the High Court denounced his ethics.

I am not going into the glaring legal errors such as ruling claims belong to the Bankruptcy Trustee when they are specific exclusions under the Act. The judges were well aware of the mediation procedures as you will see the judgment leaves all the options open.

This judgment is a summary of your settlement and enforcement procedures and leaves us in the position where we can mediate under 'shadow ledgers' where your

bank failed to discover documents including bank statements in previous proceedings but at the same time allows the judgment in the vexatious proceedings to be put aside by the High Court.

I have recently contacted Mr. Trkulja and I will forward him a copy of this submission direct. I have no doubt that originally your staff may have misused your corporate name but the NAB continued and allowed this to continue, when they could have allowed us to settle up, amicably. I was a Dalgety's client when they, disposed of their mortgage book and at no time was there a bad word between us. I was going through divorce and they took my word and the whole thing came together with out anybody losing. So much so that they made, refunds after settlement. Would the NAB do that ?

From your banks' side this now needs a cool head as it has exhausted its' legal options and left a judgment unchallenged that shows your exposure to charges of corrupting evidence and avoiding statutory provisions, including;

- the accounting in mortgages and bills contracts, avoiding taxation; and
- avoiding the provisions of the "Bills of Exchange Act "
- other illegalities including dealing with recoveries.

However whatever you decide would you please communicate it to me within 14 days or by the end of the first week in January,2007.

Yours faithfully,



I..Freeman.

Mr. John Stewart
 Chief Executive Officer
 and Managing Director
 National Australia Bank
 Docklands.
 Melbourne.

P O Box 1476,
 Gladstone.. 4680.
 14.12..2006.

Dear Sir,

Re: LNC Freeman : Submission for a General Manager's Decision (to enable
 a legal situation to become a business decision).
 Skeleton Chronology & Executive Summary.
 Submission and attached Documents.

With reference to the above enclosed please find a submission and documents and a High Court Application for Special Leave. You will see from the application your bank has given incorrect information to the High Court and that fact has served to disadvantage myself to the point where the High Court must consider, allowing a claim to the Federal Court under section 22 of the Federal Court Act.

Hereunder is an Executive Summary and Chronology as part of this covering letter:

SKELETON CHRONOLOGY

- May 1992: NAB stated if the writer continued his property upgrade NAB would submit and support the writer's claims for interest subsidy.
- 1992-1996 The writer completed the works and increased his breeders as agreed.
- July 1996 : NAB advised its manager to require reductions on the writer's interest only facilities
 The writer as director was involved in the commencing of a Mining Exploration company with tenements on the property, Zinace Pty Ltd.
- August 1996. NAB refused to complete the writer's drought and productivity interest subsidy submissions and to accept the funds.
- Sepr 1996: NAB completed an incorrect budget at the Bundaberg Business Branch for the writer. Writer sold \$30,000 in breeders because of incorrect statements from nab.

- Nov. 1996. NAB made false demands and wrote letters creating the impression to Credit Control the writer was uncooperative, submitting unidentified correspondence to Credit Control in February,97.
Mr. Alder advised his clerk not to advise Credit Control he had made the demands and had verbally given the writer until the end of February, 1997 before reviewing reduction.
- Feb. 1997 The writer through independent Dept. Primary industry staff made the interest subsidy applications. Mr. Alder denied three times receiving the applications and retained the original until 23rd February, 1997 so that it was inside a week, (to the end of February,97). The approval time for applications was a week. Stopping the account from being reduced by the end of February,97.

Mr. Alder, completed his part of the application stating an incorrect telephone number. By this your bank could not be advised of my subsidy payment of \$54,500 after approval of the claim on 3 March, 1997.

Mr. Alder advised Asset Structuring to recover on 18 February,1997.
- April. 1997 The writer contacted the Queensland Rural Adjustment Authority personally. Mr. Alder refused the \$54,500 on the 24.4.1997 and demanded \$30,000 on the 1.5.1997 an illegality.

The Zinace - North Ltd mining Joint Venture completed.
- May, 1997 NAB is paid \$22,000 that could have been made up to \$30,000 except Mr. Alder refused to complete a review so obviously he was continuing. Falsifying my file.

Zinace paid for cattle purchased after initial Joint Venture payment with North Ltd now CRA.
- May-July 97 The QRAA Inspector investigated the writer, finding, no problems and the writer was long term viable and on issuing new facilities the writer would receive his \$54,500 interest subsidy.
- July, 1997 QRAA Inspector advised NAB of the above and NAB renewed the writer's facilities. Phillip Luck approved facilities.
- Aug. 1997 NAB again refused the writer's subsidy of \$54,500 and the writer paid further moneys that could have gone to debt reduction of \$14,500 for timber sales.

NAB had the writer investigated by RCS as to viability leaving out over \$1m in property income. The writer gave a detailed reply. Not even read by NAB.

NAB failed to cooperate even though they were aware a Broker would contact NAB to talk to the broker to allow transfer of the accounts to another bank.

- Sept. 1997 This was confirmed by Mr. Luck and advised by letter on 15.9.1997.
- NAB insisting the writer proceed to mediation.
- Dec 1997: The debt was converted to a Bill Facility after NAB pressured the writer.
- March 1998; NAB and the writer agreed to settle for \$500,000. The Bills of Exchange Act gave the writer, grace to settle.
- April, 1998 Another bank requested the NAB settlement account of \$500,000 and the writer paid \$2205 to cover interest on Bills to settlement. NAB intentionally kept the funds from the account.
- NAB issued demand.
- Sept. 2000 The matter went to Court the writer had traded the four years your bank stated he couldn't paying more in legal fees than interest, without interest subsidy. NAB Officers gave incorrect evidence in the court and Shadow Ledgers applied.
- Oct. 2000 Judgment and 'shadow ledgers' inquiry. NAB refused to provide Bank Statements. NAB obtained judgment.
- Nov. 2000 Police impound Zinace's cattle and charge the writer the first time.
- Dec. 2000 Australian Banking Industry Ombudsman produced Bulletin 77 which is still industry policy on the provision of bank statements.
- Jan. 2001. Police drop the stealing charges and NAB commences to sell, the writer's family and Zinace cattle. Moneys admitted by NAB to be paid to NAB.
- Feb. 2001 NAB admits in writing not providing statements and that accounts had been corrupted. This avoids the Bills of Exchange Act another illegality.
- March 2001. Confirming letter to above.
- The writer is recharged with stealing livestock after the family and Zinace cattle that could not be hidden in the records had been sold and some were stated to have died.
- July, 2001 ACCC wrote to NAB to investigate and NAB solicitors produced an incorrect Report to the ACCC.

- Aug. 2001 NAB refused to mediate the situation in contravention of the published advertisements.
- The writer wrote to the Chief Justice of Queensland and the letters were tabled in Parliament.
- NAB completed an incorrect Affidavit of Documents on 14.8.2001 and on the same day NAB issued a policy statement saying it was contractual to compensate affected persons under "shadow ledgers"
- The appeal was heard and NAB did not admit the fresh evidence and objected to evidence of cattle sale dockets that had been missed by the original judge and left out of the CA Record Book by arrangement with the NAB solicitors being put before the court
- Sept. 2001 ACCC issued Mediation Guidelines for 'shadow ledgers'.
- Nov. 2001 The judgment came down giving NAB the right to veto interest subsidy applications based on the incorrect evidence of Mr. Alder and Wayne Carlson.
- 12 Days later the Minister made a statement to Parliament denying the court judgment and that no one had not received interest subsidy who had been granted same.
- Dec. 2001 NAB maintains in the Federal Court, its Affidavit of Documents is correct.
- Mar. 2002 The writer is Bankrupted and the Bankruptcy Trustee and NAB agree the writer is to appear in the further civil court actions.
- The writer was charged again with stealing mortgaged cattle in March, 2001 and was now acquitted.
- July, 2002 the writer losses an appeal in the FCFCIA against Bankruptcy.
- Cattle distribution is heard and Zinace wins back some cattle.
- Dec. 2002. Zinace wins back more cattle.
- Jan. 2003 Zinace proceeds to the same court to have the orders made enforceable.
- NAB objects and cattle of Zinace are the next day misappropriated. Some moneys being paid to NAB. Other moneys being redirected to Zinace.
- Mar. 2003 The parties appear in the High Court and NAB denies it produced an incorrect Affidavit of Documents.

- Aug. 2003 The writer finds fresh evidence and that NAB had incorrectly completed its Affidavit of Documents.
- Oct. 2003 The parties appear in the Supreme Court and the NAB and the Bankruptcy Trustee issue incorrect notices between themselves under the Bankruptcy Act.
- Dec. 2003 NAB documents referring to 'shadow ledgers' and the Mediation Procedure are found by the writer.
- Matters continue in the Federal Court.
- July, 2005 The NAB makes an application to call the writer vexatious against the NAB and the Trustee.
- The writer files the Claim, the judgment QSCCA 329 is produced from.
- Oct. 2005 The parties appear in the Supreme Court of Q and the NAB objects to the Chief Justice hearing the application, because he lives next door to the receiver, who could be charged with misappropriating cattle proceeds to NAB
- Nov. 2005 The writer is found vexatious and appeals.
- May, 2006 the writers claim continues and is lost and the writer appeals.
- The parties appear in the FCFCFA as to the vexatious proceedings in the Federal Court and the judgment is upheld and the writer appeals to the High Court.
- July, 2006 As part of the Claim appealed in the Supreme Court the Court finds the notices issued between the NAB and the Bankruptcy Trustee in 2003 vested under s. 58(1)(a) of the Bankruptcy Act 1966 (Cth) not section 60.
- Aug 2003. The writer contacts Mr. Trkulja and suggests we compromise before the judgment in the QSCCA is handed down.
- Sept. 2006 the claim in the Supreme Court of Appeal is published Judgment enclosed.
- The judgment confirms the NAB
- (a) did not discover documents
 - (b) discovered documents at a later time than was required and obtained an advantage
 - (c) the accounting was not correct

- (d) further illegalities
- (e) that government scheme deposits are being withheld by NAB
- (f) that incorrect documents are being issued in discovery
- (g) that bank witnesses gave incorrect evidence

The NAB does not admit the illegality, the incorrect affidavits of documents, the incorrect evidence by Mr. Carlson or its other witnesses.

Dec. 2006 An amended Application for Special Leave is filed in the High Court challenging the NAB and Trustees application to make the writer vexatious against those parties.

Issues being NAB did not advise the High Court when an action for non discovery was in hearing in that court in the original action, between the parties.

The Parliamentary Joint Statutory Committee into corporations and securities had uncovered NAB as issuing incorrect bank statements in the court, BEING DIFFERENT to those supplied to the writer.

That the NAB had admitted same and produced three different series of bank statements for the writer's Bills account all different and that the writer had been disadvantaged in that the choses in action between the parties passed in law to the Bankruptcy Trustee who had at the instigation of the NAB produced incorrect notices under the Bankruptcy Act 1966 9Cth) to retain those choses.

That the industry proposed a Mediation process to facilitate compensation in this situation and this had been denied by NAB.

That the documents were not produced at trial or Appeal.

That this with the other heads from (b) to (e) above was a connived fraud and that the situation was continued by incorrect notices between the NAB the Bankruptcy Trustee.

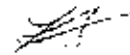
EXECUTIVE SUMMARY

1. NAB identified it had caused an illegality in May, 1996.
2. Instead of allowing the writer to leave the bank.
3. NAB forced the writer to Mediation.
4. Where NAB did not disclose the true facts and misrepresented other facts, and put the writer to unlawful pressure. Now identified by scientific test.

5. After Mediation on the 4.3.1997 NAB agreed to settle for \$500,000 after the Bill Facility expired. In accordance with the Act, which gave the writer time to settle the account.
6. The writer paid interest and fees and these were held by the NAB to allow the settlement on the agreed date.
7. NAB intentionally held the posting of the funds, to the account until after issue of demand.
8. NAB won the case using incorrect evidence.
9. The PJSCCS (Federal Parliament) issued a Report stating the bank was involved in issuing incorrect bank statements and withholding statements, including withholding funds from accounts.
10. NAB admitted all the points but failed to mediate a letter from Mr. Luck stating they would only negotiate with the Bankruptcy Trustee which was an unlawful statement. Because it had been decided in *Re; Brown Ex parte Taylor v The Electricity Commission* that mediations under a contract between parties did not vest in the Bankruptcy Trustee.
11. The bank had the opportunity to settle all actions but Brisbane failed to mediate.
12. The NAB then issued incorrect notices under the Bankruptcy Act to the Trustee who replied with incorrect notices.
The Trustee denying he had elected to continue the litigation when in fact he had by agreement with NAB previously and the fresh evidence was evidence of the Mediation under 'shadow ledgers'.
13. The NAB and the Trustee defended every action from then on based on the incorrect notices and denying mediation under the Banker's contract but retaining the writer as a customer by charging fees to one account and after acquired property.
14. NAB witnesses along with the receivers had falsified their evidence in the criminal action against the writer and action for recovery of livestock. this is now fact..
15. A result being the failure to supply this evidence to the court in the stealing charge and the determination of ownership, once again leaves the NAB open to litigation because NAB knowingly received the proceeds of the illegal sales of the livestock evidence. hidden from the courts.

16. There are now two High Court Applications for Special Leave both relying on a NAB failure to be honest in the courts and with the writer.
17. In order to protect itself and employees from litigation after these acts, NAB moved to call the writer vexatious.
18. Judgments now show the acts pleaded in the vexatious defence are substantiated, and NAB only won the vexatious orders on false facts.
19. The Federal Court is well aware of the Acts of NAB in this action as identified by the judgment in the vexatious litigation case by Judge Gyles in the FCFCA.
20. The High Court is now aware because of the Applications before it.
21. The Supreme Court of Qld. has ruled the choses belong to the Bankruptcy Trustee.
22. The High Court now has the opportunity to rule because of the banks failure to mediate the incorrect evidence produced at the original trial to Order a decision in equity and common law in the Federal Court under s.22 of the Federal Court Act.
23. The NAB still has the opportunity to mediate under the Banker's Code of Practice and its stated policies on its www site.

Yours sincerely,



L.Freeman.

SUBMISSION

In 2005 I wrote a letter explaining to you the situation where persons with an illegality had written to a corporation and after the situation had developed from corrections of \$40,000 to \$20,000,000 the corporation paid. That situation revolved around a Government Report and subsidies, the corporation CEO trying to avoid the implications of the original circumstances.

In the matters between us I advised that if the matters continued the losses for your bank would exceed the \$20M. We are now at that point and I am forwarding this letter direct to you because each time your bank has had the opportunity to settle this matter the good cop, bad cop treatment by the bank, causes it to collapse and this has happened again.

A brief outline is; Your bank

- (a) refused a deposit to my account of \$54,500,
- (b) demanded \$30,000 that if not paid the \$54,500 would not be accepted.
- (c) when the demand was paid your bank refused the deposit.
- (d) then forced, mediation and pressuring myself who was ill at the time (scientific test) obtained a Deed'
- (e) the purpose of this exercise could only have been to obtain the mining tenements of Zinace a small company, where I was Director at the time,
- (f) then re-negotiated the mediation to a \$500,000 settlement,
- (g) then stopped the interest payment being recorded to my account, to allow the matter to settle, irrespective of the three day statutory allowance,
- (h) trying to have myself sign away the assets of an independent company, to the nah,
- (i) then proceeded in the court where it can be shown incorrect evidence was used: and then,
- (j) when a Government Inquiry reported, dealing with 'shadow ledgers' stating matters should be settled by a second mediation, your bank, avoided the process,
- (k) By an incorrect affidavit of documents to the Federal Court,
- (l) bankrupted myself and then along with the Bankruptcy Trustee,
- (m) proceeded under cover of incorrect notices under the Bankruptcy Act 1966 (Cth)
- (n) to stop the mediation on the banks false and misleading accounting and waiver and estoppel,
- (o) after selling the property of the customer at an undervalue,
- (p) As part of the banks process at the encouragement of Mr. Luck ; your receivers charged me with stealing cattle under the mortgage,
- (q) After all other actions had been completed emerged the cattle sale dockets where the charges had been dropped against myself and instead of placing in evidence cattle branded with my family' brands and a company brand;
- (r) Your receiver had the charges against myself dropped and then sold the cattle and hid the evidence of the brands from all courts, reinstating the criminal charges and giving evidence no cattle of those brands were found on the property.

- (s) Your employees also giving incorrect evidence to a criminal trial on the point.
- (t) Your employees and the receiver Mr. Lloyd then gave evidence in various courts that there were no cattle of those brands on my property. Thus this deliberate incorrect evidence and the failure to produce the documents to the court has affected the judgments.
- (u) I then advised you of cases for financial disadvantage by deception. Your bank made an application to make me vexatious against your bank and the bankruptcy trustee.
- (v) I advised Mr. Wayne Carlson of his incorrect evidence in the original court hearing and your bank applied to make me vexatious against the nab in the Supreme Court.
- (w) At the time of vexatious litigation applications before the court was a case for decision which if the facts were accepted showed how your bank had avoided the mediation under 'shadow ledgers' in 2000 and 2001 and had supplied the bank statements not supplied at Trial and these were false and the transactions admitted to be false.

I am enclosing that judgment in the Queensland Supreme Court of Appeal and bring you to the point that I made above and another judgment that shows the Bankruptcy Trustee and your bank issued incorrect notices under the Bankruptcy Act 1966 (Cth). These judgments deal with many issues which may or may not be important. I respectfully submit you at this point peruse the Application to the High Court enclosed. The reason being the Bankruptcy Trustee and your bank collected \$36,000 from the Inspector General to defend actions against the nab and the trustee issued, incorrect notices to the court on the face of the notices based on incorrect notices from the nab. The Bankruptcy Act expressly under the relevant sections, denying funds for this purpose.

LIVESTOCK. The real issues in the judgment dated 1 September, 2006 are between [36] and [43]. The livestock situation where you charged me knowing there were cattle belonging to my family and another on the property 'Glassford Vale', and I was acquitted, will now be dealt with separately because the cattle sale dockets your bank tried to have withdrawn from the case show the charges had been dropped, against myself, but the police did not return the cattle to the company from where they were taken. At the same time your receiver sold livestock belonging to my family and the other entity, your bank claiming it received the proceeds. But because as is stated in the judgment you did not issue statements pursuant to your stated policies and the 'shadow ledger' inquiry recommendations and ABIO policy. So it can now be clearly shown irrespective of the above, your bank is continuing to rely on incorrect accounting.

This happened a second time after judgment had returned livestock to the company and the livestock were being stolen and sold with your cattle from the redistribution by the Qld. District Court on Appeal, but I photographed the livestock agents selling cattle not distributed to the bank, in the bank pens. The sale being illegally made, in my name, but at the time all this was happening Zinace was in the Qld. District Court trying to have the sale cattle, identified separately, because of the earlier failure of your receivers to turn up the cattle of my children and the company. Your banks agents then issued an account sale to Zinace. By the way it appears the

bank gave the mortgaged rural property to use, to the bank's witnesses in the criminal trial for a period including Christmas 2000. I have already advised your bank as to the implications for your bank and legal practitioners that will occur.

But better still in evidence in the court was a list of all the cattle sold and this disappeared in the court registry but before that happened I had made a copy of the documents contents. For interest sake it means that a method of deceiving customers and avoiding court orders, at your banks encouragement and participation (partly through legal representation to allow the process), has been identified, it is now to identify the culprits but your banks' counsel, in the court and Mr. Luck's affidavit specifically refers the proceeds of the sale of the cattle misappropriated by the receivers to your bank.

INTEREST

The Interest Charging head, fits in with the 'Shadow Ledgers " Inquiry in 2000 and I enclose the parts of your submission to the banking code of practice dated the 14 August 2001 and the Mediation Agreement under same dated September 2001 and agreed with the ACCC on behalf of the industry and ABIO, of which your bank is a director. The issue of course is that mediations do not belong to the Bankruptcy Trustee so when your bank gave an incorrect affidavit of documents dealing with the issue to the Federal Court, I was illegally bankrupted, by what is commonly known as a connived fraud. This extended to the Bankruptcy Trustee when he followed your solicitors written advice and issued incorrect notices under the Bankruptcy Act to allow a further unlawful claim against myself and obtained \$36,000 in government funding.

I need go no further to show that the whole of the judgments are based on connived fraud through incorrect affidavits made by your banks' solicitors. The court at [39] describing an illegality under the Taxation Acts, consequently your judgments may all be illegal. Clearly these matters require a General Manager's decision.

THE AGREEMENT ON THE \$500,000 SETTLEMENT;

in actual fact did not have to be pleaded because of the findings at [39] but the problem for your bank is that at the time it was holding about \$900,000 in funds to be credited to my account., which your counsel has stated was credited to my account. The admitted failure to credit the interest paid to the account also means the illegality of the Bills Contract is shown. Which brings to point, the original contract you used to sue on and your mortgages may all be illegal contracts, once again it does not have to be pleaded.

One of the most important issues about this litigation is that your bank is relying on incorrect facts being accepted by the court to give you judgments that now are seen to be incorrect and that a government inquiry settlement process was ignored and incorrect evidence given to the various courts to cover up the situation.

Before this judgment I wrote and telephoned Charles Trkulja and told him that the judgment when issued would expose the bank to illegality actions, irrespective of who was given the judgment. You can now see my reasoning and your bank can not complain you were not given the opportunity to avoid this judgment. Your customers now knowing how your accounting corrupts their files. The Parliament and the

relevant authorities the method used by Police and your bank employees and agents to manipulate evidence before criminal courts and actions brought by police to determine ownership involving the NAB. Mr. Trkulja arranged for your Queensland Counsel to contact the writer by letter, frankly when it is clear your corporation and its representatives have given incorrect documents and information to myself and the court including the High Court, and a Supreme Court of Appeal has found in fact how your bank misrepresents accounts and thrown doubt on your realisation accounting and identified, factually a criminal offence, where your bank, knowingly received the proceeds. To expect me to deal with the possible architect of this situation is beyond reasonable expectations. Especially when he opens with a letter of the type he did.

As you have already been informed at the appropriate time, I was expected to inform the relevant industry players and certain publishers how your corporate culture infected the courts in Australia.

I am nearly at that stage and your banks attitude gives me no reason to expect any change. I am providing this letter so you may make a General Manager's decision and enclose a copy of the question referring to vexatious litigation in the High Court. I also enclose a copy of one of the Irish High Court Decisions on your subsidiaries activities and suggest you may compare the culture revealed.

If you check the file you will find in 2002 there was a General Manager's Direction to settle the actions this was the second time, the first failed when the \$500,000 settlement was avoided by failing to credit the payments to my account on 6 April, 1998.

The second one in December, 2002 when your bank sent Mr. Luck, your solicitors and your counsel, but when I went to stand beside Mr. Luck to discuss the situation he moved away. Obviously just another good cop -bad cop situation to satisfy Melbourne.

When you consider I was in the process of refinancing in August, 1997 and Mr. Alder my then manager would not give the broker details and Mr. Luck confirmed the move with the same broker (diary notes and letter enclosed).

Mr. Alder had demanded \$30,000 on the 1st May, 1996 after he knew I had an interest subsidy deposit of \$54,500 approved (Diary Note, Letter and approval advice showing no arrears, enclosed.) I still do not know whether the demand was genuine because I satisfied it, even though the court did not find that way because Mr. Alder was given credit on incorrect evidence, that it was not satisfied.

Your bank has now spent millions of dollars which of course plus interest and losses amounts to gross inefficiency in a finance house to destroy me and probably steal from my family and another to cover Mr. Alder's and Mr. Luck's and others legal practices. That of course has now inevitably come to public notice.

An examination of the facts of the Irish circumstances when exposing your bank's subsidiaries on the subject of DIRT and customer additional interest payments and fees charges brings the same culture back to Australia and reflected in these circumstances.

I have held off advising the local banking experts of the information required to establish the cases surrounding your bank's accounting and misuse of Government Interest Subsidy Funds until after the High Court Judgments.

The last time I explained how an action in the court could be sustained you brought an action to make me vexatious against you and the Bankruptcy Trustee, that is appealed in the High Court and I enclose the Application for Special Leave. Then when it became obvious criminal actions could be brought against your banks agents and staff you moved to make me vexatious against your bank in the Queensland Courts. The issue that has been forgotten is after the first illegality with the interest subsidies, not being put to my account and the mediation to cover up the exercise and the obvious intention of your bank to put pressure on me to hand over the mining interests of Zinace to your bank, then the second illegality of relying on incorrect accounting practices being defined by government inquiry, and covered up by an incorrect affidavit of documents by your solicitors has no defence.

Your banks' problems are now obvious when it is considered;

* If you had mediated in accordance with your bank's published policies, then there would have been no courts at all. Or

* if your bank had cooperated to allow me to shift my business in 1997, there would have been no court at all.

* if your bank had not persisted in requiring me to deal with those that needed to cover up their involvement then there would have been no court at all.

I informed your senior people of your personnel problem and Mr. Alder departed the scene but your bank kept me dealing with Phillip Luck and now from the material herein it is obvious your bank's senior counsel, has the problem he may be ultimately responsible for your banks' affidavit material. and your bank expects me to deal with him.

This attitude did not stop the accounting showing the reasons for the mediation coming out of the '2000 Shadow Ledger' Inquiry from being factually identified by judgment; or the problems surrounding the whereabouts of the cattle sale moneys being identified; and the attempt to obtain a conviction against me by sale of livestock in my name by a receiver, encouraged by Mr. Luck, both aware the livestock belonged to another identity, but was prepared to sell the cattle in my name as he had done previously and your bank admitting it received the moneys.

But when your banks' Queensland Counsel is to deal with me, it is impossible, because it would appear that his Office has had a hand in the previous failures to come to a successful outcome. I enclose diary notes and letters where you could have settled this by my refinancing in 1997 and an affidavit of someone present when you could have continued the \$500,000 settlement of the 4th March, 1998. when your people saw the opportunity of taking over the company Zinace mining Joint Ventures with the then North Ltd. they intended to bankrupt myself to obtain Zinace's assets. They missed the assets and kept the issues in the court exposing your bank's corruption of the process.

I am enclosing an independent document by the Queensland Rural

Adjustment Authority that shows a clear case against your bank for giving false information to the authority which of course has not yet been brought. The facts are that your bank's witnesses gave incorrect evidence to the original trial and mediation and that can be substantiated by scientific, mathematical and fresh factual evidence.

It can now be shown that when your bank can pressure a person to an advantage for the bank through mediation you are proceeding but when a mediation is required under industry agreements acknowledged by yourself you are avoiding same, and issuing incorrect documents along with your requested Bankruptcy Trustee to avoid settlement and deceive the courts.

I, partly advised this by letter to the Queensland Chief Justice in 2001 and the letter was tabled in Parliament. I enclose a copy of those letters and remind you that the judgment of the QSCCA sections between [36] and [43] factually outline the point.

Attached hereto is an outline of the facts that show we can mediate under 'shadow ledgers' and you may be able to contact Zinace Pty Ltd about the cattle of theirs, that your bank has falsely claimed and their costs and losses that were unnecessarily expended.

However this is only a suggestion as I have no control over Zinace and each time I have tried to settle with your bank, they have regarded it a sign of weakness, and manipulated the situation, accordingly. I can't help but feel the \$20M quoted will be ultra conservative, considering the whole of the situation, I expect you remember all the replies, by your solicitors from my previous letters, stating the matters in the judgments enclosed had been heard.

The most interesting part about this whole situation is, you have expended whatever in legal costs being in excess of the original claim, you could have solved the problem by continuing your processes honestly and then solved the problem of bankrupting and manipulating the evidence by buying me another stocked property agreed to the value of the losses. By the way Mallesons advised you would not settle on this basis in writing.

Now you have the problems as stated all becoming public including the fact your bank has misused the High Court process, irrespective of any High Court decision. Including the fact Mr. Carlson has been advised he gave incorrect evidence in the original proceeding S 4013/98 at trial and the next time we were in court your legal team did not make the admission to the court, that they had relied on that evidence, and that the Minister for Primary Industries twelve days after the judgment had been published making a statement to parliament denying the facts of his evidence.

Alas the State Government lost \$130M in supervision fees and other banks took up the process of making the promise to obtain interest subsidies, and selling their customers up, when the works were complete, just before the customer, could repay the debt, however in my case your bank found ways not to accept payment of the debt in August, 1996, December, 1997, April 1998. Your bank made no money

out of not allowing the account to settle because the mining projects are too small for the majors. All you have done is make sure I cannot work in accounting etc. and return me, to the processes of showing how corporate culture affects court judgments when the original prosecuting authority, corrupts the evidence and recoveries.

I enclose a newspaper article of the social impacts that could be caused by the incorrect evidence of your banks' witnesses in the courts in my case and which cost the Qld. Govt. over \$130M in supervision fees for Fed. Govt. schemes.


I. Freeman.
14.12.2006.

Documents:

Hereunder is a document list the only documents provided are those in **Bold Type**, the others are all held by the **Bank** and not considered necessary in the first instance.

DOCUMENT LIST (all copies)

1. **Application for Special Leave dated 5.12. 2006. And Notices between the NAB and Bankruptcy Trustee.**
2. **Application for Line of Credit 11.5.93 (Carlson's letter).**
3. CA Judgment 2.11.2001
4. "
5. **QRAA Report 24.4.1997, Diary Note and Demand of 1.5.97.**
6. Budget signed at top, public service, method of showing subsidy forms, stage of completion at time of signature.
7. **Internal Memo of 6.11.96 and letter of 3.12.96.**
8. Credit Control Report 18.2.1997.
9. **Bank Statement for May,97 for self and Zinace. Included at 2.**
10. QRAA Inspector's Report relevant page.
11. Luck's Statement to Police page 2.
12. **Diary Note August, 97.**
13. Hynes Letter. Start of the Timber Sales at \$14,500.
14. **Luck's Letter 15.9.97**
15. Quinlan's Affidavit 4.3.98.
16. NAB Fax
17. **Luck's letter with the bank statements not provided.**
18. Cattle sale dockets of Children and Zinace and Police Receipt for March, 2001.
19. **Letters to De Jersey filed in Parliament**
20. Costello's Affd of Documents. **Included in 19.**
21. **ACCC Mediation Guidelines 16.9.2001.**
22. **Minster's Statement to Parliament of 19.11.2001.**
23. Judge Noud's Decision.
24. Way Bill etc. cattle to be sold in Freeman's name.
25. High Court Judgment March, 2003.
26. NAB and Trustees Notices.
27. **Judgment QSCCA 329/06**
28. **Irish Judgment ; National Irish Bank v RTE**
29. **Newspaper Article, rural social impacts.**

Form 23: Third Amended Application for Leave or Special Leave to appeal.
(rule 41.01.1)

IN THE HIGH COURT OF AUSTRALIA

No. B16 of 2006.

BRISBANE REGISTRY

THE COURT OF ALLEGES

FILE NO

FILE NO

LYNTON NOEL CHARLES FREEMAN

Applicant

NATIONAL AUSTRALIA BANK LIMITED ACN004 044 937

First Respondent

MATTHEW LESLIE JOINER, THE BANKRUPTCY PROPERTY OF LYNTON NOEL
CHARLES FREEMAN

Second Respondent

PHILLIP GREGORY JEFFERSON, THE BANKRUPTCY PROPERTY OF LYNTON
NOEL CHARLES FREEMAN

Third Respondent

THIRD AMENDED APPLICATION FOR LEAVE OR SPECIAL LEAVE TO APPEAL.

1. The appellant Applies for special leave to appeal from the whole of judgment of the Full Court of the Federal Court given on the nineteenth-day of May, 2006.

GROUND

2. The Full Court of the Federal Court failed to decide the question that, on the fourteenth day of October, 2003, the second respondent issued a Notice on request from the first respondent's Notice under Section 60 of the Bankruptcy Act 1966 (Cth). The second respondent's notice being under section 60 (3) of that Act. The Supreme Court of Queensland Court of Appeal on the 18 July 2006 ruled the application vested under sub section 58 (1)(a) of the Bankruptcy Act 1966 (Cth).

The second respondent's notice and the first respondent's notices were incorrect in Law. Representing the whole of an Application in the Supreme Court of Queensland by the Applicant came under section 60, 60(2),60 (3) of the Bankruptcy Act 1966 (Cth).

When in law, part of the application a right to mediate under a contract and
agreement, was void against the trustee or the proceeds vested pursuant to sections
58(1) (a) or 58(1)(b), 2,3,6 and 116 (1)(a) and 126(1)(2) and avoided sections 60,60(2),
60(3). The Application being filed on the twenty-seventh August, 2003 after
sequestration on twelve March, 2002.

The incorrect notice issued by the second respondent misused the jurisdiction of the
Supreme Court of Queensland to hear the status of the application and made the same
representation in these actions.

Where, part of the application did not vest in the Trustee or vested under sections
58(1)(b)(6), 116 (1) and 126(1)(2) of the Bankruptcy Act 1966(Cth) it was property
after sequestration and status could only be heard by the Federal Court of Australia or
the High Court of Australia under the provisions of the Bankruptcy Act 1966 (Cth).

Every action in the Federal Court of Australia after the 15th October, 2003 relied on
the notices of the first respondent and the second respondent, including this one.

The applicant was a self litigant and the responsibility to assist the court in these
actions in law and fact fell to the counsel for the first and second respondents. The
notice of the first respondent requesting the second respondent's notice was not
produced and not provided to the applicant or the court until the bringing of the
vexatious litigation application against the applicant by the two respondents.

The applicant has now been made vexatious against the two respondents based on
actions brought under the incorrect notices including this one. The notices claiming
unlawful rights under section 60(3) of the Bankruptcy Act 1966 (Cth) making the
actions based on those rights and the judgments eventually made by the Federal Court
incorrect in Law including this action at the knowledge of or should have been known
by the two respondents' counsel.

3. On fourteen March 2003 the applicant and the first respondent pursuant to an agreement between the two respondents described by the Full Court of the Federal Court of Australia as a "modus operandi", appeared before the High Court of Australia at Brisbane for Special Leave to Appeal. The first respondent at no time admitted to the Court the evidence, it had not discovered all the documents required by Law in the action for which leave was requested.

Then by avoiding the facts the basis of the mediation known to the first respondent in December, 2000 before the issue of the incorrect notices in March 2003 the first respondent has relied on:

(a) Incorrect Accounting

(b) Non discovery of documents

(c) Failure to discover documents in the first instance, then discovering the documents at a later time to the disadvantage of the applicant.

(d) Incorrect documents produced at discovery and trial

(e) NAB witnesses giving incorrect evidence.

4. The respondents in this application have avoided a Mediation or Arbitration arising by industry agreement between the first respondent and the applicant that would have avoided all litigation after December 2000 (if the respondents had not sought to have known) or knowingly relied on:-

(a) an incorrect affidavit of documents and incorrect affidavit.

(b) by not at the earliest moment of their knowledge advised the court and the applicant, of the undiscovered evidence and industry mediation process; and

(c) by the practitioners not correctly, advising their client on the supervision of any affidavit content,

(d) and the first respondent not correctly advising his practitioner of the correct content of an affidavit at his earliest opportunity after knowledge, when

(e) the applicant failed, because of an incorrect affidavit by the solicitor or his client, then; that in effect : Is

(f) to connive in a fraud to defeat the ends of justice.

5. It is unjust for the applicant to be made vexatious when the responsibility for making correct legal representations lay with the counsel of the two respondent's. When the applicant's applications in the Federal Court and Appeals were based on incorrect Law and facts represented to the applicant and the Court by the respondent's respective counsels in all actions after December, 2000 defended by the respective respondent's against the applicant and again in these applications and appeal. The respondents at all times knowing or ought to have known the first respondent had after a Parliamentary Committee Inquiry and industry agreement where the first respondent, had agreed the circumstances relating to the provision of bank statements to the applicant created a situation where the remedy of mediation, became available to the applicant. The first respondent solicitors by affidavit in the Federal Court avoided discovery after the first respondent accepted he did not provide correct bank statements, for the applicant's facilities and agreed to settlement under industry mediation.

There needs to be a policy or tort established beyond the statements in ethics to ensure misrepresentation by legal counsel is not used against self litigants to create injustice. Legal Policy needs to be established on whether the extended definition of 'proceeding' should be applied to mediations where the word appears in O21 r 2 of the Federal Court Orders 1976. When the mediation would have avoided all proceedings and was deceptively avoided by the first respondent, with financial advantage, for both respondents at the time.

ORDERS SOUGHT

1. That Special Leave and Leave to Appeal be granted.
2. That the Court make and order directions it considers necessary, and give directions for the completion of an appeal record index and record book.
3. OR any other Order the Court considers necessary.

At the time of Appeal.

4. (a) The appeal is upheld.

(b) That the orders of Spender J under Order 21 rule 2 of the Federal Court Rules and others be abandoned including costs.

(c) That the Orders of the Full Court of the Federal Court of Australia of the nineteenth May, 2006 be abandoned.

(d) That the costs orders in the previous application and appeal be abandoned

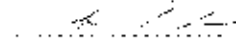
(d.1) That the applicant receive costs on an actual disbursements basis including travelling to and from court.

(e) That subject to section 22 of the Federal Court Act 1975 the Court Order that all decisions in the Federal Court of Australia after the 15th October, 2003 should be abandoned.

AND/ OR in the alternative

(e.1) That the Court allow the applicant to bring before the Federal Court of Australia any action to establish loss or damage to the applicant through the acts of the respondents, after the issuing of an incorrect notice relying on s.60(3) of the Bankruptcy Act 1966 (Cth).

Dated the fifth day of December, 2006.

 (Applicant)

Schedule 2

Form 22

Amended Application for leave or Special Leave to Appeal.

To: The National Australia Bank Limited ACN004 044 937
Mallesons, Stephen James
Level 30, Waterfront Place
1 Eagle Street
Brisbane, 4000

AND

To: Matthew Leslie Joiner and Phillip Gregory Jefferson
Forbes Dowling Lawyers
Level 9, 193 North Quay
Brisbane, 4000.

TAKE NOTICE: Before taking any step in the proceedings you must, within 14 days
after service of this application, enter an appearance in the office of the Registry in which
the application is filed, and serve a copy on the applicant.

THE APPLICANT'S ADDRESS FOR SERVICE IS:

Bailey Street, Mary Peaks Q.

Postal Address: P.O. Box 1476,

Gladstone, 4680.

Telephone : 07 49 745 479

Mr. Wayne Carlson,
National Australia Bank,
Brisbane.

P O Box 1476,
Gladstone. 4680
28th June, 2006

Dear Wayne,

Re: E. N C Freeman

Thank you for receiving my phone call. I take on board that your bank considers in the circumstances it is right.

Without going to unnecessary detail, I am enclosing a document filed in the Supreme Court action B/S 5438/05. I thought you may be able to consider this document as being evidence of the original Interest Subsidy proposal put to me, as you are not involved personally in B/S 5438/05. It tends to show certain aspects of the your banks representations at the time as recorded by your bank's RFA who was present. By applying the budget as well the picture becomes even more clear.

In 2002 the details of Alder's refusing the subsidy were identified by Melbourne with a meeting between , Cicuttio, Head of Asset structuring and Andrew Linklater. They decided to settle because to refuse a deposit greater than a demand is a fraud and that question was not examined at Mediation or at trial.

[In the alternative Alder stated in evidence I did not pay the \$30,000. He knew I had planed to have \$30,000 extra by 31st May, 1997. The QRAA subsidy was made available on the 24.4.1997 and would have been credited on the 31.4.1997. So I timed my cattle sales for the 2nd May, 1997 about \$12,000 that meant my April, payments would have come out of my interest subsidy and then Zinacc completed a contract on the 30th May, 1997 and it owed me \$7,500 with part of the remaining \$7,500 being used to purchase cattle from me over the next few months. Then it sold some of the cattle through the Zinacc account with your bank.. I am enclosing the two May bank statements.]

To hide the Melbourne decision, the solicitors issued incorrect notices enabling the bankruptcy trustee to issue incorrect notices back to the bank and consequently the NAB misused the jurisdiction of the Supreme Court and the Bankruptcy Trustee then claimed a subsidy from the Inspector General.

Bundaberg Branch about the time I had submitted the money to issue new Bills on 6.4.98 told the refinancier to contact me as to the debt and refused to make a time for settlement.

At the time I believed we were to settle for \$500,000 and the money was available.

The bank keeps stating this is important, it may be to their loss situation but the Bills of Exchange Act was changed and provided I had the moneys at the bank to issue a new Bill on the date due, then the bank was liable.

The Bank did not issue a notice of no more bills until the day after this event.

The Shadow Ledgers inquiry described this situation and placed liability on the NAB and the bank accepted liability shown in it and other publications and customer contracts but avoided settlement by deceit.

Clearly this matter did not settle because with a little inside misapplication every outside organisation, solicitors , receivers bankruptcy trustees etc. could make money and the bank and I paid for it.

I thank you for this opportunity to submit material to you in your new position.

As you stated NAB is not interested in settlements. So I can only continue to the prosecution in B/S 5438/05 and contribute to the study of how the NAB corporate culture has infected the court system and processes.

Yours sincerely,



L.Freeman.

Encl., Bank Report 11.5.1993
Bank Statement 1.NCF 30.9.97
Bank Statement Zinacc 25.6.97
QRAA Report Commercial Lenders Notes 24.4.97

Customer: SEC NAME

508-72

ESP Inc.

Date:

$$F(\mathbb{C}) = \mathbb{C}[X, Y, Z] \quad \text{and} \quad F(\mathbb{C})' = \mathbb{C}[X, Y, Z]$$

15. *As a result of the above, the following is proposed:*

2. $\overline{5.7}$

1/15/57

Continuation Sheet (if needed)

To achieve \$100000 is required an energy which is an
 enormous ambition starting from a drought, to show the abolition
 crisis of carrying more cattle, and find any individual exposure
 of drought climate back in the near future.

While drought is afflicting several millions, and even
 fresh, it will be feared, and that even with abolition
 while there is sufficient large food with some sufficient
 to cause death through the end of winter without
 any provisions.

Serviceability

Estimates of limited subsidies to May 1995 have been calculated in accordance with numerous studies

Timber income is an uncertain quantity, however it has been as high as \$120,000 and this financial year, when the cuts are 960,000. At present levels timber cuts are thought to be sustainable, as regrowth should replace the timber sold.

As for having SLOC budgeted income was thought to be sufficient for substantial debt reduction at this revenue level since the last two years have been almost substantially. As at 30 June 1991 there was a total of 300 cattle and on 1st May 1993 there were 1475 cattle. Following approval of the SLOC numbers are expected to be around 1955/56 on the 30/6/94 and rising to about 2000 then to 2000.

Then last build up with increase apparently about the same
 about and a 150000 expenditure is expected at a large in
 connection with construction ✓

little to be purchased here a low price / 1st budgeted
copper livestock schedule 30/6/43 - 94 as cattle are to be
purchased in priority depressed cattle market largely due to
the drought and cattle selling members down. On the sales
program prices are related to a market recovery. However
~~in~~ prices used as still considered conservative

Capital required for the 12 months ahead is \$16091
and for the following 12 months \$90281 with bond build
up complete, a \$50000 requirement and a margin for interest
in case

TEL : 50 7377
BUNDABERG-168 BOURBONG ST 4-571 P

MR LNO FREEMAN
PO BOX 1476
CLADSTONE QLD 4680

LYNTON NOEL CHARLES FREEMAN
FARM MANAGEMENT ACCOUNT

Managers sel
084-571
Account no.
28 028-6647

15MAY97			Brought forward	118,358.07 DR
MAY97	281149	81.66		
	281150	24.00		118,463.73 DR
20MAY97	281146	699.00		119,162.73 DR
29MAY97	CHEQUES	10,000.00		
	291148	170.00		109,332.73 DR
30MAY97	INTEREST CHARGED	1,162.07		
	INTEREST CHARGED			
	FROM A/C 66-953-3896	7,615.74		118,110.56 DR

FOR FAST, EASY ACCOUNT ACCESS JUST CALL 13 22 65.
OUR STAFF ARE AVAILABLE TO ANSWER YOUR ACCOUNT AND GENERAL
ENQUIRIES BETWEEN 8AM AND 6PM, MONDAY TO FRIDAY.

TOTALS THIS PAGE 9,732.49 10,460.00

Date of issue

Page number

Final balance

Subject to any adjustment. Please see page 2.

30MAY97

138

DEBIT

\$118,110.56

Important

Please keep this statement in a safe place.

It is a record of your account with the Bank and should

be retained for taxation purposes. A charge may be applied to replace this statement if lost or destroyed.



Account statement

80 7377

BUNDABERG-168 BOUNDARY

1-571

For Account
enquiries
telephoneTHE DIRECTORS
ZINACE PTY LTD
PO BOX 1476

15 2265

GLADSTONE QLD 4680

ZINACE PTY LTD
NATIONAL FLEXIACCOUNT

ACN 072 535 712

Managers tel
084-571
Account no.

65 922-2058

Particulars	Debit	Credit	Balance
		Brought forward	72.97 CR
25MAY97			
29MAY97		CHEQUES	15,000.00
	000012		10,000.00
			5,000.00
2JUN97		FEDERAL GOVT TAX	
		FROM A/C 65-922-2058	5.20
			5,005.20
3JUN97	000014		14.95
			5,020.15
6JUN97	000013		162.60
			5,182.75
13JUN97	000015		2,000.00
			3,182.75
24JUN97		CHQ BK 084571 659222058 MAILED WITH SRL NOS. 000031- 000060	

FOR FAST, EASY ACCOUNT ACCESS JUST CALL 15 22 65.

OUR STAFF ARE AVAILABLE TO ANSWER YOUR ACCOUNT AND GENERAL

ENQUIRIES BETWEEN 9AM AND 6PM, MONDAY TO FRIDAY.

TOTALS THIS PAGE

12,183.75

15,000.00

Date of
issuePage
number

Final balance

Subject to any adjustment - Page 1 of 1

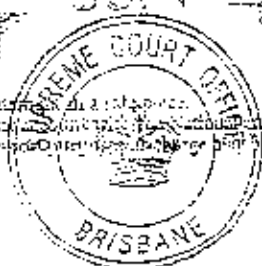
25JUN97

17

CREDIT

12,183.75

Please keep this statement as a reference.
It is a record of your account and should be retained for a period of 6 years.
If you are not satisfied with the service, please contact your manager or the National Flexiaccount Manager.



1098

NAME: FREEMAN LNC
FILE NO: 38567

COMMERCIAL LENDERS COMMENTS: (Private and Confidential)

NAB Rural Finance Manager (John Alder) advised:-

File does not indicate anything adverse. Facilities were due for review in February, but now extended to May. He considers that debt load is excessive and would not wish to see any increases.

Would prefer to await completion of annual review prior to giving any commitment for continuing support.

ARREARS:

Nil.

FINANCIALS/ESTIMATES:

Statement of position at 01/97 A. \$3,070K, L \$1,044K, S \$2,026K.

Financial - Actuals.

93/94 Cash deficit (\$129K).

94/95 Cash deficit (\$57K) Interest sub \$45K paid.

95/96 Cash deficit (\$102K) Interest Sub \$58K paid. Capital Ex \$47K. (Elect connection \$24K new bore and water connections \$17K. Mower \$4K).

Estimates 96/97 Cash deficiency (\$45K).

Estimates 97/98 Cash deficiency (\$21K).

CLIENTS COMMENTS:

Lynton Freeman advised 24/04/97.

- Have received some good rain.
- Water supply now no problem since equipping new bore with additional piping to watering points.
- A good body of feed available.
- Cattle are in good condition.
- Main problems now being faced:-
 1. Understocked. Would like to run 1000 breeders with annual turn off of 800 mixed.
 2. Low prices.
 3. The need to sell stock at current prices to meet commitments/operating expenses

GENERAL COMMENTS:

The major problem facing this enterprise is the high level of debt with attaching interest imposts of some \$110,000 p.a. The problem is heightened by the low cattle numbers and current prices. From sales receipts as projected for 1997/98 year (450 head) interest alone will take \$245 per beast or 51% of proceeds.

Ability to increase cattle numbers to a level where percentage interest to farm income is acceptable, is of some doubt as there will continue to be pressure from lenders to sell outside of optimum time to meet commitments. Even a turn off of 800 head annually at average price of \$400 will only reduce interest to 34% of income.

Prospects for this year appears reasonable however prices will dictate the degree of any headway in overcoming present financial difficulties.

Fully stocked and given fair cattle prices, the enterprise should be a viable unit.

A further years interest subsidy under Drought appears warranted however it may be appropriate for property inspection and assessment by a Field Officer to consider the long term viability and in particular ability to achieve this within a reasonable period.

NAME: FREEMAN LNC
FILE NO: 38567

RECOMMENDATION:

Total Interest Expense \$ 108,292

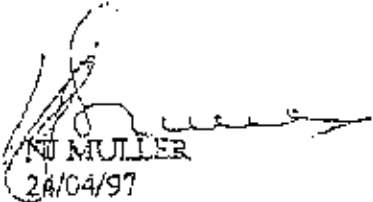
Application No 5660

Approval: \$54,550 IRS (10.91%) (4-DD)

Stats: 0125-Callope-RAS Drought (DRO93CO) \$500,000 part NAB FRJOL 10.91%

Scheme 2A Fund 410

Application Source: FARMER
Year last applied for RAS: 1995 (01/96)
Year first received RAS: 1993 (04/94)
Date application received: 07/03/97
Total Rural Debt: \$ 1,026,150
Next Review to be: 04/98
Reconsideration: N
Copy of Correspondence to: N/A


J. MULLER
24/04/97
JIF

COPY

Confidential communication

Matthew Joiner and Gerald Collins
Horwarth Jefferson Stevenson
Level 4
370 Queen Street
BRISBANE QLD 4000
~~Fax (07) 3329 5508~~

9
September 2002

EL E Costello
Direct line
+61 7 3244 8115
Partner
M Darian-Smith

Dear Sirs

National Australia Bank Limited ("Bank") - Lynton Noel Charles Freeman ("Freeman")

We act on behalf of the Bank. On 26 August 2003 the Full Federal Court upheld the sequestration order made by His Honour Justice Spender at first instance. Accordingly, you were appointed as trustees in bankruptcy to the estate of Freeman.

On 29 August 2003, Freeman served upon us an application to set aside the judgment obtained by our client in the Supreme Court of Queensland on 11 October 2001 ("Judgment"). We attach a copy of the application for yourselves. The Judgment was appealed by Freeman to the Court of Appeal unsuccessfully. Freeman then sought leave to appeal to the High Court of Australia and was also unsuccessful.

As Freeman's trustees in bankruptcy, his property, including any choses in action, vest in his trustees. The property that vests in the trustees includes any action of Freeman to appeal a judgment even if it is the judgment that the bankruptcy notice/creditors petition was founded upon (*Evans v Hisert Pty Ltd* [2003] SASC 186 and *Cummings & Fuller v Claremont* (1996) 185 CLR 124). Accordingly, the right to proceed with the application to set aside the Judgment that is purported to be brought by Freeman vests in his trustees in bankruptcy.

Pursuant to section 60 of the Bankruptcy Act 1966 ("Act") we request that you make a decision as to whether or not the trustees intend to prosecute or discontinue the application filed by Freeman. Freeman has filed the application with the return date on 15 September 2003. By

Solicitors

Level 30 Waterfront Place 1 Eagle Street Brisbane QLD 4000 Australia
DX 311 Brisbane ABN 55 001 462 299 bris@mallesons.com www.mallesons.com

T +61 7 3244 8000
F +61 7 3244 8999

10/23/03 10:10 AM

Jefferson Stevenson & Co

consent, we have tentatively agreed that this matter be adjourned until 24 October 2003.
Accordingly, the trustees will need to notify us of any decision prior to these dates in order that
we may advise the court of the trustees' decision.

We look forward to your response.

Yours faithfully

Miller Apple Taylor

Encl

400



Horwath Jefferson Stevenson
Business Recovery &
Insolvency Accountants
Level 4, 370 Queen Street
GPO Box 277
Brisbane, Queensland 4001
Telephone (07) 3229 2800
Facsimile (07) 3229 5508
<http://www.horwath.com.au>
reception.brisbane@horwath.com.au

Our Ref: 10560/29/002MALLESONS/MJ/hm

14 October, 2003

Messrs Mallesons Stephen Jaques
Solicitors

Attention: Ms Clare Turner

Facsimile No.: (07) 3244 8999

Dear Sirs

**LYNTON NOEL CHARLES FREEMAN
(BANKRUPT ESTATE NO. 1837 OF 2002)
Your Client: National Australia Bank Limited**

I refer to your letter received on 12 September, 2003 concerning the application filed by Mr Freeman in the Supreme Court of Queensland proceedings known as 4013/98.

I note that, pursuant to Section 60 of the Bankruptcy Act, 1966 ("the Act"), I was required to make a decision by 10 October, 2003 as to whether I, as Trustee, would prosecute or discontinue the application filed by Mr Freeman. I have not made any election pursuant to Subsection 60(2) of the Act. Accordingly, I consider that the proceedings have been abandoned by virtue of Subsection 60(3) of the Act.

I have also informed Mr Freeman in writing of the above development.

Should you have any queries, please contact me.

Yours faithfully

Matthew L. Joiner
Trustee

401

Partners:
Philip Jefferson
Gerald Collins
Matthew Joiner

Horwath Jefferson Stevenson is an independent practice.
Other Horwath practices operate in each of the nation's financial centres.

NAME: FREEMAN LNC
FILE NO: 38567

RECOMMENDATION:

Total Interest Expense	\$ 108,292

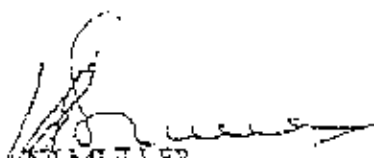
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Total Rural Debt: \$ 1,026,150
Next Review to be: 04/98
Reconsideration: N
Copy of Correspondence to: N/A


J. MULLER

24/04/97

JTF

1067

NAME: FREEMAN LNC
FILE NO: 38567

COMMERCIAL LENDERS COMMENTS: (Private and Confidential)

NAB Rural Finance Manager (John Alder) advised:-

File does not indicate anything adverse. Facilities were due for review in February, but now extended to May. He considers that debt load is excessive and would not wish to see any increases.

Would prefer to await completion of annual review prior to giving any commitment for continuing support.

ARREARS:

Nil.

FINANCIALS/ESTIMATES:

Statement of position at 03/97 A. \$3,070K, L \$1,044K, S \$2,026K.

Financial - Actuals.

93/94 Cash deficit (\$129K).

94/95 Cash deficit (\$57K) interest sub \$49K paid.

95/96 Cash deficit (\$102K) Interest Sub \$58K paid. Capital Ex \$47K. (Elect connection \$24K new bore and water connections \$17K. Mower \$4K).

Estimates 96/97 Cash deficiency (\$45K).

Estimates 97/98 Cash deficiency (\$21K).

CLIENTS COMMENTS:

Lynton Freeman advised 24/04/97.

- Have received some good rain.
- Water supply now no problem since equipping new bore with additional piping to watering points.
- A good body of feed available.
- Cattle are in good condition.
- Main problems now being faced:-
 1. Understocked. Would like to run 1000 breeders with annual turn off of 800 mixed.
 2. Low prices.
 3. The need to sell stock at current prices to meet commitments/operating expenses

GENERAL COMMENTS:

The major problem facing this enterprise is the high level of debt with attaching interest impost of some \$110,000 p.a. The problem is heightened by the low cattle numbers and current prices. From sales receipts as projected for 1997/98 year (450 head) interest alone will take \$245 per beast or 61% of proceeds.

Ability to increase cattle numbers to a level where percentage interest to farm income is acceptable, is of some doubt as there will continue to be pressure from lenders to sell outside of optimum time to meet commitments. Even a turn off of 800 head annually at average price of \$400 will only reduce interest to 34% of income.

Prospects for this year appears reasonable however prices will dictate the degree of any headway in overcoming present financial difficulties.

Fully stocked and given fair cattle prices, the enterprise should be a viable unit.

A further years interest subsidy under Drought appears warranted however it may be appropriate for property inspection and assessment by a Field Officer to consider the long term viability and in particular ability to achieve this within a reasonable period.

NAME: FREEMAN LNC
FILE NO: 38567

PREVIOUS DECISIONS: Continued

06/04/95 Approve \$ 7,440 IRS (12.4%) 2-DD \$60,000 NAB FDA 12.4% New.
\$ 7,182 IRS (3.99%) \$180,000 part NAB FRL 10/97 (Top up)
\$12,400 IRS (12.4%) \$100,000 NAB OD 12.4% New.
\$11,209 IRS (10.19%) \$110,000 NAB FRL 10.19% New.
\$58,231

Advise clients that this second year of Exceptional Circumstance. Drought assistance applies to the 12 months period from 04/95 as did the second year productivity subsidy paid in advance in 01/95.

25/01/96 \$32,755 IRS (10.911%) (3-DD) \$300,000 part NAB FRIOL 10.911% (New)
\$25,300 IRS (12.65%) \$200,000 NAB O/D 12.65% (New)
\$58,033

Advise clients that this third year assistance applies to the twelve month period from 04/96.

CRAA PROJECTION (Based on Plan)

Income

Based on 800 breeders @ 80%
640 mixed cattle @ \$475

	304,000
TOTAL INCOME	<u>\$304,000</u>

Outgo	Fixed and Variable	\$120,000	
	Personal	\$ 30,000	<u>\$150,000</u>
	Available for Debt Servicing		<u>\$154,000</u>

DEBT SERVICING REQUIREMENTS
01/96

Secured Lender	Balance	Arrears	Int %	Maturity	Int Only	AIT
NAB FMA	117,126	Li \$120K	12.25	05/97	11,760	11,760
		285,191				80%
NAB FDA	33,750	50,000	11.25	06/99	3,797	18,797
NAB FRIOL	250,000	650,000	10.91	6/97	52,755	92,725
S/Totals:	1,000,876	985,191			108,292	123,292
HP:						
NAB Lease	17,297	21,807		1/98		5,297
Esanda lease	7,977	14,585		5/97		7,977
Totals:	1,026,150	1,021,583			108,292	136,566

\$9700 per beast
\$1,543 per breeder

Surplus	\$45,708	\$17,434

LANDED EQUITY

Land/Improvements

	Owners	F.M.V
	\$	2,500,000
	\$	<u>1,000,000</u>
EQUITY	(60%)\$	<u><u>1,500,000</u></u>

NAME: FREEMAN I.N.C.
FILE NO: 38567

REQUEST: Interest Subsidy.

DROUGHT DECLARED SHIRE: YES Shire: Callicpa
I.D.P. CERTIFICATE NO
V.G. SEARCH UNDERTAKEN: NO

ENTERPRISE/LOCALITY: Cattle.
Bullyan, Boyne Valley west of Gladstone.

AREA OWNED (HA): 9988 ha
AREA OPERATED (HA): 9988 ha
AREA CULTIVATED (HA): 60 ha

CULTIVATION/GRAZING/FARM PEAK (T/C) / ASSIGNMENT/MILL:
As above.

STOCK ON HAND/CARRYING CAPACITY/LAMBING/CALVING%FARROWING%

			0/86/	1/95/	
Cattle	Cows	665	750	750	Calving 80%
	Heifer	70	200	150	C/Capacity 1000 breeders
	Steers	340	628	370	
	Calves	365		440	
	Bulls	25	36	30	
		<u>1465</u>	<u>1614</u>	<u>1740</u>	

PREVIOUS DECISIONS:(USE SEPARATE SCHEDULE IF NECESSARY)

08/04/94 Approval \$10,000 IRS (4%) Drought \$250,000 NAB FRL 8.815% (Top up).
Approval \$10,000 IRS (4%) \$250,000 NAB FRL 8.815% One year only. FIM (ICI)
Advise applicants that subsidy has been provided on a one-off basis in view of the difficulties occasioned by the drought conditions over the past year and to assist with the implementation of the productivity plan.
Client is presently going through a period of rebuilding stock (Stock 1,725 as opposed to carrying capacity 2,500) and as such needs a helping hand in the short term. Should he wish to reapply after 04/95, we will once again require a fully completed application.
Applies to the 12 months to 04/96.

31/01/93 Approval \$11,160 IRS (6.2%) \$180,000 Part NAB FRL 12.4 Second year only FIM (ICI).
Advise applicant subsidy has been provided to continue assistance with the implementation of the productivity plan.

1068

31-23 57

LNC FREEMAN

01/5/97 Mr Lyn Freeman rang to find out how much he 'had in credit'. I gave him the balance and reminded him that a PP of \$1250 would also go through tonight. PP is for loan payment and was deferred yesterday due to insufficient funds. Deposit of \$12000 overnight has fixed account up.

Mr Freeman asked would this make us happy as he had now met interest when it was due and we hadn't had to chase it up.

Advised Mr Freeman that it was good that he had met the interest and we would like to see this continue. Reminded him that he also had to make a \$30,000 reduction at the end of May. He replied that somebody from QRAA was seeing him in the next few weeks and also he is having a visit from a timber cutter soon.

Mr Freeman expressed his feeling that the bank needs to appreciate the situation the whole industry is in.

Told Mr Freeman that I felt that we had been very supportive and that he only had to look at his OD limit from June last year and the temporary increases since then to realise how supportive we have been.

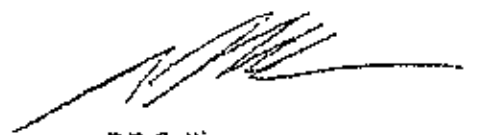
Asked Mr Freeman was he relying on QRAA subsidy to meet the reduction. He said that it would be very handy as he received over \$60,000 last year. Told him that the bank did not factor in QRAA subsidies into cashflow income projections and we would want to see that reductions can be met and debt serviced without relying on subsidies which may not continue indefinitely.

Mr Freeman then asked was the bank going to 'Jam' him. I replied that the bank would consider instigating appropriate action if he did not meet the reduction AND keep meeting his interest as it falls due. He asked what did I mean by 'appropriate action'. I explained that demand may be served and if this was the case then it is ~~for~~ the full amount of debt outstanding not just the overdraft.

He replied 'so you're going to jam me if I don't get the \$30,000'. I said that he might call it this but the bank follows a set process and the best way to avoid this was to meet the reduction etc.

Call went on for a long time, covering beef price decline, weather, timber prices, timber mills, attitudes of various timber cutters etc.

Finished call by asking Mr Freeman to direct his efforts towards meeting the May 31 deadline.



RF Collins
RFA

0555



Chart of a/c accounts	Totals	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct
	\$,0's	\$,0's	\$,0's	\$,0's	\$,0's	\$,0's	\$,0's	\$,0's	\$,0's	\$,0's	\$,0's	\$,0's	\$,0's
INCOME													
Drop income													
Cats.....	1000	0	1000	0	0	0	0	0	0	0	0	0	0
Livestock income													
Cattle Sales.....	13976	2600	500	2000	1450	1450	1450	1450	900	870	0	610	500
Other income													
Diesel rebate.....	110	0	0	0	0	0	0	0	0	0	0	110	0
Rain Roads.....	600	600	0	0	0	0	0	0	0	0	0	0	0
Railway Fencing Contract	1250	650	600	0	0	0	0	0	0	0	0	0	0
Work in Labour.....	500	0	500	0	0	0	0	0	0	0	0	0	0
Income sub-totals	17436	4150	2600	2000	1450	1450	1450	1450	900	870	0	610	500
INCOME TOTALS	17436	4150	2600	2000	1450	1450	1450	1450	900	870	0	610	500
EXPENDITURE													
Operating expenditure													
Accountant.....	170	0	0	0	0	0	170	0	0	0	0	0	0
Bank Charges.....	422	0	0	0	0	182	0	0	42	0	0	182	0
Contract Harvesting.....	180	120	0	0	0	0	0	0	60	0	0	0	0
Dips & Poisons.....	200	0	50	0	0	50	0	0	50	0	0	50	0
Fodder.....	51	25	0	0	0	0	0	0	0	0	0	12	12
Freight & Cartage.....	1110	90	200	200	80	50	50	80	80	80	80	50	80
Fuel.....	1200	400	0	0	100	100	100	100	100	100	100	0	100
Insurance.....	170	0	0	0	0	0	0	0	0	0	0	170	0
Insurance - WAFB.....	300	0	0	0	240	0	0	0	0	0	0	0	0
Living expenses.....	1440	120	120	120	120	120	120	120	120	120	120	120	120
M/Vehicle losses.....	1852	96	96	96	96	96	96	96	96	96	96	96	96
M/Vehicle expenses.....	526	14	14	14	14	14	14	14	14	14	14	14	14
Rates & Rent.....	275	0	0	0	0	0	0	0	0	0	0	275	0
Repairs & Maintenance.....	1800	150	150	150	150	150	150	150	150	150	150	150	150
Seed.....	100	0	100	0	0	0	0	100	0	0	0	0	0
Stock Medicines.....	100	150	0	0	0	0	0	150	0	0	0	0	0
Sundries.....	420	15	15	15	15	15	15	15	15	15	15	15	15
Telephone.....	420	120	0	0	120	0	0	120	0	0	120	0	0
Truck & Ute Expenses.....	95	0	0	0	0	0	0	0	0	0	0	0	0
Wages/Share.....	1520	60	10	120	120	120	120	120	120	120	120	200	120
Expenditure sub-totals	11950	1450	880	770	1210	925	1610	1120	905	750	975	1421	570
MAN REPAYMENTS													
PA.....	1500	125	125	125	125	125	125	125	125	125	125	125	125
Expenditure sub-totals	1500	125	125	125	125	125	125	125	125	125	125	125	125

LNC FREEMAN

R.S.S. : 4578

Cashflow (v1.01)

Page 1

GROSSFORDTALR

Class : 19106

DUNEDIN, SIO

Number : 7526-24011 Cash Flow report for Forecast 35 Nov 96/97

Chart of all Accounts	Totals	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct
	\$,0's	\$,0's	\$,0's	\$,0's	\$,0's	\$,0's	\$,0's	\$,0's	\$,0's	\$,0's	\$,0's	\$,0's	\$,0's
WORKING ACCOUNT INTEREST													
Freeman.....	1637	119	112	116	119	128	139	147	159	170	181	193	216
- DR Rate 11.35%													
Expenditure sub-totals	1637	119	112	116	119	128	139	147	159	170	181	193	216
LOAN ACCOUNT INTEREST													
FIXED RATE LOAN/FDA.....	12746	772	773	773	772	772	772	772	773	773	773	773	773
- DR Rate 10.91%													
FDA.....	351	40	31	37	36	34	33	31	31	29	28	27	26
- DR Rate 11.35%													
Expenditure sub-totals	9661	812	811	811	809	807	806	805	803	802	801	800	794
EXPENDITURE TOTALS	26031	2598	2604	2601	2608	2643	2691	2701	2992	2883	2903	2559	2911
* NET CASHFLOW	(3521)	(562)	(666)	(175)	(313)	(353)	(1246)	(753)	(1052)	(981)	(1091)	(1919)	(1521)

OPENING BALANCES CR/(DR)

Freeman.....	(11655)	(10933)	(10256)	(10077)	(10091)	(11486)	(12734)	(15487)	(14579)	(13562)	(11956)	(11954)	(11954)
Fixed Lending.....	(98751)	(82750)	(80535)	(83580)	(86275)	(86250)	(88125)	(89000)	(87975)	(87750)	(87625)	(87500)	(87500)
Opening net balances	(101440)	(93683)	(90801)	(93657)	(96366)	(97736)	(100859)	(104487)	(102454)	(103312)	(105180)	(107004)	(107004)

CLOSING BALANCES CR/(DR)

Freeman.....	(10923)	(10256)	(10077)	(10091)	(11486)	(12734)	(13487)	(14579)	(13562)	(11956)	(11954)	(11954)	(11954)
Fixed Lending.....	(87750)	(80635)	(86580)	(92375)	(86250)	(88125)	(89000)	(87875)	(87750)	(87625)	(87500)	(87375)	(87375)
Closing net balances	(98673)	(90891)	(96657)	(92466)	(97736)	(100859)	(101487)	(102454)	(103312)	(105180)	(107004)	(108461)	(108461)

Closing net balance (108461)
less Opening net balance (101440)

* NET CHANGE IN LIABILITY CR/(DR) (7021)

Attention:-

To enable 12 months data to appear across one page all figures in this report have been scaled and rounded. Sub-totals and total figures have been calculated using unscaled data and have then been scaled. Thus they may not total.

IMPORTANT INFORMATION

The Cash Flow projections are provided to you as an estimate of the financial activity which may occur during the period shown. It is important to note that, because the projections are estimates only, they are subject to the variables

0534

National Australia Bank Limited A.C.N. 064041931
LTC FREEMAN E.S.E : 4571 Cashflow (71.01)
GLASSBOROUGH Class : 16156
SULLIVAN, QLD Number : 1624-24012 Cash flow report for forecast \$5 Nov 96/97

15 Oct 1996.
Page 3

IMPORTANT INFORMATION (Continued)

which affect your farm/ business. Variations are, accordingly, likely to occur.

The Cash Flow estimate is based upon information supplied to National Australia Bank Limited ("the Bank") by you or your authorised representatives.

The estimate is based upon assumptions regarding:

1. Prices received;
2. Production volume; and
3. Amount and volume of business expenses.

The estimates will be affected by the accuracy of the information provided and its relevance in light of changes in general economic conditions and other factors. It is important that you revise the Cash Flow estimates whenever changes occur and provide a copy of the revised estimates to the Bank.

So far as the law allows, the Bank disclaims any warranty or representation as to the accuracy or reliability of the information and statements in this document.

The Bank advises that the Cash Flow program is produced to assist the Bank in making its own credit assessments and it should not be relied upon by any other person as constituting any statement of information or opinion by the Bank. The Bank will not be liable in any way whatsoever (whether in negligence or otherwise) for any loss or damage which may be suffered by any person relying upon such information or otherwise arising in connection with the contents of or any omission from this document except where a liability is made non-excludable by legislation.

----- END OF REPORT -----

D1-61

National Australia Bank

Internal Memo

6 Nov 1996

Date

Manager From
 Manager
 RURAL FINANCE BUNDABERG
 PO BOX 534
 BUNDABERG Q 4670

JLA/RFM

Your Reference

Our Reference

071 507 361

Phone Number

071 507 366

Subject

re: Charles Freeman

4-571	28-028-6647	\$120,000	\$113,887
4-571	64-606-1256	\$ 37,500	\$ 37,500
4-571	66-953-3896	\$850,000	\$850,000
	35-301-9181	\$ 17,735	\$ 17,735
		\$1,025,235	\$1,019,122

✓

to attached file and various d/notes 28/10, 30/10 & 6/11 and sundry letters (copies attached)

is that it would appear that Mr Freeman will have difficulty in reducing o/d debt below \$90,000 as arranged. As you have been closely monitoring Mr Freeman's situation.

our date of 3/9/96 we have confirmed values of our security with Monte Manager (refer his memo below security) and we have advised Mr Freeman of the Bank's requirements (refer copies of various letters attached)

recommend that o/d limit be extended at current level of \$120,000 to 28/2/97 with monthly updates to monitor if some can be made, as it is unlikely he will be able to operate the account below the \$90,000 in the short term, and the limit will only add to our irregular list.

Done for
 Bth mth 1/1

approval

LEADER

FINANCE MANAGER

ent
 end BBL
 letter re
 term at
 is stage

28/11/96 A most disappointing situation & as
 full history indicates that internal has
 again shown an inability to
 operate within his professional
 limits of on his 2/10/96
 payment & an action plan must be
 formulated 5/1/97
 NO EXCESS TO BE

1057

ANNOUNCED

Name & Title

Instructions

When Forward



National Australia Bank Limited
A.C.N. 004044837



RURAL FINANCE BUNDABERG
PO BOX 534
BUNDABERG Q 4670
Phone: 071 507 368
Fax: 071 507 366

SUPREME COURT
OF QUEENSLAND

7-8-96: 10:45 AM

3 December 1996

7 JUL 1998

FILED
BRISBANE

Mr Lyn Freeman
P O Box 1476
Gladstone 4680

Dear Mr Freeman,

Reduction of Farm Management Account Overdraft Limit to \$90,000

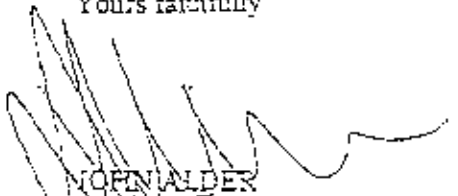
It is disappointing and disturbing to find that you have not decreased your overdraft debt to below \$90,000 as arranged in September.

As per the conditions you have acknowledged in our letter of 4/9/96, (copy attached) we stress that the Bank now requires that you formulate an action plan immediately to reduce your debt to a more acceptable level.

It is also suggested that you seek the advice of a Rural Financial Adviser, such as the DPI representative, Mr Bob Phillips from Biloela, who can be contacted on 079 921044. We have also attached a list of QRAA accredited rural financial advisers and information brochure on the QRAA subsidy for such services for your further information and attention.

Affirmative action is required now, as it is obvious that you have ignored previous agreement you made with the Bank.

Yours faithfully


NOEL ALDER
RURAL FINANCE MANAGER

1060

10

18

File ☐ 2 maintained at
☐ 7 via telephone. Office

There is no real alternative

4. Time & Space

NAME: FREDMAN LNC
FILE NO: 38567

COMPARISON WITH APPLICANTS PROJECTIONS/PAST ACTUALS

(NORMAL YEAR - AVERAGE OF 3 PROJECTIONS)

94/95 and 95/96 results reflect retention of females to build breeder herd 96/97. Client has failed to off load a significant number of females to meet interest payments thus setting program back. Estimates 97/98 are based upon an average of \$300/hd. Timber sales are an unknown for 97/98 as client is negotiating with Hinze constructions.

COMMENTS ON ABOVE PROJECTIONS:

YIYO projection incorporates an average of \$410/hd sold off the place. This will be quite achievable once client commences irrigated fodder program. Average sales of last six years have been \$410/hd. (Includes some lot feeding however also includes cattle slump of last 12 months).

If client were to reach his target herd of 1000 breeders YIYO scenario should see a bottom line surplus of \$38K. This does include a small principal reduction component (as does first scenario) of around \$15K.

GENERAL COMMENTS:

Whilst client has made solid progress as far as pasture development, irrigation and increasing stock numbers is concerned it has been at a high cost with debt load more than doubling in the last 5 years with subsidy failing to make an impact. The next 12 months will again see a significant deficiency which applicant proposes to cover by selling a vehicle, leasing a new one and using proceeds plus timber sales to purchase \$30K of turnover cattle. It is very unlikely the projected \$75K deficiency will be covered, thus assistance is required.

It is felt that under present debt servicing arrangements viability is questionable with ongoing support required until target breeder herd is reached.

If however client is successful in negotiating a new finance deal which will allow stock numbers to be increased additional subsidy under a new productivity program would be appropriate.

Assistance is also sought under Professional Advice to engage the services of Stuart McArthur - RCS. Quote on file \$5,700.

It would be prudent to assist with Farm Business Plan immediately.

RECOMMENDATION:

Total Interest Expense =	\$	108,292

Application No 5660

1) Defer decision for interest subsidy pending outcome of re-finance application.

Advise client a decision on interest subsidy application has been deferred until outcome of re-finance application is known. Advice should be received by this office no later than the 30th of September 1997 to enable consultation under the Productivity provisions of RAS.

~~State - 4126 College Road - 57 - 4126 - 4126 - 4126~~

0569

5. In this case the Freeman file was referred to the Asset Structuring Unit in June 1997. My review of the file revealed that the Account Manager John ALDER and his superiors in the Credit Bureau had a significant and deepening concern about FREEMAN's financial position and continuing ability to meet interest and ultimately repay debt.

6. On my review of the file I noted that FREEMAN had recorded operating losses for each of the five financial years from 1 July 1991 to 30 June 1996.

7. The banks concern about FREEMAN's financial position was such that FREEMAN had been referred to the Farm Financial counsellor with the department of Primary Industries Central Region Office, Mr Bob PHILIPS.

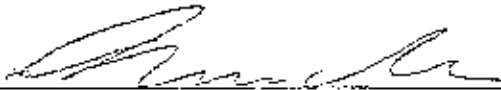
8. Mr PHILIPS had put forward an action plan to FREEMAN suggesting FREEMAN take steps to increase income, reduce expenditure and reduce liabilities.

9. Mr PHILIPS also identified the option of selling assets to clear liabilities. We were advised by PHILIPS that FREEMAN had not adopted any strategies outlined by PHILIPS.

10. At 4 July 1997 I approved a temporary extension of FREEMAN's borrowing facilities to allow time for a further independent review of his financial position and prospects by a private rural consultancy firm Resource Consulting Services Pty Ltd.

11. Resource Consulting Services reported in August 1997 with detailed recommendations for FREEMAN's management of his property and cattle herd. FREEMAN subsequently provided a written detailed response to the Resource Consultancy Services recommendations, effectively rejecting those suggestions.

12. I wrote to FREEMAN at 9 September 1997 to again outline the banks concerns about his financial position and prospects

		This is Page 2 of a Statement comprising 5 Pages.	
Witness	Justice of the Peace (Qual) / Commissioner of Declarations	Commissioner for Declarations	Police Officer

18/8/97

D1-12

Ref: JLA/RFM

Mr Freeman rang me on the car phone and we had a short discussion as was going out of range and stated that the Bank required a written action plan from Mr Freeman asap to see if we were prepared to continue assistance. Briefly discussed refinancing. Also confirmed that I could be contacted in my office Wednesday to further discuss

19/8/97

Contacted Wayne Carlson who advised that Mr Freeman had again rang him re situation. Wayne Carlson confirmed that he would forward a diary note re conversation.

LNC Freeman
20/8/97

Mr Freeman and his position was discussed further. He enquired what rate we would give him if assistance was continued and I advised that I could make no commitment on this as his rates had been increased because of the perceived increasing risk with his operation and rates as advised would be the rates charged unless he provided a very strong business case as to his viability and serviceability.

He mentioned that he would need to increase his breeders by 300 and he should be able to service his commitments. Advised if this involved increased funding that the National Bank would be unlikely to assist unless a strong business case that we thought may work was presented.

Discussion covered QRAA interest subsidy with Mr Freeman that it was the Bank's fault for delays and non receipt of the subsidy. Confirmed that QRAA had contacted us and asked if the Bank could guarantee assistance for a further 12 months and my reply was that I could not give that guarantee at that time.

Mr Freeman went on to advise that I did not understand his business operation and that he had been very guarded in disclosure of financial matters to the Bank because of recent court case????

Ended the conversation by reaffirming that the bank would need a business plan put to us asap in an endeavour to decide if we would continue support.

RFA Please follow up on original of file from Legal (E-mail would be best)



0010010016

18/9 Mr Brett Williams 019 222064 from
then I can ensure my re Mr Freeman.
- told him I would visit Mr Freeman's
business to exchange any info.

1101



Hyne & Son Pty. Limited

Quality Products from Renewable Resources

72
SUPREME COURT August 1987
OF QUEENSLAND

- 7 JUL 1988

FILED
BRISBANE



L N C Freeman
P O Box 1476
GLADSTONE QLD 4680

Dear Sir

SALE OF STANDING TIMBER

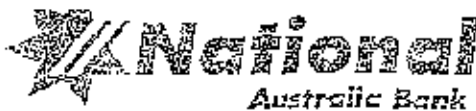
I am in receipt of the Standing Timber agreement duly signed by yourself for the sale of 400 cubic metres of hardwood milling timber now standing on Portion 8V in the Parish of Bompa.

The Agreement has now been duly signed on behalf of the Company and forwarded onto the Stamps Office in Brisbane for stamping. Upon its return I will forward a copy back to you for your safe keeping.

The agreed sum of \$14,000.00 for the above mentioned sale has been deposited on your behalf with the National Australia Bank in Bundaberg (copy of my letter to the Bank attached).

Yours faithfully
HYNE & SON PTY LIMITED

A M Bennett
A M BENNETT (MRS)
LOGGING ADMINISTRATION OFFICER



National Australia Bank Limited
A.C.N. 004048857



Asset Structuring Unit
Level 21, 255 Adelaide Street
Brisbane
Phone: (07) 3234 5885
Fax: (07) 3234 5916

LNC 58

(14)

PREMIER COURT: PL: Set C
QUEENSLAND

15 September 1997

7 JUL 1998

FILED
BRISBANE

Mr LNC Freeman
PO Box 1476
Gladstone Qld 4680

Dear Mr Freeman

Thank you for taking the time to telephone me last week to discuss your situation, in response to my letter dated 9 September 1997. I wish to confirm the matters raised in our conversation, and my response on behalf of the Bank.

You advised that you hold the opinion that your present difficulties arise from late submission of your application to QRAA for interest subsidy, and that you hold our local Manager responsible for both the late submission and for failing to confirm the Bank's support would be forthcoming for the following year. Never-the-less, you confirmed that the Bank's officers have no obligation to complete such applications. I advised that I fully supported our local Manager's approach, and confirmed the Bank's opinion is that your operation has become unviable. In such case we are unable to provide a confirmation of continued support.

You indicated that while you are willing to take your business to another lender, you feel that this Bank is responsible for the "loss" of 300 breeders you had to sell to meet interest, and for the loss of income from their progeny, and that you will be looking for some adjustment from the Bank for that value. I stated the Bank was in no way responsible for any loss of numbers (for which you received value at sales arranged by you), but if you wanted to take the matter further following transfer of your business, then action through the legal system is available. I also advised that if the Bank did not have an acceptable plan to deal with the debt (or approval from another lender to take-out our lending) by 31 October 1997, then we will proceed to Demand for the full amount owing and extend an invitation to take the matter to mediation. In the mediation process there would be an opportunity to raise the issue of breeders sold to cover interest (but again the Bank would disclaim any responsibility for the need to sell breeders).

.....(2)

1104

EXHIBIT "LNC-58"

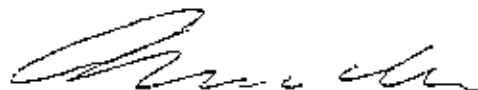
(2)

You advised that you have initiated steps to arrange refinance, that Brett Williams was assisting with your application, and that we are authorised to discuss all aspects of your business with Brett. I encouraged your effort to refinance in the belief that your relationship with this Bank had been irretrievably damaged, because of our judgement that you could not meet interest commitments in the medium to long term and because of your failure to provide an acceptable plan of how you propose to deal with your debt. You advised that a Valuer had visited your property in recent days as the first step to arranging refinance. Later, I telephoned Brett who confirmed that he was preparing to take your application to other lenders, subject to your payment of his fees and subject to an opinion from a Registered Valuer that the value of your property was sufficient to satisfy other lenders.

I stated that while the Bank will wait until 31 October 1997 for an acceptable plan, we will not wait beyond that date, and I again encouraged you to examine all options in a realistic, businesslike way.

I hope that a mutually agreeable plan can be settled in the next six weeks, and I look forward to continued contact with you as you work through the various issues.

Yours faithfully



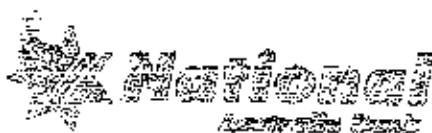
Phillip LUCK
Manager, Asset Structuring

1105

6. This letter describes the property as being incorrectly advertised , as to the attributes of the property carrying capacity , Irrigation and Timber .
7. The failure to point out these attributes correctly in any particular sale means the assessment of the value of the property is diminished .
8. The carrying capacity of Glassford Vale was shown only at 1300 cattle when I had assessed it at 2400 mixed cattle.
9. Now produced and shown to me is a true copy of a Queensland Rural Adjustment Authority Report dated the 24.4.97 signed by N.J.Muller . This document shows the property Glassford Vale carrying 1740 cattle in March , 1993 , this was during a major drought and herd building phase .This document is annexed as (2) to this Affidavit.
10. The same report also shows the carrying capacity to be 1000 Breeders with 80% calving at the property's turnover rate , this report was available to me at the time of valuation.
11. On the 4.3.1998 I accompanied Lynton Noel Charles Freeman to a meeting with the National Australia Bank and its Solicitors at the premises of Mallesons Stephens Jaques , Solicitors.
12. At this meeting the National Australia Bank representative made proposals to Mr. Freeman around a Work Out Agreement . At this time it was agreed that Mr. Freeman would pay to the NAB the sum of \$500,000 in settlement of his account with the NAB
13. The NAB agreed to extend his facilities to allow this to happen .

[Handwritten signature]

0004
 81357
 2-11-0



National Australia
Bank Limited
ACN 004044927

Facsimile Message

Date 30/4/98

Phil Luck RE LNC FREEMAN

Company/Department Asset Structuring

Facsimile Number 07-3234-5916

From Rural Finance Office - Bundaberg

Phone No 07-4150-7368 Fax No 07-4150-7324

Number of pages (inclusive) 1

Message

Phil can you confirm the following for me, a few things have changed while I was on holidays, thanks.

- In the file there is a warrant for \$2,205-. Your advice of 14/4/98 said to hold until demand has been covered. Has this happened yet? If so credit funds to LNC Freeman's account 22-028-6647?
- We've received a drawing from the Banks solicitors for \$5,962.55 with a notice to debit the suspense account maintained in relation to Freeman. Would this be the MSA Realisation account? (+568 45-109-1060). Done 9/5/98
- This realisation account is currently irregular as it is \$13,902-31 overdrawn. Should there be an office limit recorded on this account? YES AN OFFICE LIMIT.
- Lastly I believe that John Alder may have asked if an office limit is to be recorded on the account No 22-028-6647 but I'm unable to locate a copy of the request or any reply.

ADVICE HAS ISSUED
TO CREDIT TO PPL
AND MORE RED INR
MEMO CARD

NO PLEASE OPEN
MGRS. SUSP. ACC -
LITIGATION FUND

Peter Scott
RFA

PLEASE RECORD LIMIT \$1,020,000
EXPIRING 30/6/99. THIS
ADVICE WILL SUPERCEDE ANY
PREVIOUS.

ASSET STRUCTURING UNIT 30/4/98
Philip Luck
Manager - Watch Loans 'C'

0006



Account statement

National Australia Bank Limited A.C.N. 00404937

TEL : 07 4150 7368

BUNDABERG-168 BOURBONG ST

4-571

Z

DO NOT MAIL
REFER MANAGERFor Account
enquiries
telephone
13 2265LYNTON NOEL CHARLES FREEMAN
FARM MANAGEMENT ACCOUNTManager's ref
084-571Account no.
28 028-6647

Particulars	Debit	Credit	Balance
7APR98		Brought forward	1,019,998.58 DR
8APR98	PLEASE NOTE YOUR CURRENT DEBIT INTEREST RATES ARE 8.75 TO \$120,000, 13.25 TO ACCOUNT BALANCE		
9APR98	PLEASE NOTE FROM 06/APR/98 YOUR DEBIT INTEREST RATES ARE 13.25 TO \$1, 13.25 TO ACCOUNT BALANCE		
1MAY98	PLEASE NOTE FROM 30/APR/98 YOUR DEBIT INTEREST RATES ARE 13.25 TO \$1, 13.25 TO \$1,020,000 OVER LIMIT 13.25 GOVT DEBITS TAX FROM A/C 28-028-6647 6.90		
12MAY98	DEPOSIT 11/5/98	2,205.00	1,020,005.28 DR 1,017,800.28 DR

FOR FAST, EASY ACCOUNT ACCESS JUST CALL 13 22 65.			
OUR STAFF ARE AVAILABLE TO ANSWER YOUR ACCOUNT AND GENERAL			
ENQUIRIES BETWEEN 8AM AND 6PM, MONDAY TO FRIDAY.			

TOTALS THIS PAGE	6.90	2,205.00	

0008

Date
IssuePage
number 161Final balance
Subject to any adjustment - Please see over

Ref: PL:Ser C

26 February 2001

Mr L N C Freeman
c/- Mrs L Williams
"Skeleton Creek"
Miriam Vale Qld 4677

Dear Mr Freeman

Your letter dated 15/02/01 refers.

Your account was classified within the Bank's records as a "Non-Accrual Loan" at and from 7.4.98. Computer generated Statements of account were not thereafter sent to you because they did not reflect the full extent of your liability to the Bank. Statements of your account are, and always were, available on request. We are not aware of any request from you for a statement.

Interest on your facilities has always been charged in arrears.

The deposit of \$2,205 has been credited to your account at the day of deposit.

The issue of the Bank's provisioning of Bad and Doubtful debts is not open for discussion with you as it does not in any way effect your dealings with the Bank.

Yours faithfully



Phillip Luck
Senior Asset Structuring Manager



000356
1303

19

Account Statement

Bundaberg Branch

ESB 084-571

Mr LNC Freeman

PQ Box 1475

GLADSTONE QLD 4630

പ്രകാശം നൽകുകയും ചെയ്യും.

7-11-65

செய்து கொடுக்கப்பட்டிருக்கிறது.

28-732-6647

Date	Description	Debit	Credit	Balance
31/03/1998			Brings Forward	\$2,757.92 Dr
1/04/1998	Govt Debts Tax	\$38.30		
	Cheque No 000407	\$300.00		\$2,419.62 Dr
2/04/1998	Cheque No 000411	\$2,900.00		
	Cheque No 000412	\$110.00		\$1.62 Dr
6/04/1998	Cash on Bk 006357547	\$1,020,000.00		\$1,019,998.38 Dr
30/04/1998	Interest	\$3,886.56		\$1,023,884.94 Dr
1/05/1998	Govt Debts Tax	\$6.00		\$1,023,891.84 Dr
12/05/1998	Deposit		\$2,205.00	\$1,026,096.84 Dr
18/05/1998	Title searched	\$57.80		\$1,026,734.34 Dr
29/05/1998	Interest	\$10,827.43		\$1,037,561.78 Dr
30/06/1998	Interest	\$12,052.77		\$1,049,614.55 Dr
31/07/1998	Interest	\$11,813.76		\$1,061,428.31 Dr
31/08/1998	Interest	\$11,944.58		\$1,073,370.99 Dr
30/09/1998	Interest	\$11,690.45		\$1,085,060.44 Dr
30/10/1998	Interest	\$11,316.75		\$1,096,377.19 Dr
30/11/1998	Interest	\$12,343.67		\$1,109,220.82 Dr
7/12/1998	Interest rate change to 12.00%			
31/12/1998	Interest	\$12,429.36		\$1,121,650.17 Dr
29/01/1999	Interest	\$11,586.26		\$1,133,236.43 Dr
26/02/1999	Interest	\$11,304.31		\$1,144,536.74 Dr
31/03/1999	Interest	\$12,457.23		\$1,157,988.97 Dr
30/04/1999	Interest	\$12,573.05		\$1,170,562.00 Dr
31/05/1999	Interest	\$12,520.08		\$1,183,084.08 Dr
Total				\$1,183,084.08

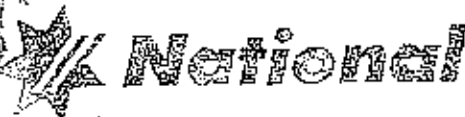
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0011

IN ORDER TO SAFEGUARD



TAILORED FINANCIAL SOLUTIONS

Account Statement

Bundaberg Branch

BSB 084-571

Mr LNC Freeman
PO Box 1476
GLADSTONE QLD 4680

General Enquiries to

13 22 65

Account no.

Lynlon Noel Charles Freeman
Farm Management Account

38-028-6647

Particulars	Debit	Credit	Balance
1/06/1999		Brought Forward	\$1,183,284.08 Dr.
30/06/1999 Interest	\$12,543.31		\$1,195,927.39 Dr.
30/07/1999 Interest	\$12,778.40		\$1,208,705.79 Dr.
31/08/1999 Interest	\$13,775.93		\$1,222,481.72 Dr.
30/09/1999 Interest	\$13,062.13		\$1,235,543.85 Dr.
30/10/1999 Interest	\$12,781.61		\$1,248,305.49 Dr.
8/11/1999 Interest rate change to 10.25%			
30/11/1999 Interest	\$14,415.36		\$1,262,720.85 Dr.
31/12/1999 Interest	\$14,202.22		\$1,276,923.07 Dr.
31/01/2000 Interest	\$14,359.84		\$1,291,282.91 Dr.
7/02/2000 Interest rate change to 10.25%			
29/02/2000 Interest	\$12,995.10		\$1,305,263.81 Dr.
31/03/2000 Interest	\$15,243.21		\$1,320,507.02 Dr.
1/04/2000 Interest rate change to 10.50%			
30/04/2000 Interest	\$14,021.55		\$1,334,528.57 Dr.
1/05/2000 Program entry	\$10.00		\$1,334,528.57 Dr.
1/05/2000 Program entry		\$10.00	\$1,334,518.57 Dr.
5/05/2000 Interest rate change to 10.25%			
31/05/2000 Interest	\$17,563.23		\$1,351,721.80 Dr.
30/06/2000 Interest	\$18,324.71		\$1,367,553.71 Dr.
31/07/2000 Interest	\$18,381.19		\$1,384,164.86 Dr.
31/07/2000 Interest rate change to 10.50%			
30/08/2000 ATM Validation	13,266.00		\$1,398,064.86 Dr.
7/09/2000 Interest rate change to 10.50%			
29/09/2000	161	Debit	\$1,398,064.86

Important:

Please keep this statement as a safe record of all transactions with the Bank and keep it separate from all other documents.

0012

Account Statement

Sundberg-Branch

BSB 084-571

Mr LNC Freeman
PO Box 1476
GLADSTONE QLD 4630

উপস্থাপনা

12 22 65

ਸਿੰਘਾਣੀਆਂ ਨੂੰ ਫਾਟਾ

Lynlon Noel Charles Freeman
Farm Management Account

26-326-5647

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Deck

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התלמידים

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www.ck12.org

0013

Ref: PL:Set C

26 March 2001

Mr L N C Freeman
PO Box 1476
Gladstone Qld 4680

Dear Mr Freeman

Your letter dated 7 March 2001 refers.

The Bank's position was correctly stated in our letter to you dated 26 February 2001.

We have sent the statements of your account as requested.

Realisation costs will be accounted to you when the realisation of the Bank's security is completed.

You have not correctly described the Bank's policy in relation to recommendations of the Parliamentary Joint Statutory Committee on Corporations and Securities.

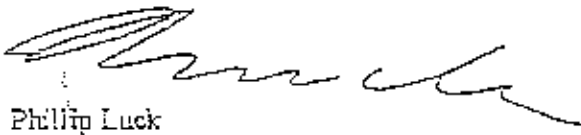
Interest on your borrowing facilities was and is charged in arrears. Nothing in our letters dated 20 and 22 January 1998 says that interest is not charged in arrears.

Our letter dated 26 February 2001 was incorrect in the statement that the deposit of \$2,205 was credited to your account at the day it was received. In fact it was credited to the account at 12 May 1998. The deposit did not remedy the defaults on your borrowings, and the Demand issued at 20 April 1998 was valid. We note that you did not satisfy the Demand. The deposit was accounted for in the amount of the Judgement granted by the Supreme Court.

Mr Salmon's "report" does not accurately describe the Bank's procedures. His "report" is irrelevant to your dealings with and liabilities to the Bank.

We note that you have had the opportunity to raise the matters covered in your letter in Court. We note that you will have a further opportunity to raise the matters in any appeal of the Court's judgement. Please be aware that we will not respond to further correspondence from you on the subjects covered in your letter.

Yours faithfully


Phillip Luck
Senior Asset Structuring Manager

1325

000378

Mallesons Stephen Jaques
SOLICITORS

Mr Lynton Freeman
PO Box 1476
GLADSTONE QLD 4680

20 August 2001

E Costello
Direct line
3244 8115
Partner
2 M Darian-Smith

Dear Sir

National Australia Bank Limited v Freeman

We enclose for your reference an up to date statement of your account.

We trust that this is of assistance.

Yours faithfully

Malle Stephen Jaques

LEVEL 30
WATERFRONT PLACE
1 EAGLE STREET
BRISBANE QLD 4000
AUSTRALIA
DX 311 BRISBANE
ABN 55 001 462 299

POSTAL ADDRESS
GPO BOX 1406
BRISBANE QLD 4001
AUSTRALIA

TELEPHONE
(61 7) 3244 0000

FAX
(61 7) 3244 8999

EMAIL
bris@msj.com.au
www.msj.com.au

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BRISBANE
CANBERRA
ADELAIDE
HONG KONG
BEIJING
TAIPEI
JAKARTA
PORT MORESBY
LONDON

0014

Account Statement

Bundaberg BBC

084-571

Mr LNC Freeman
PO Box 1476
GLADSTONE QLD 4680

General Enquiries no.
132205

Lynton Noel Charles Freeman
Farm Management Account.

Account no.
20-923-6697

Date	Description	Debit	Credit	Balance
31/03/1996	Interest Rate on debit balances 13.25%			
	Brought forward		\$2,757.92	CR
10/04/1996	Govt Debits Tax	\$38.30		\$2,719.62 CR
	Cheque No 000407	\$300.00		\$2,419.62 CR
21/04/1996	Cheque No 000411	\$2,003.00		\$416.62 CR
	Cheque No 000412	\$416.60		\$0.02 CR
01/04/1997	Comm Bill 8069-52567	\$1,020,000.00		\$1,019,999.98 DR
30/04/1998	Interest	\$0,518.25		\$1,020,514.37 DR
10/05/1998	Govt Debits Tax	\$5.90		\$1,020,561.67 DR
11/05/1998	Deposit		\$2,205.00	\$1,028,316.57 DR
15/05/1998	Title Searches	\$57.50		\$1,028,374.07 DR
29/05/1998	Interest	\$16,410.02		\$1,042,784.09 DR
30/06/1998	Interest	\$12,113.05		\$1,054,898.44 DR
31/07/1998	Interest	\$11,971.22		\$1,066,869.66 DR
31/08/1998	Interest	\$12,004.91		\$1,078,874.47 DR
30/09/1998	Interest	\$11,748.30		\$1,090,622.77 DR
30/10/1998	Interest	\$11,979.24		\$1,102,602.01 DR
29/11/1998	Interest	\$12,408.76		\$1,115,010.77 DR
7/12/1998	Interest Rate Change to 13.80%			DR
31/12/1998	Interest	\$12,502.12		\$1,127,512.89 DR
	TOTAL THIS PAGE	\$1,132,100.01	\$2,205.00	

Date of issue: 14/08/2001 Page Number: 150 DEBIT \$1,127,166.89 DR

Important

Please keep this statement in a safe place as it is a record of your account with the Bank and should be retained for taxation purposes.

IN CORRECT STATEMENTS

WITH FALSE REPRISES OF \$11,000 163

0015

Account Statement
Bundaberg BBC
084-671
**Mr LNC Freeman
 PO Box 1476
 GLADSTONE QLD 4680**

 General Enquiries on
 132205

**Lynton Noel Charles Freeman
 Farm Management Account**

 Account no.
 25-026-5567

Date	Description	Debit	Credit	Balance
24/12/1998				\$1,127,100.00 DR
25/01/1999	Interest	\$11,343.24		\$1,132,509.13 DR
26/02/1999	Interest	\$11,356.63		\$1,150,166.82 DR
31/03/1999	Interest	\$13,518.39		\$1,163,684.41 DR
30/04/1999	Interest	\$12,433.80		\$1,176,118.30 DR
31/05/1999	Interest	\$12,805.63		\$1,189,103.93 DR
30/06/1999	Interest	\$12,785.49		\$1,201,550.42 DR
30/07/1999	Interest	\$12,611.25		\$1,214,000.87 DR
31/08/1999	Interest	\$13,043.60		\$1,226,494.36 DR
30/09/1999	Interest	\$13,128.33		\$1,241,000.74 DR
25/10/1999	Interest	\$10,824.41		\$1,254,445.15 DR
31/11/1999	Interest Rate change to 13.25%			DR
30/11/1999	Interest	\$14,435.25		\$1,268,931.41 DR
31/12/1999	Interest	\$14,275.82		\$1,283,211.27 DR
31/01/2000	Interest	\$14,475.52		\$1,297,651.75 DR
7/02/2000	Interest Rate change to 13.75%			DR
29/02/2000	Interest	\$14,551.87		\$1,311,703.72 DR
31/03/2000	Interest	\$15,319.43		\$1,327,021.96 DR
10/04/2000	Interest Rate change to 14.00%			DR
	TOTAL THIS PAGE	\$155,353.01	\$0.00	

1/08/2001	181	DEBIT	\$1,327,021.96 DR

Important

Please keep this statement in a safe place as it is a record of your account with the Bank and should be retained for taxation purposes.

0016

Account Statement
Bundaberg BBC
084-571
**Mr LNC Freeman
 PO Box 1476
 GLADSTONE QLD 4680**

General Enquiry No.

132265

Account No.

28-028-8547
**Lynton Noel Charles Freeman
 Farm Management Account**

Date	Description	Debit	Credit
26/04/2000	Interest	\$45,160.55	
30/05/2000	Interest Rate change to 10.25%		DR
31/05/2000	Interest	\$47,107.01	\$1,355,370.21 DR
30/06/2000	Interest	\$15,408.65	\$1,374,279.85 DR
31/07/2000	Interest	\$15,408.65	\$1,350,872.44 DR
31/07/2000	Interest Rate change to 11.00%		DR
30/08/2000	NTW Values	\$3,950.00	\$1,354,872.44 DR
7/09/2000	Interest Rate change to 10.00%		DR
31/09/2000	Interest	\$17,226.07	\$1,412,097.31 DR
28/10/2000	Interest	\$15,792.77	\$1,427,890.08 DR
14/10/2000	Interest Rate change to 10.00%		DR
31/10/2000	Interest	\$13,577.53	\$1,242,555.01 DR
30/11/2000	Interest	\$11,558.72	\$1,254,112.73 DR
29/12/2000	Interest	\$11,558.72	\$1,415,550.75 DR
30/01/2001	Interest	\$1,202.07	\$1,479,234.70 DR
30/02/2001	Interest	\$1,104.00	\$1,480,362.95 DR
30/03/2001	Interest	\$1,400.24	\$1,511,215.61 DR
30/04/2001	Interest	\$12,763.19	\$1,510,597.80 DR
31/05/2001	Interest	\$12,877.70	\$1,325,169.10 DR
	TOTAL THIS PAGE	\$291,947.50	10.00

Date of Issue

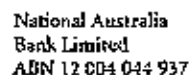
Page Number

14/08/2001
703
DEBIT
\$1,528,469.40 DR

Important

 Please keep this statement in a safe place it is a record of your account
 with the Bank and should be retained for taxation purposes.

0017



Bundaberg BBC

084-571

Mr LNC Freeman
PO Box 4476
GLADSTONE QLD 4680

গির্জা: ১০০০ টি

492265

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21-028-5647

Lynton Noel Charles Freeman
Farm Management Account

Results

1.5692005

உய்யுதல்

453

७८३४

9660.550.22 DR

מחיר: 100 ₪

Please keep this statement in a safe place as it is a record of your success with the Diet and should be retained for taxation purposes.

18 Feb 1964 LDC contact 25.

0018

Author's Reply

Matthew David
CAREO



Business Cheque Account
Account/transaction enquiries call 13 22 65

Account Balance Summary

Opening balance	\$128.98	Cr
Total credits	\$0.00	
Total debits	\$4.00	
Closing balance	\$124.98	Cr
Statement starts	8 June 2002	
Statement ends	9 July 2002	

MR LNC FREEMAN
GLASSFORD VALE
BULLYAN QLD 4680

Outlet Details

Bundaberg-168 Bourbong St
168 Bourbong Street, Bundaberg Qld 4670

Account Details

LYNTON NOEL CHARLES FREEMAN
BUSINESS CHEQUE ACC

BSB number 084-571
Account number 45-802-2447

Lending, Investment & Insurance Enquiries

Banker John Alder
Telephone number (07) 4150 7368

Transaction Details

Date	Particulars	Debits	Credits	Balance
8 Jun 2002	Brought forward			128.98 Cr
28 Jun 2002	TRANSACTION SUMMARY	QUANTITY	U/COST	FEE
	Transaction Fees			\$0.00
	Account Fee			\$10.00
	Total Fees			\$10.00
	Less Rebate			\$6.00
	Total Fees Charged			\$4.00
	Minimum Monthly Balance	\$128.00	Cr	
	Value Of Next Month's Fee Rebate	\$6.00		
	Account Fees	4.00		124.98 Cr

Summary of Government Charges

	From 1 July to date	Last year to 30 June
Government		
Withholding tax	\$0.00	\$0.00
Financial Institutions Duty (FID)	\$0.00	\$0.00
Bank Account Debit (BAD) tax	\$0.00	\$2.40
*This FID amount applies to credits processed prior to 30/6/2001. FID has been abolished by all states on 30/6/2001. For Tas. and N. T. State Debit Duty will continue to apply after 1/7/2001.		

Explanatory Notes

Customers are requested to check all entries and promptly report any apparent error or possible unauthorised transaction immediately by telephoning 13 22 65.

We may subsequently adjust debits and credits, which may result in a change to the balance in your account, to accurately reflect the obligations between us.

The proceeds of cheques and other payments credited to your account are not available until cleared.

Please retain this statement for taxation purposes.



Business Cheque Account
For further information call 13 22 65 for Personal
Accounts or 13 10 12 for Business Accounts.

Account Balance Summary

Opening balance	\$12.22	Dr
Total credits	\$25.22	
Total debits	\$13.00	
Closing balance	\$9.00	

Statement starts 10 February 2004
Statement ends 2 March 2004

DO NOT MAIL
REFER TO MANAGER

2 4571

Outlet Details

Bundaberg-168 Bombong St
168 Bombong St Bundaberg Qld 4670

Lending, Investment & Insurance Enquiries

Banker David Krueger
Telephone number (07) 4150 7367

Account Details

LYNTON NOEL CHARLES FREEMAN
BUSINESS CHEQUE ACC

BSB number 084-571
Account number 45-302-2447

Transaction Details

Date	Particulars	Debits	Credits	Balance
10 Feb 2004	Brought forward			12.22 Dr
10 Feb 2004	10186 Freeman		14.02	1.80 Cr
27 Feb 2004	TRANSACTION SUMMARY			
	Over The Counter	1		
		\$0.90	\$0.90	
	Transaction Fee		\$0.00	
	Flat Monthly Fee		\$10.00	
	Total Fees Charged		\$10.90	
	Account Balance	10.90		9.10 Dr
2 Mar 2004	Bad Debt Write-Off		11.20	
	Government Debits Tax	2.10		0.00

ACCOUNT CLOSED

The National is dealing on its own behalf in relation to this transaction.

Summary of Government Charges

	From 1 July to date	Last year to 30 June
Government		
Withholding tax	\$0.00	\$0.00
Bank Account Debit (BAD) tax	\$5.70	\$3.60
For Taa and N.T. State Debt Duty will continue to apply after 1/7/2001.		
For further information on any applicable rebates, fees or government charges, please refer to the National's "A Guide to Fees & Charges" booklet.		
Please retain this statement for taxation purposes.		

Explanatory Notes

Please check all entries and report any apparent error or possible unauthorised transaction immediately.
We may subsequently adjust debits and credits, which may result in a change to your account balance to accurately reflect the obligations between us.
For information on resolving problems or disputes, contact us on 1800 152 015, or ask at any branch of the National.

MALLESON'S STEPHEN JAKUES

Mr Lynton Freeman

23 April 2002

To be helpful we make the following comments in relation to the documents that you have requested disclosure of:

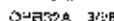
- (a) Our client has not claimed from you any monies that may have been incurred in realising your assets. As such any realisation accounts are not relevant;
- (b) We are unsure what "Banker's books" are a reference to. Please provide further details of this request;
- (c) You have already been provided with up to date statements of your accounts which indicate what monies have been received by the Bank from the receivers and managers of your property. There are no other accounts that relate to these monies;
- (d) The Bill Facility documents were provided to you in the previous Supreme Court Proceedings;
- (e) We are unsure what type of documents you are requesting that deal with the Bill Facility and Bills pursuant to the Bills of Exchange Act. Please provide a further explanation as to what you mean;
- (f) The Bank manuals are irrelevant to the pleadings on any interpretation of the pleadings. Please advise how you assert that they may be relevant;
- (g) Any documents between the receivers and managers and their agents in respect of the dealings with your assets are presumably covered by the Notice of Third Party disclosure which will be dealt with separately; and
- (h) Our client objects to producing documents that may exist between themselves and the receivers and managers of your property for the reasons set out above.

If our client's application is unsuccessful then once the pleadings are finalised our client will provide disclosure in accordance with the Rules.

Yours faithfully

Mr Stephen Jakues

Attach



P 0664147 (15)

DPB32 400

பேர்ப்பாட்டு:

Adresse:

Ph: (H) _____ (W) _____

Name: _____

Address: _____

Ph: (E) (W)

$\frac{A}{L}$	Adjusted value

Approx. value

Fig. 1. The dependence of the rate of the reaction of the polymerization of α -methylstyrene on the concentration of the initiator.

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100	101	102	103	104	105	106	107	108	109	110	111	112	113	114	115	116	117	118	119	120	121	122	123	124	125	126	127	128	129	130	131	132	133	134	135	136	137	138	139	140	141	142	143	144	145	146	147	148	149	150	151	152	153	154	155	156	157	158	159	160	161	162	163	164	165	166	167	168	169	170	171	172	173	174	175	176	177	178	179	180	181	182	183	184	185	186	187	188	189	190	191	192	193	194	195	196	197	198	199	200	201	202	203	204	205	206	207	208	209	210	211	212	213	214	215	216	217	218	219	220	221	222	223	224	225	226	227	228	229	230	231	232	233	234	235	236	237	238	239	240	241	242	243	244	245	246	247	248	249	250	251	252	253	254	255	256	257	258	259	260	261	262	263	264	265	266	267	268	269	270	271	272	273	274	275	276	277	278	279	280	281	282	283	284	285	286	287	288	289	290	291	292	293	294	295	296	297	298	299	300	301	302	303	304	305	306	307	308	309	310	311	312	313	314	315	316	317	318	319	320	321	322	323	324	325	326	327	328	329	330	331	332	333	334	335	336	337	338	339	340	341	342	343	344	345	346	347	348	349	350	351	352	353	354	355	356	357	358	359	360	361	362	363	364	365	366	367	368	369	370	371	372	373	374	375	376	377	378	379	380	381	382	383	384	385	386	387	388	389	390	391	392	393	394	395	396	397	398	399	400	401	402	403	404	405	406	407	408	409	410	411	412	413	414	415	416	417	418	419	420	421	422	423	424	425	426	427	428	429	430	431	432	433	434	435	436	437	438	439	440	441	442	443	444	445	446	447	448	449	450	451	452	453	454	455	456	457	458	459	460	461	462	463	464	465	466	467	468	469	470	471	472	473	474	475	476	477	478	479	480	481	482	483	484	485	486	487	488	489	490	491	492	493	494	495	496	497	498	499	500	501	502	503	504	505	506	507	508	509	510	511	512	513	514	515	516	517	518	519	520	521	522	523	52

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100	101	102	103	104	105	106	107	108	109	110	111	112	113	114	115	116	117	118	119	120	121	122	123	124	125	126	127	128	129	130	131	132	133	134	135	136	137	138	139	140	141	142	143	144	145	146	147	148	149	150	151	152	153	154	155	156	157	158	159	160	161	162	163	164	165	166	167	168	169	170	171	172	173	174	175	176	177	178	179	180	181	182	183	184	185	186	187	188	189	190	191	192	193	194	195	196	197	198	199	200	201	202	203	204	205	206	207	208	209	210	211	212	213	214	215	216	217	218	219	220	221	222	223	224	225	226	227	228	229	230	231	232	233	234	235	236	237	238	239	240	241	242	243	244	245	246	247	248	249	250	251	252	253	254	255	256	257	258	259	260	261	262	263	264	265	266	267	268	269	270	271	272	273	274	275	276	277	278	279	280	281	282	283	284	285	286	287	288	289	290	291	292	293	294	295	296	297	298	299	300	301	302	303	304	305	306	307	308	309	310	311	312	313	314	315	316	317	318	319	320	321	322	323	324	325	326	327	328	329	330	331	332	333	334	335	336	337	338	339	340	341	342	343	344	345	346	347	348	349	350	351	352	353	354	355	356	357	358	359	360	361	362	363	364	365	366	367	368	369	370	371	372	373	374	375	376	377	378	379	380	381	382	383	384	385	386	387	388	389	390	391	392	393	394	395	396	397	398	399	400	401	402	403	404	405	406	407	408	409	410	411	412	413	414	415	416	417	418	419	420	421	422	423	424	425	426	427	428	429	430	431	432	433	434	435	436	437	438	439	440	441	442	443	444	445	446	447	448	449	450	451	452	453	454	455	456	457	458	459	460	461	462	463	464	465	466

Estimated $\frac{\partial \pi}{\partial \alpha}$ (1/yr) = $-\frac{1}{2} \frac{\partial \pi}{\partial \alpha}$ = $-\frac{1}{2} \frac{\partial \pi}{\partial \alpha}$

[illegible]

Name: _____ Rank/Reg No. _____

Station of Unit: _____ By: _____

I, being the owner or the person in lawful possession of the property before it was seized, consent to the Queensland Police Service keeping the property until the end of any proceeding involving the property and any appeal.

Yes ☐ No ☐

Date	Time

DECLARATION AND ACKNOWLEDGEMENT

This section is to be completed by the person from whom the property was taken, if applicable.

1. I wish to claim the property described herein should the rightful owner not be located.

2. I do not wish to claim the property and I relinquish all rights of claim with respect to it.

I confirm that this receipt is a true and correct account of the items taken by the reporting officer and that a copy of this receipt has been provided to me.

Signature of person from whom property taken

DISTRIBUTION

1. WHITE - Issuance Officer 2. GREEN - to GPR30 3. BLUE - O/C copy 4. PINK - Field Property Receipt 5. WHITE - Audit copy 6. BUFF - Property tag

01001

WARNING

If the intended journey involves moving stock from the Cattle Tick Infected Area you will require a permit from a Stock Inspector as well as this waybill. The stock may also require inspection and/or treatment for cattle tick. Contact the nearest Stock Inspector.

- PRINCE ELDERS

- "GLASSFORD SALE"
 4500 - CLARK RD

- GRACE OVER
SLEYARDS

- low property name
access road and
district

6. Name of person in charge of the stock being travelled

3. Registered Property
Number of property
of origin of the stock

- Telephone (49) 746-33

- 7 Date movement commenced

- 3 1/2 12500

(Lg: Approved Tail Tag/ Ear Tag Number)

- 8. Particulars of Stock** (Full and accurate details of the Stock must be supplied below)

Q Name (please print)

NEVILLE ROSS COX

am the

Actual owner
of the stock.

(Tick applicable box)

Occupier of the holding
of origin of the stock

☐ Authorised agent of the owner.

Telephone Number:

(07) 49 741 323

Signature
and Date

786

31/12/20

Permit Issue

This section is to be completed only when a travel permit has been issued for the movement.

Name and address of inspector who issued the travel permit

Travel Permit Number

Date of issue



MacElders Limited ABN 66 076 142 053

MAC ELDERS LIMITED
68076142053
BLADSTONE RD
HAMPTON QLD 4700

***** REPRINT *****

Account No: 4001324441-001
Account ABN: 47733181008
Reference: 4200/300168/KPMG

For enquiries please phone : 07 4927 6123

HENNESSY & GE GRADY
RECEIVERS & MANAGERS
P LNC FREEMAN
EL 30/345 QUEEN ST
ST 5 QLD 4000

Sold: AUCTION
Sale: GRABEMERE PRIME SL 4/12
Sale Date: 4/12/2000
Account: LIVESTOCK VENDOR

RECIPIENT CREATED TAX INVOICE

QTY	DESCRIPTION	AMOUNT	GST	TOTAL
1	Steer 275kg @ 166.2c/kg	457.05	45.71	502.76
4	Steers 1260kg @ 166.2c/kg	2094.12	209.41	2303.53
1	Cattle 395kg @ 123.2c/kg	486.64	48.66	535.30
3	Heifers 845kg @ 118.2c/kg	998.79	99.88	1098.67
1	Heifer 240kg @ 79c/kg	189.60	18.96	208.56
1	Heifer 350kg @ 118.2c/kg	413.70	41.37	455.07
1	Cow 240kg @ 70c/kg	168.00	16.80	184.80
6	Cows 8035kg @ 105c/kg	2136.75	213.68	2350.43
2	Cows 770kg @ 58.2c/kg	756.14	75.61	831.75
2	Cows 835kg @ 115c/kg	960.25	96.03	1056.28
1	Cow 455kg @ 115c/kg	523.25	52.33	575.58
4	Cows 1440kg @ 107c/kg	1540.80	154.08	1694.88
1	27 Cattle	10725.09	1072.52	11797.61
L		10725.09	1072.52	11797.61

TAX INVOICE

	AMOUNT	GST	TOTAL
Cartage	589.00	58.90	647.90
Commission	375.38	37.54	412.92
Cattle Transaction Levy	94.50		94.50
Handling Fees	48.60	4.86	53.46
Saleyard Levy	15.56	1.57	17.23
Yard Fees	92.07	9.21	101.28
	1215.21	112.08	1327.29

0195

Waybill

A 3693911

WARNING

penalties apply for knowingly entering false or misleading information on a waybill or when stock are removed from the Cattle Tick Infected Area.

Intended journey involves moving stock from the Cattle Tick Infected Area you will require a permit from a Stock Inspector as this waybill. The stock may also require inspection and/or treatment for cattle tick. Contact the nearest Stock Inspector.

Name and
address
of actual
owner of stock
travelling

K.P.M.G.
GLASSFORD VALE

4. Name of person
or company
taking delivery
of the stock

PRIMA ELDERS

5. Full address of
destination of
the stock

GRANEMERE
SALEYARDS

Put "and return"
if applicable

Address of
ing, saleyard
place of origin
of stock

GLASSFORD VALE
MOUNT - GLASSFORD RD
MANY PENNS

6. Name of person
in charge of the
stock being
travelled

C. REDWELL

Telephone (09) 764133

Registered Property
Number of property
origin of the stock

7. Date movement commenced

7/12/2000

(i.e. Approved Tail Tag/ Ear Tag Number)

Particulars of Stock (Full and accurate details of the Stock must be supplied below)

Breed	Description/Sex	Horse & Cattle Brand or Sheep & Goat Brand	Approved Tail Tag/Ear Tag Number (if different from number shown in 3 above)	Cattle Earmark or Sheep & Goat Earmark
H/FORD COW & CALF	OLD	RIBS		
BRAHMAN BULL	OLD	OFF RUMP		
BRAHMAN MICKEY BULL	OLD	BACK LEG		
BRAHMAN HEIFERS	OLD	BACK LEG		
RED BRAHMAN BULL	OLD	OFF RUMP		
BLACK STEER	OLD	BACK LEG		
RED BRAHMAN COW	OLD	OFF RUMP		
H/FORD COW	OLD	RIBS		
BRINDLE COW	OLD	RIBS		
RED COW	OLD	RIBS		
RED BRAHMAN STEER	OLD	BACK LEG		

Name (please print)

NEVILLE ROSS COX

am the

☐ Actual owner
of the stock

(Tick applicable box)

☐ Occupier of the holding
of origin of the stock

☒ Authorised
agent of the
owner

Signature
and Date

N.R. Cox

7/12/2000

Permit Issue

Permit is to be completed
when a travel permit has
been issued for the movement.

Name and address of Inspector who issued the travel permit

Travel Permit Number

Date of Issue

WARNING

ever penalties apply for knowingly entering false or misleading information on a waybill or when stock are removed equally from the Cattle Tick Infected Area.

the intended journey involves moving stock from the Cattle Tick Infected Area you will require a permit from a Stock Inspector as well as this waybill. The stock may also require inspection and/or treatment for cattle tick. Contact the nearest Stock Inspector.

Full name and postal address of the actual owner of stock being travelled

KPMR
GLASSFORD VALE

4. Name of person
or company
taking delivery
of the stock

PRIMAC ELDERS

Full address of
holding, saleyard
or place of origin
of the stock

GLASSFORD VALLEY
MONTGOMERY - GLADSTONE RD.
MANY PEAKS

5. Full address of destination of the stock

GRACE MERK
SALEYARDS

Put "and return"
if applicable

Show property name,
across road and
district

6. Name of person in charge of the stock being travelled

© PEDWELL

Registered Property
Number of property
of origin of the stock

Telephone (219) 764-1333

7 Date movement commenced

71 K. 1200

(Leave Approved Tail Tag/ Ear Tag Number)

Particulars of Stock (Full and accurate details of the Stock must be supplied below)

[illegible]

Names (please print)

I, NEVILLE ROSS BOK

am the

(Tick applicable box)

Actual owner
of the stock

Occupier of the holding
of price of the stock

~~Authorized agent of the owner~~

phone number: (49) 741 3 2 3

Signature
and Date

NP

7/1/2 ~~Low~~

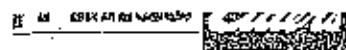
Permit Issue

A section is to be completed
when a travel permit has
been issued for the movement.

Name and address of Inspector who issued the travel permit

Travel Permit Number

Date of Issue



Imac Elders Limited ABN 68 076 142 053

IMAC ELDERS LIMITED
N 68076142053
7 GLADSTONE RD
CKHAMPTON QLD 4700

***** REPRINT *****

Account No: 4021324441-001
Account ABN: 47733181008
Reference: 4200/300170/KPMG

For enquiries please phone : 07 4927 6122

HENNESSY AND GE GRADY
IS RECIEVERS & MANAGERS
FOR LNC FREEMAN
LEVEL 30/345 QUEEN ST
MISBANE QLD 4000

Sold: AUCTION
Sale: GRACEMERE STORE SL 8/12 /
Sale Date: 8/12/2000
Account: LIVESTOCK VENDOR

RECIPIENT CREATED TAX INVOICE

QTY	DESCRIPTION	AMOUNT	GST	TOTAL
12	Cows @ \$620	7440.00	744.00	8184.00
1	Cow @ \$365	365.00	36.50	401.50
2	Cows @ \$365	730.00	73.00	803.00
1	Cow @ \$365	365.00	36.50	401.50
1	Bull 620kg @ 125c/kg	775.00	77.50	852.50
1	Bull 355kg @ 113c/kg	401.15	40.12	441.27
5	Heifers 340kg @ 131c/kg	1100.40	110.04	1210.44
4	Steers 1015kg @ 140c/kg	1421.00	142.10	1563.10
27	Cattle	12597.55	1259.76	13857.31
TOTAL		12597.55	1259.76	13857.31

TAX INVOICE

	AMOUNT	GST	TOTAL
Cartage	589.00	58.90	647.90
Commission	440.00	44.00	484.00
Cattle Transaction Levy	94.50		94.50
Handling Fees	48.60	4.86	53.46
Valleyand Levy	15.66	1.57	17.23
Land Fees	93.83	9.38	103.21
TOTAL	1282.52	118.60	1401.32

PLEASE RETAIN FOR YOUR TAXATION RECORDS * NET PROCEEDS \$12,455.99

SETTLEMENT : Settlement will be made on a separate advice.

WARNING

Severe penalties apply for knowingly entering false or misleading information on a waybill or when stock are removed illegally from the Cattle Tick Infected Area.

If the intended journey involves moving stock from the Cattle Tick Infected Area you will require a permit from a Stock Inspector, as well as this waybill. The stock may also require inspection and/or treatment for cattle tick. Contact the nearest Stock Inspector.

1. Full name and postal address of the actual owner of stock being travelled

KPMG
GLASSFORD VALE

4. Name of person
or company
taking delivery
of the stock

PRIMARY ELDER S

2. Full address of holding, saleyard or place of origin of the stock.
Show property name, access road and district.

GLASSFORD VALE
MONTGOMERY - GLAISTONE RD
MANY PEAKS

5. Full address of destination of the stock

GRADE 7/8/9

SALEMBRO

Put "and return"
if applicable

3. Registered Property
Number of property
of origin of the stock

6. Name of person in charge of the stock being travelled

NCP

Telephone (W.P.) 741 32 3

7. Date movement commenced

14101101

(If Approved Tail Tag: See Tag Number)

B. Particulars of Stock (Full and accurate details of the Stock must be supplied below)

[illegible]

6.5/8

Name (please print):

I, NEVILLE R COX

am the ☐ Actual owner
of the stock:

(Tick applicable box)

☐ Occupier of the holding
at origin of the stock

☒ Author/Agent or owner

Telephone
Number

(49) 361 373

Signature
and Date

7/8/64

141 10

Permit Issue

This section is to be completed only when a travel permit has been issued for the movement.

Name and address of Inspector who issued the travel permit

Travel Permit Number

Date of Issu.

— 10 —

.....

11



Mac Elders Limited ABN 68 076 142 053

MAC ELDERS LIMITED
68076142053
GLADSTONE RD
HAMPTON QLD 4700

***** REPRINT *****

Account No: 4001324441-001
Account ABN: 47733181008
Reference: 4200/300177/KPMG

For enquiries please phone : 07 4927 6122

HENNESSY & GE GRADY
RECEIVERS & MANAGERS
LNC FREEMAN
P.O. BOX 30/345 QUEEN ST
S.E. QLD 4000

Sold: AUCTION
Sale: GRACEMERE PRIME SALE 15/1
Sale Date: 15/01/2001
Account: LIVESTOCK VENDOR

RECIPIENT CREATED TAX INVOICE

QTY	DESCRIPTION	AMOUNT	GST	TOTAL
1	Bull 520kg @ 100c/kg	520.00	52.00	572.00
1	Cow 340kg @ 101c/kg	343.40	34.34	377.74
5	Cows 1905kg @ 101c/kg	1924.05	192.41	2116.46
al	7 Cattle	2787.45	278.75	3066.20
TOTAL		2787.45	278.75	3066.20

TAX INVOICE

	AMOUNT	GST	TOTAL
Commission	97.56	9.76	107.32
Cartage	147.25	14.73	161.98
Cattle Transaction Levy	24.50		24.50
Handling Fees	12.60	1.26	13.86
Saleyard Levy	3.36	.34	3.70
Yard Fees	20.47	2.05	22.52
TOTAL	305.74	28.14	333.88

0200

WARNING

If the intended journey involves moving stock from the Cattle Tick Infested Area you will require a permit from a Stock Inspector, as shown on this waybill. The stock may also require inspection and/or treatment for cattle tick. Contact the nearest Stock Inspector.

KPMG
GRASSFORD VALE

4. Name of person or company taking delivery of the stock

PRINCE ELDERS

5. Full address of destination of the stock

ROBERT M. R
SALE YARDS

Put "and return"
if applicable

CLIFFORD NARE

all address of
building; saleyard
place of origin
the stock

MAY PERES

```
it      party name,  
pass,ad and  
strict
```

6. Name of person in charge of the stock being travelled

N. Coe

Telephone (409) 741-373

Registered Property
Number of property
price of the stock

QDCLOO24

“I’m Approved Tail Tao” (Ext. Tao Member)

7. Date movement commenced.

151 2 1201

particulars of Stock (Full and accurate details of the Stock must be supplied below)

[illegible]

Naija (Nigeria) vint

I

NEVILLE ROPS COM

am the

Actual owner
of the stock

Trichostema

Occupier of the holding
of origin of the stock

Authorized
agent of the
owner

stone
yber

(49) 741323

Signature
and Date

NR 6

1572 1209

permit issue

This section is to be completed
when a travel permit has
been issued for the movement.

Name and address of Inspector who issued the travel permit

Travel Permit Number

Date of Issue

FDI037-11C97

State of Tennessee 1997

0201 Jones Management Unit



as Elders Limited ABN 26 076 142 053

IAC ELDERS LIMITED
68276142053
GLADSTONE RD
HAMPTON QLD 4700

***** REPRINT *****

Account No: 4001324441-001
Account ABN: 47733161008
Reference: 4200/300189/KPMG

For enquiries please phone : 07 4927 6122

KENNESSY & DE GRADY
RECEIVERS & MANAGERS
P LNC FREEMAN
EL 30/345 QUEEN ST
SPRUE QLD 4000

Sold: AUCTION
Sale: GRACEMERE STORE SALE 16/2
Sale Date: 16/02/2001
Account: LIVESTOCK VENDOR

RECIPIENT CREATED TAX INVOICE

QTY DESCRIPTION	AMOUNT	GST	TOTAL
1 Y'ling Bull 255kg @ 134c/kg	341.70	34.17	375.87
3 Cows @ \$300	900.00	90.00	990.00
4 Cows 1945kg @ 110c/kg	2139.50	213.95	2353.45
1 Steer 270kg @ 136c/kg	367.20	36.72	403.92
2 Heifers 495kg @ 130c/kg	643.50	64.35	707.85
AL 11 Cattle	4391.90	439.19	4831.09
AL	4391.90	439.19	4831.09

TAX INVOICE

	AMOUNT	GST	TOTAL
Cartage	294.50	29.45	323.95
Commission	153.71	15.37	169.08
Cattle Transaction Levy	38.50		38.50
Handling Fees	19.80	1.98	21.78
Saleyard Levy	5.93	.59	6.41
Yard Fees	34.10	3.41	37.51
AL	546.44	50.79	597.23

0202

PRIMAC ELDERS LIMITED ABN 68076142053

PRIMAC ELDERS LIMITED
ABN 68076142053
127 GLADSTONE RD
ROCKHAMPTON QLD 4700

***** REPRISE *****

Account No: 4001324441-001
Account ABN: 47733181008
Reference: 4200/600554/KPMG

For enquiries please phone : 07 4927 6122

KPMG (RECEIVER & MANAGER)
A/C L & C FREEMAN
245 QUEEN STREET
BRISBANE QLD 4000

Sold: PRIVATE
Sale: KPMG/AMH
Sale Date: 22/02/2001
Account: LIVESTOCK VENDOR

RECIPIENT CREATED TAX INVOICE

PEN	QTY DESCRIPTION	AMOUNT	GST	TOTAL
	1 Steer	620.87	62.09	682.96
Total	1 Cattle	620.87	62.09	682.96
TOTAL		620.87	62.09	682.96

TAX INVOICE

	AMOUNT	GST	TOTAL
Cartage	10.00	1.00	11.00
Commission	21.73	2.17	23.90
Cattle Transaction Levy	3.50		3.50
Feeding	4.00	.40	4.40
TOTAL	39.23	3.57	42.80

* PLEASE RETAIN FOR YOUR TAXATION RECORDS *

NET PROCEEDS

\$640.

SETTLEMENT : Settlement will be made on a separate advice.

0203

If your intended journey involves moving stock from the Cattle Tick Infected Area you will require a permit from a Stock Inspector as is this waybill. The stock may also require inspection and/or treatment for cattle tick. Contact the nearest Stock Inspector.

1. name and
 postal address
 of the actual
 owner of stock
 and travelled

Full address of
holding, saleyard
or place of origin
of stock

1. Property name,
 2. Access road and
 3. District

Registered Property
Number of property.
X origin of the stock

4. Name of person
or company,
taking delivery
of the stock

5. Full address of destination of the stock

Put "and: return"
if applicable

6. Name of person in charge of the stock being travelled:

7. Date movement commenced

PRIMA FLOERS

GRACE MERIE
SALYARDS

N Cox

Telephone (49) 741373

2015 1290

(i.e. Approved Tax Year End Tax Number)

Particulars of Stock (Full and accurate details of the Stock must be supplied below)

Stock	Breed	Description/Sex	Horse & Cattle Brand or Sheep & Goat Brand	Approved Tail Tag/Ear Tag Number (If different from number shown in 3 above)	Cattle Earmark or Sheep & Goat Earmark
1	BLACK ANGUS	COW	OLQ	(RUMP)	
1	RED X	HEIFER	OLQ	(RUMP)	
1	BRAFORD	STEER	OLQ	(BACK LEG)	
LOT ~~20~~ 19					

Name (please print)

1. NEVILLE ROSE COX

am the ☐ Actual owner
of the stock

Tick applicable box

☐ Occupier of the holding
of origin of the stock

☒ Authorised agent of the owner

phone number (49) 741 323

Signature
and Date

NP Cox

201 51 61

ermit issue

a section is to be completed
when a travel permit has
been issued for the movement.

Name and address of Inspector who issued the travel permit

Travel Permit Number

Date of issue



Elders Limited ABN 68 076 142 053

O ELDERS LIMITED
6076142053
LADSTONE RD
MARTON QLD 4700

***** REPRINT *****

Account No: 4001324441-001
Account ABN: 47733181008
Reference: 4200/300224/KPMG

For enquiries please phone : 07 4927 6122

(RECEIVER & MANAGER)
J. N. D. FREEMAN
QUEEN STREET
MARE QLD 4000

Sold: AUCTION
Sale: GRACEMERE PRIME SALE 21/5
Sale Date: 21/05/2001
Account: LIVESTOCK VENDOR

RECIPIENT CREATED TAX INVOICE

QTY DESCRIPTION	AMOUNT	GST	TOTAL
1 Steer 365kg @ 130c/kg	474.50	47.45	521.95
1 Heifer 335kg @ 129.2c/kg	432.82	43.28	476.10
1 Cow 365kg @ 84.2c/kg	307.33	30.73	338.06
3 Cattle	1214.65	121.46	1336.11
	1214.65	121.46	1336.11

TAX INVOICE

	AMOUNT	GST	TOTAL
Cartage	75.00	7.50	82.50
Commission	42.52	4.25	46.77
Cattle Transaction Levy	10.50		10.50
Handling Fees	5.40	.54	5.94
Saleyard Levy	1.59	.16	1.75
Yard Fees	9.30	.93	10.23
	144.31	13.38	157.69

0205

PLEASE RETAIN FOR YOUR TAXATION RECORDS *

NET PROCEEDS

\$1,178.42



Elders Limited
ABN 72 004 345 121

Elders Limited
2004245121
Ladysmith Rd
HAMPTON QLD 4300

***** REFPRINT *****
Account No: 4081304441-201
Account ABN: 477381810008/08
Reference: 4230/220803/CPMS
Issued: 31/07/2001

For enquiries please phone : 0749276122

(RECEIVER & MANAGER)
J N O FREEMAN
LEEN STREET
DANE QLD 4000

Sold: AUCTION
Sale: GRACEMERE PRIME SALE 25/6
Sale Date: 25/06/2001
Account: LIVESTOCK VENDOR

ACCOUNT SALE

STY DESCRIPTION	AMOUNT	GST	TOTAL
1 Yelling Steer 130kg @ 123.00/kg	160.00	18.48	308.38
1 Yelling Steer 125kg @ 123.00/kg	277.50	27.72	304.92
1 Cow 420kg @ 113.00/kg	474.60	42.30	501.38
1 Cow 415kg @ 100.00/kg	415.00	43.61	478.71
1 Cattle	1381.10	138.11	1519.21
	1381.10	138.11	1519.21

TAX INVOICE

	AMOUNT	GST	TOTAL
Commission	48.00	4.93	53.17
Age	35.00	3.90	38.90
Lot Transaction Levy	14.00		14.00
Marketing Fees	7.00	1.72	7.92
Land Levy	2.10	1.21	3.31
Other Fees	12.48	1.34	13.84
	172.58	13.00	187.98

PLEASE RETAIN FOR YOUR TAXATION RECORDS & NET PROCEEDS 11,331.35

Settlement & Settlement will be made on a separate advice.

0207

GRACEMERE SALEYARDS
PRIME SALE Cattle Monday, 25 June 2001 (1)
PRIMAC ELDERS LIMITED
KPMG (RECEIVER MANAGER)

ed and Sex	Tailtag	HGP Treated	C/Kg	Avg Kg	Tot Kg	\$ / Head	Gross \$
Human Cow	QDCL0004	Yes	115.0	420.0	420.0	453.00	483.00
Human Cow	QDCL0004	Yes	98.0	445.0	445.0	436.10	436.10
Human Cow			106.3	432.5	865.0	459.55	919.10
HumanCross Yearling Steer	QDCL0004	Yes	123.2	150.0	150.0	184.80	184.80
HumanCross Yearling Steer	QDCL0004	Yes	123.2	225.0	225.0	277.20	277.20
Human Yearling Steer			123.2	187.5	375.0	231.00	462.00
Human Sale			111.4	310.0	1240.0	345.28	1381.10

0208

\$ Amounts in this report are exclusive of any GST

GRACEMERE SALEYARDS
PRIME SALE Cattle Monday, 25 June 2001 (1)
PRIMAC ELDERS LIMITED
KPMG (RECEIVER MANAGER)

Head	Breed and Sex	Tailtag	HGP Treated	C/Kg	Avg Kg	Tot Kg	\$ / Head	Gross \$
1	Brahman Cow	QDCL0004	Yes	115.0	420.0	420.0	483.00	483.00
1	Brahman Cow	QDCL0004	Yes	98.0	445.0	445.0	436.10	436.10
2	Total Cow			106.3	432.5	865.0	459.55	919.10
1	BrahmanCross Yearling Steer	QDCL0004	Yes	123.2	150.0	150.0	184.80	184.80
1	BrahmanCross Yearling Steer	QDCL0004	Yes	123.2	225.0	225.0	277.20	277.20
2	Total Yearling Steer			123.2	187.5	375.0	231.00	462.00
4	Total Sale			111.4	310.0	1240.0	345.28	1381.10

0208

\$ Amounts in this report are exclusive of any GST

~~5~~ 5

The Chief Justice,
Qld Supreme Court,
Brisbane.

1.8.2001
P.O.Box 1475,
Gladstone. 4680

Dear Sir,

Re: National Australia Bank -v- Freeman S4013/98 Appeal 9718/2000.

I refer to the above action which I believe is ultimately under your jurisdiction. I am obviously very disappointed to be writing you this letter but I hold no great expectation. However you are the Chief Justice and I presume the person that deals with the problem I am about to raise with you on a day to day basis.

Earlier this month the ABC Four Corners program exposed practices by the Commonwealth Bank in New South Wales this included the use of I believe NSW Supreme Court Files for a Fee and the related implications. The failure of the informants Barrister now to practice and the failure of his accountant to practice as an auditor, may be indicative of the Banks practices.

On the 3.8.2000 a Mr. John Salmon placed before the Parliamentary Joint Statutory Committee on Corporations and Securities a Submission detailing the process of the National Australia Bank in Queensland and how it deals with its litigant clients. My case was heard by Judge Ambrose on the 25.9.2000. His Honor had told my Barrister because we were under prepared as I had shifted legal Firms that we would be granted an adjournment for a week on the morning of the Trial the Judge failed to grant this adjournment. My case was one of the first of which is termed the Engineered Default and can be seen to be shown in the attached newspaper article " Bank Slugs farmers for Advice " Courier Mail 17.4. 2001 by Amanda Gearing.

The reason we needed the adjournment so badly was because the National Australia Bank refused to complete discovery with Creswicks. The accounts the subject of the Parliamentary Joint Statutory Committee details were not provided and the Bank refused them. In fact the Bank is still refusing to supply the two Realisation Account Statements in the Federal Court where they have instituted proceedings.

The thrust of Mr. Salmons report to the Parliamentary Joint Statutory Committee was how the National Australia Bank held back discovery documents and manipulated judgements by false evidence. Obviously I have reason to believe both of these happened in my case. Firstly the NAB could not afford discovery of the Bank Statements requested including the two Realisation Accounts because of various reasons but the one most obvious is that in the article quoted above the Engineered Default Client was charged the moment their account was declared " on Watch" this happened to my account in June, 1997. Thus all the correspondence, Mediation Fees etc. were charged to this account without my knowledge a possible Breach of Section 52 of the Trade Practices Act. This account was not declared in the Mediation Deed signed by the Bank on 4.12.97.

This account and the withholding of \$2205 paid in interest are the subject now of

Further investigation by the Australian Competition and Consumer Commission I have no doubt they will be found to be unconscionable. The Joint Parliamentary Committee recommendation was that the Banks offer clients affected by the failure to supply the above Bank Statements Mediation. A copy of their Report is attached and was issued in October, 2000. The fact the Bank gave false information in the Court and it was used by His Honor Amersoe is shown in a copy of his Judgment Section 87 and an attached Queensland Rural Adjustment Authority report of the 24.4.97 that shows the true statements by Mr. Alder of the NAB.

Thus Mr. Salmons report of the 3.8.2000 detailed some of the shortcomings in the Court system and how the National Bank manipulates them and my case went to the Supreme Court on the 25.9.2000 and the Parliamentary Joint Statutory Committee on Corporations and Securities, report on "Shadow Ledgers" was released in October, 2000 covering some of the aspects of the problems associated with my case. Stating the NAB should mediate this problem.

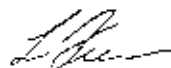
Obviously the situation covering Court processes, discovery and Banking Malpractice has now been shown to be interlocking in Queensland. I have now suffered a further disadvantage in that the Court of Appeal held a Directions Hearing in my absence because the Notice to me was sent Ordinary Mail and it takes at least 10 days to reach me that way. So the day of the hearing I received the Notice.

Now the following have been established all having a major influence on the situation and all being avoided because of the manipulation of Court process.

- a. The Australian Competition and Consumer Commission is investigating the NAB and my situation and the ACCC has the capacity under the Act to take over my Civil Case.
- b. The Court of Appeal has given the Bank an advantage in that it has ordered that the Appeal Books need to be completed by 9.8.2001 thereby locking me into the unsatisfactory Appeal.
- c. The Joint Parliamentary Committee on Corporations and Securities has recommended Mediation as the way of solving the problem with some of the undiscovered documents and their implications.
- d. That on the 14.8.2001 the Federal Court has set down for hearing the order that the NAB discover the documents covered by the mediation process one day after the Court of Appeal is demanding that I show cause as to why my Appeal should not be dismissed.
- e. The Appeal process may be avoided altogether by the discovery of the Bank Statements requested in the Supreme Court Trial S4013/98 but not provided.
- f. The Bank may choose to go to Mediation as the Parliamentary Report recommends, rather than produce the documents.
- g. The point being that the Bank as per the newspaper article charged fees against my accounts without telling me before the Mediation of the 4.12.97 then they have been deceptive or unconscionable or having an intent to defraud as a copy of the NAB letter of the 26.3.2001 states merely that Realisation Costs will be accounted when Realisation is complete. This means an account with a debit of \$13,962.31 on the 30.4.98 will not be properly accounted for as the NAB practice was not to advise anyone of this account and not to issue statements at all. Thus the newspaper articles disclosure

I do not know if you can request the Registrar to bring on a hearing to have the Orders of the 19.7.2001 changed to allow me some chance of compliance with the Court processes without disadvantage. My approaches have failed.

Yours faithfully,

A handwritten signature in cursive script, appearing to read 'L. Freeman'.

L. Freeman.



Australian Competition & Consumer Commission

Our Ref: B2000/1640
Contact Officer: David Sutherland
Contact Phone: (07) 3835 4652

9 July 2001

Mr Lynton Freeman
PO Box 1476
GLADSTONE QLD 4680

PO Box 1641
Assessors' Office
Brisbane QLD 4001
Level 1
ANA Building
300 Queen Street
Brisbane QLD 4000
Australia
Ph: (07) 3835 4652
Fax: (07) 3835 4652

Dear Mr Freeman

I refer to your complaint regarding the National Australia Bank ("NAB").

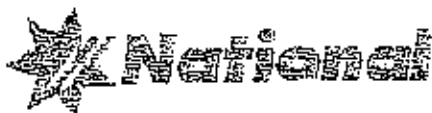
This letter is to inform you that this office has written to NAB to seek clarification of certain matters to determine if your complaint raises any implications under the *Trade Practices Act 1974*.

I will advise you when a response has been received, and this matter has been assessed.

If you need to discuss this further please do not hesitate to contact David Sutherland of this office on (07) 3835 4652

Yours sincerely

Melinda McDonald
Assistant Director
Queensland



Account statement

National Australia Bank Limited A.C.N. 004049937

TEL : 07 4150 7568
4-571

BUNDABERG-168 BOURBONS ST

DO NOT MAIL
REFER MANAGERFor Account
enquiries
telephone
15 2245Manager's ref
084-571LYNTON NOEL CHARLES FREEMAN
FARM MANAGEMENT ACCOUNTAccount no.
28 028-6647

Particulars	Debit	Credit	Balance
31MAR98		Brought forward	2,757.92 CR
1APR98	GOVT DESETS TAX		
	FROM A/C 28-028-6647	32.50	
	000407	506.00	2,619.62 CR
2APR98	000411	2,000.00	
	000412	415.00	1.62 CR
6APR98	COMM BILL: 386252547		
	FREEMAN LNC	1,020,000.00	1,019,998.38 DR
7APR98	PLEASE NOTE FROM 06/APR/98 YOUR DEBIT INTEREST RATES ARE 6.75 TO \$120,000, 13.25 TO ACCOUNT BALANCE		

FOR FAST, EASY ACCOUNT ACCESS JUST CALL 15 22 45.
OUR STAFF ARE AVAILABLE TO ANSWER YOUR ACCOUNT AND GENERAL
ENQUIRIES BETWEEN 9AM AND 8PM, MONDAY TO FRIDAY.

Chick
STB/Thomson

SKWINE
STB/Thomson

TOTALS THIS PAGE

1,022,756.50

0.00

0007

Date of
issuePage
number

160

Final balance

Subject to any adjustment - Please see note

NET TT

\$1,019,998.38

NAME: FREEMAN INC
FILE NO: 38567

REQUEST: Interest Subsidy.

DROUGHT DECLARED SHIRE: YES Shire: Calliope
I.D.P. CERTIFICATE NO
V.G. SEARCH UNDERTAKEN: NO

ENTERPRISE/LOCALITY: Cattle,
Bullyan, Boyne Valley west of Gladstone.

AREA OWNED (HA): 9988 ha
AREA OPERATED (HA): 9988 ha
AREA CULTIVATED (HA): 60 ha

CULTIVATION/GRAZING/FARM PEAK (T/C) / ASSIGNMENT/MILL:
As above.

STOCK ON HAND/CARRYING CAPACITY/LAMBING/CALVING% FAREWING%

			<u>1/86</u>	<u>1/95</u>	
Cattle	Cows	665	750	750	Calving 80%
	Heifer	70	200	150	Capacity 1000 breeders
	Steers	340	638	370	
	Calves	365		440	
	Bulls	25	25	30	
		<u>1465</u>	<u>1614</u>	<u>1740</u>	

PREVIOUS DECISIONS: (USE SEPARATE SCHEDULE IF NECESSARY)

08/04/94 Approval \$10,000 IRS (4%) Drought \$250,000 NAB FRL 8.815% (Top up).
Approval \$10,000 IRS (4%) \$250,000 NAB FRL 8.815% One year only. FEM (ICD)
Advise applicants that subsidy has been provided on a one-off basis in view of the difficulties occasioned by the drought conditions over the past year and to assist with the implementation of the productivity plan.
Client is presently going through a period of rebuilding stock (Stock 1,725 as opposed to carrying capacity 2,500) and as such needs a helping hand in the short term. Should he wish to reapply after 04/95, we will once again require a fully completed application.
Applies to the 12 months to 04/96

31/01/95 Approval \$11,160 IRS (6.2%) \$180,000 Part NAB FRL 12.4 Second year only FEM (ICD).
Advise applicant subsidy has been provided to continue assistance with the implementation of the productivity plan.

NAME: FREEMAN LNC
FILE NO: 38567

PREVIOUS DECISIONS: Continued

06/04/95 Approve: \$ 7,446 IRS (12.4%) 2-DD \$60,000 NAB FDA 12.4% New
\$ 7,182 IRS (3.99%) \$180,000 part NAB FRL 10/97 (Top up)
\$12,400 IRS (12.4%) \$100,000 NAB OD 12.4% New.
\$11,209 IRS (10.19%) \$110,000 NAB FRL 10.19% New.
\$38,231

Advise client that this second year of Exceptional Circumstance. Drought assistance applies to the 12 months period from 04/95 as did the second year productivity subsidy paid in advance in 01/95.

25/01/96 \$32,733 IRS (10.911%) (3-DD) \$300,000 part NAB FRIOL 10.911% (New)
~~\$25,300~~ IRS (12.65%) \$200,000 NAB O/D 12.65% (New)
~~\$58,033~~

Advise clients that this third year assistance applies to the twelve month period from 04/96.

ORAA PROJECTION (Based on Plan)

Income

Based on 800 breeders @ 80%

640 mixed cattle @ \$475

	304,600
TOTAL INCOME	<u>\$304,600</u>

Outgo	Fixed and Variable	\$120,000	
	Personal	\$ 30,000	\$150,000
	Available for Debt Servicing		<u>\$154,600</u>

DEBT SERVICING REQUIREMENTS

Secured Lender	Balance	Arrears	Int %	Maturity	Int Only	A/T
NAB FMA	317,126	1,512,000	12.25	05/97	11,760	11,760
		285,191				80%
NAB FDA	33,750	50,000	11.25	06/99	3,797	18,797
NAB FRIOL	850,000	650,000	10.91	6/97	92,735	92,735
S/Totals:	1,000,876	985,191			108,292	123,292
HP:						
NAB Lease	17,297	21,807		1/98		5,297
Esanda lease	7,977	14,585		5/97		7,977
Totals:	1,026,150	1,021,583			108,292	136,566

\$15,700 per beast

\$1,543 per breeder

Surplus	\$45,708	\$17,434

LANDED EQUITY

Land/Improvements

	Owners	F.M.V
	\$	2,500,000
	\$	<u>1,000,000</u>
EQUITY	(605,413)	<u>1,500,000</u>

NAME: FREEMAN LNC
FILE NO: 38567

COMMERCIAL LENDERS COMMENTS: (Private and Confidential)

NAB Rural Finance Manager (John Alder) advised:-

File does not indicate anything adverse. Facilities were due for review in February, but now extended to May. He considers that debt load is excessive and would not wish to see any increases.

Would prefer to await completion of annual review prior to giving any commitment for continuing support.

ARREARS:

Nil.

FINANCIALS/ESTIMATES:

Statement of position at 63/97 A \$3,070K, L \$1,044K, S \$2,026K.

Financial - Actuals.

93/94 Cash deficit (\$129K).

94/95 Cash deficit (\$57K) interest sub \$49K paid.

95/96 Cash deficit (\$102K) Interest Sub \$58K paid. Capital Ex \$47K. (Elect connection \$24K new bore and water connections \$17K. Mower \$4K).

Estimates 96/97 Cash deficiency (\$45K).

Estimates 97/98 Cash deficiency (\$21K).

CLIENTS COMMENTS:

Lynton Freeman advised 24/04/97.

- Have received some good rain.
- Water supply now no problem since equipping new bore with additional piping to watering points.
- A good body of feed available.
- Cattle are in good condition.
- Main problems now being faced:-
 1. Understocked. Would like to run 1000 breeders with annual turn off of 800 mixed.
 2. Low prices.
 3. The need to sell stock at current prices to meet commitments/operating expenses

GENERAL COMMENTS:

The major problem facing this enterprise is the high level of debt with attaching interest impost of some \$110,000 p.a. The problem is heightened by the low cattle numbers and current prices. From sales receipts as projected for 1997/98 year (450 head) interest alone will take \$245 per beast or 61% of proceeds.

Ability to increase cattle numbers to a level where percentage interest to farm income is acceptable, is of some doubt as there will continue to be pressure from lenders to sell outside of optimum time to meet commitments. Even a turn off of 800 head annually at average price of \$400 will only reduce interest to 34% of income.

Prospects for this year appears reasonable however prices will dictate the degree of any headway in overcoming present financial difficulties

Fully stocked and given fair cattle prices, the enterprise should be a viable unit

A further years interest subsidy under Drought appears warranted however it may be appropriate for property inspection and assessment by a Field Officer to consider the long term viability and in particular ability to achieve this within a reasonable period

NAME: FREEMAN LNC
FILE NO: 19567

RECOMMENDATION:

Total Interest Expense	\$ 108,292

Application No 5660

Approval: \$54,550 IRS (10.91%) [4-DD]

Stats: 0325-Calliope-RAS Drought (DRO93CO) 5500,000 part NAB FRIOL 10.91%

Scheme 2A Fund 410

Application Source: FARMER
Year last applied for RAS: 1995 (01/96)
Year first received RAS: 1993 (04/94)
Date application received: 07/03/97
Total Rural Debt: \$ 1,026,150
Next Review to be: 04/98
Reconsideration: N
Copy of Correspondence to: N/A


J. MULLER

24/04/97

JTF

FRIDAY, APRIL 17, 2003

NEWS 5.01

Bank slugs farmers for advice



Greg Tanzer
SNA to investigate

Amanda Gearing

THE nation's largest rural lender is charging customers up to \$110 an hour for advice associated with the management of its own loans.

The costs may be incurred through telephone calls to bank staff, or after face-to-face discussion.

The National Australia Bank is charging the fees on loans it says are "on watch", under additional scrutiny but not necessarily in default.

A Darling Downs farmer recently received a bill for more than \$200 for three phone calls

and a meeting with a NAB officer in February.

The farmer, who fears identifying himself because he is negotiating the refinancing of his rural properties, is being charged management fees although he has not defaulted on any payments on his loan.

The fees were charged because his account was reviewed and transferred to Brisbane under the asset restructuring manager.

National Australia Bank corporate relations manager Brandon Phillips said the fees were charged to customers whose loans were on watch but not necessarily in default.

"When they are on watch, the customer can agree or not agree to having their account managed in a more intense way," he said.

"If there are problems with the loan, and we are willing to commit resources, we offer extra management. But there are some costs associated with it. In about 70 percent of cases we get the loans back in good shape."

Legal Aid lawyer Lee Nevison, who works with struggling farmers and small businesses, said fees being charged ranged from \$55 to \$300 an hour.

The \$110 fee was common. Mr Nevison said clients are

given the option of paying the fee or facing foreclosure, even though many of them had not defaulted on payments.

Mr Nevison said farmers and small businesses were being forced into paying fees to stave off foreclosure.

Some of the 120 farmers and small business owners on his current client list who had been hit by fees were so angry they had threatened bankers with violence, he said.

"Every case I see is where people are meeting all their commitments and the bank has reviewed their loan and said they are not prepared to continue on," Mr Nevison said.

"I have seen farms being judged unviable because off-farm income was higher than farm income."

Australian Securities and Investment Commission regional commissioner Greg Tanzer said he had not heard of the bank fees being charged and would look further into the issue.

"ASIC's role is generally a consumer protection role and consequently I'm interested to see whether fee structures were adequately disclosed to customers," Mr Tanzer said.

MacLagan grazier and National Livestock Reporting Service reporter Trevor Hess

said he had left the NAB as he was charged interest 18 per cent and up to \$200 a month in service fees.

"It's a real rip-off. It's not if banks weren't making good profit. We keep hearing about record profits," he said.

Mr Hess said he saved a drought-hit property by taking work as a livestock reporter and starting a new feedlot on his property, 40k north of Jondaryan.

Dairy grain and cattle grower Gary Mallon, an NAB customer for 30 years, said the fees were exorbitant and cruel.

Phone 07 3 343 4743

5 Lawana Street,
MANSFIELD.

QLAND 4122

3rd August, 2000

The Secretary,
Parliamentary Joint Statutory Committee
on Corporations & Securities,
Parliament House,
CANBERRA.
A.C.T. 2600

Dear Sir,

I am prompted to raise this Submiseion following publication in the Courier Mail on 24 June 2000 of an article headed "Bank Facing Debt Allegations" appearing under the name of Amanda Gearing. The article said in part:

"The Commonwealth Bank has been asked to answer allegations that it failed to inform rural customers when their debts had been written off.

The bank also allegedly wrote off loans as bad debts while still receiving interest payments to service those debts and refused to issue bank statements to customers who continued to service the loans."

The article went on to state that Committee Chairman, Senator Grant Chapman would question the Commonwealth Bank about its commercial dealings as well as others. The overall issue here concerns the "Bad & Doubtful Debt Procedures of the Commonwealth Bank of Australia". At this stage I would say that this is an issue which requires indepth investigation and the Committee's Terms of Reference should be widened to cover all banks in Australia, however principally the other three major banks, viz: ANZ Banking Group, Westpac Banking Corporation and the National Australia Bank Limited.

Before continuing, let me give your Committee a brief rundown on my background:

"Approaching thirty seven years employment with the National Australia Bank, the last sixteen of those years being employed in various managerial roles. I retired from the bank in December 1988.

For the past twelve and a half years, I have been working as a Consultant, specialising in assisting various banks of prestige, principally through their legal representa-

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I do

Many clients regarding how years gone by to include be those interit communication aggressive that the bank possession &

The undermen this Submise

Banks : Bad

Although it from the NAB cedures of b parallel to erisation fa

In determining should have & Doubtful D Lending Manu bad debt, re re write off treatment of

While the pr level of ind bank holds i

As soon as a CUSTOMER IS will be man ment concey authorised Head Office

Following to the customer records of the that STATE THE CUSTOMER owner's stat when period

The National RED INX NEW Bank as a S Value.) an the debtors with all in account - 1 PLACE INX A

19
Tabled by Mr R Cunningham (by leave) during the
adjournment debate 21-2-2002 98

1210 (1997) THE HOUSE OF ASSEMBLY

THE CLERK OF THE PARLIAMENT
The Chief Justice de Jersey,
Qld. Supreme Court,
Brisbane, 4000

P.O.Box 1476,
Gladstone, 4680.
8.2.2002.



Dear Sir,

Re ; National Australia Bank v Freeman 4013 / 98 Appeal 9718/2000.

This letter refers to the above cases in the Supreme Court of Queensland. I have written to you previously on 1 August, 2001 in reference to the above.

Please find enclosed a letter to Judge White (27 November, 2000) after her judgment in the Court of Appeal in the above matter. May I say that it is with humility that I write this letter . I do not see it my duty to question the integrity of your Courts or Court Officers. However it is my right to seek justice through the judicial system

I will outline some details of relevance to my dispute with the NAB. My concern is if my experience is a reflection of normal procedure.

Firstly the NAB and myself appeared in Mediation before R R, Douglas QC (now Judge Douglas) in December , 1997. Judge Douglas was a witness in the above Trial. At page 358 Line 10 the Judge (as Mediator) made the following comment to me at the time of the Mediation. He states that he said to me the following -" I said to him that the Bank held Securities , had the upper hand , that he appeared to be in default and should settle for the best he can". Is this procedure normal for a person in the role of Mediator ? taking into account the following.

On the 19.11.2001, the Queensland Minister for Primary Industries gave the attached answer to a Question on Notice to the Parliament. The Mediation was inside the period of the twelve months mentioned in the Ministers reply by 4 months. I had not missed a payment nor did I for the entire period. The NAB did not disclose all the accounts in my name or that were proposed to be in my name (Red Ink Memorandum Account ; Realisation Accounts). The NAB had called me unviable for Interest Subsidy purposes, clearly the Minister's answer states that is not the responsibility of NAB ,consequently the NAB had to refuse my subsidy deposit to call me unviable. The only reason for Breach of the Mortgage was non payment of the total debt at the end of October , 1997, 6 months into the twelve month non demand period..

The Bank included a clause in the Mediation Deed that prohibited further legal action against the Bank or its staff Clause 9.1 reads;

By the execution of this Deed Freeman immediately , absolutely and unconditionally releases the Bank , its Officers and Agents , from all claims which Freeman now has , or but for this Deed might have had against the Bank , its officers and agents , in respect of the Facilities , the Mortgages , the Proceedings , or any other matter referred to in the Recitals TO THE INTENT THAT this Deed may be pleaded by the Bank as a complete and absolute bar to any claims by Freeman in respect of the matters released by the Deed .

The customer was forced to Mediation on these draconian terms as the only alternative was immediate issuing of demand.

C.C. Freeman
Mrs. Cunningham
to

Judge Ambrose's decision in 4013/98 was only based on my credibility against the Bank Officers ; the restrictive clause in the Mediation Deed precluded any raising of my substantive claims against the Bank. My solicitor , Mr. Creswick , when hearing the judgment , refused to apply to stay the judgment , but we proceeded with an Appeal. This did not stop the NAB from applying for Bankruptcy , which they did in January , 2001.

Creswick's Accountants at the time were made my intended Trustees in Bankruptcy. I was told this information after the documents were served . Further , the Affidavit in the Federal Court (attached) was submitted by Mallesons Stephen Jaques. This Affidavit shows the relationship between Creswicks and Malleson Stephens Jaques , the Bank's Solicitors. I realise that the Bankruptcy Act states that there should be cooperation between Courts, but attached is a decision from Judge Spender and the Bank's Barristers Outline of Argument.

The NAB has now dropped the Realisation Accounts from its Bankruptcy Petition to settle for the amount of the Judgment of His Honour Judge Ambrose only . A large part of the judgment in the Court of Appeal concerns this subject of costs and their allowance, to the NAB. The balance of the Realisation Account (\$13,902.31) in debit, totally unknown to me. The Bank refused to supply the details of any of my Bank Accounts or Bank Statements eventhough a Discovery Order existed. The issue of Discovery was not addressed by the Court of Appeal , though pleaded.

This means that the Secret Bank Accounts held by the Bank , not declared at Mediation and deposed to by an expert Banking Witness as existing at the time of the Mediation and completion of the Bill Facility , will not be discovered through the entire process of at least three Court Hearings.

This matter has now gone to the High Court for Special Leave.

Recently in the Brisbane Press , an article detailed destruction of Supreme Court Records appeared. May I state the historical value of the records is important , but there is also an issue of justice at stake. As mentioned previously , the Shadow Ledgers inquiry had shown to the public the widespread use of Secret Bank Statements. There are various procedures in each Bank but the principles are similar.

Attached is exhibit 4 from 4013/98. The important issue that the three Secret Accounts held by the NAB against my name are shown. The exhibit highlights part of the reasons they would not discover my Bank Statements. The Red Ink Memorandum Account is an exhibit in 4013/98 , its balance false. However the Realisation Accounts are not discovered or exhibited. It appears the Red Ink Memorandum Account has been produced specifically for Court Record purposes and is an account of record only (not a for value account).

The Realisation Accounts are "for value" accounts. The Realisation account is normally transferred to the Red Ink Memorandum Account Record as one calculated amount effectively hiding the workings of this account.

NAB did not produce my Realisation Account . The Court of Appeal Judgment stated that the Mortgage allowed the NAB to charge on an indemnity basis . In the next

paragraph Judge White mentioned and gave precedents that this should be by agreement. The NAB had charged, without my knowledge, fees and charges (its share of the Mediators Fees and a value per hour for its staff etc. to this account. (13,902-31 as at 30.4.98). As shown in the Expert Witness Affidavits the Realisation Account was in existence before Mediation.

The single transaction to the Red Ink Memorandum Account means that , in many Bankruptcy and Court Cases , customers of the Banks have been charged these fees without agreement and knowledge. In Bankruptcy it is the other creditors of the Bankrupt who may have been unlawfully disadvantaged .In actions for recovery of Debt the customer of the Bank may have been unlawfully disadvantaged. Attached are two letters from NAB. In one dated 26.2.2001 refers to the liability to the NAB and how statements were not issued and denies the requests for discovery even though an order was in force and Mallesons Stephen Jaques replied to Creswick's correspondence. The one on the 26.3.2001 reverses the position but states Realisation Costs will be accounted after realisation is complete.

Attached is the Parliamentary Joint Statutory Committee on Corporations and Securities Report on Shadow Ledgers , October 2000, recommends Mediation in these instances (Conclusion and Recommendation 1.53).

Obviously all those people who have been unaware over the last 50 years (realisation accounts in existence) now have a need for the Court Records and their security is in the public interest.

May I respectfully suggest that some method of storage of these Court Records be found , to permit the pursuit of litigant's cases. I have unfortunately been relegated to pursuing the NAB by its behaviour and consequently its method of accounting became obvious. I realise many judges will not see the wisdom in this situation but the Parliamentary Committee did.

I hope this explanation is adequate and you will agree. in many cases the Law allows Corporations and Banks latitudes beyond the rest of us. Consequently to destroy these records would be against the public interest.

Judge Spender's comments in the last paragraph of his judgment suggests to me the use of the Realisation Account may not have been explained to him previously. Obviously I do not have the credibility needed , so that some type of inquiry may be required to discover the depth of the problem especially since 1980 , bearing in mind the Parliamentary Report Recommendations.

Yours faithfully,



L. Freeman.

H H Judge White,
Supreme Court ,
Brisbane.

P.O.Bundaberg.

27.11.2001

Dear Judge White ,

Re; NAB -v- Freeman 4013/98 CA 9718/2000.

With reference to the above , I have been trying to avoid writing this letter but unfortunately I can't .

In sections 18 and 47 of your judgment you mention the failure to produce the necessary documents to prove the loss of 300 head of females..

These documents are and always have been in the Supreme Court Registry. I do not know how his Honour missed them at the trial but the table constructed from them is in the Further and Better Particulars . The numbers will not be exactly 300 because in drought ,cattle are prepared and sold on consignment , so the cattle being prepared for sale are included in the numbers some weeks ahead and obviously values estimated in September,1997 to December,1997 being prepared .

However sufficient detail is there to show the number thereabouts losses of 610 Females for \$152607-44 by 29 3 99.

The reason the sale details (account sales) were not before you was because the Appeal Books had to be quickly put together and the Court of Appeal Registry gave them to me to have printed after they prepared a copy.

When I arrived back at the Registry , they had talked to Maillessons and I believe Emma Costello had said some wording that meant , the sale details would not be required . They could not now be copied in time for Court next morning . .

I asked for an adjournment so I could go through the Appeal Book and find all the details that were missing . I filed in Affidavit the ones I had picked up previously .

This means I have been to Trial and Appeal both times hurried . the first Barwicks just would not complete discovery (Bank Statements to prove the deposit , of the sale proceeds etc.) and the accounts not in the demand etc. after 2 years and \$120,000 then about \$50,000 with Creswicks. The second time in your Court , the ACCC had started to investigate the situation and the Bank immediately applied to have the Appeal brought on.

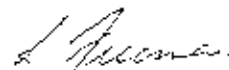
The Court of Appeal Registry normally takes a month to prepare the Books so the effort to have them ready has to be appreciated .

The problem I have is simply I now have to go to the High Court for Leave to Appeal . This means I have paid for two very expensive Legal procedures and because of an administrative situation beyond my control have to prepare for a third.

Is there any other option available other than a High Court Appeal at this stage bearing in mind the situation clearly arose in the Court , Registry.

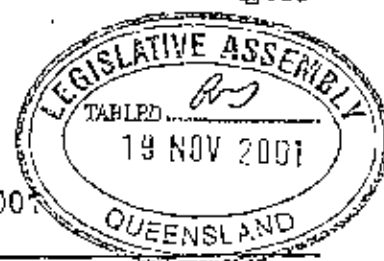
The most frustrating thing about the whole situation is I have been charged ,by the Bank with stealing my Children's cattle and a small number belonging to a company, this depended obviously on your decision , as to whether it goes to Court and I have no doubt the way the situation has been phrased in judgment , it will appear I stole the cattle .

Yours faithfully,

A handwritten signature in cursive script, appearing to read 'L. Freeman'.

L.Freeman.

QUESTION ON NOTICE
NO. 587
ASKED ON THURSDAY, 18 OCTOBER 2001



MRS E CUNNINGHAM ASKED THE MINISTER FOR PRIMARY INDUSTRIES AND RURAL COMMUNITIES (MR PALASZCZUK) -

QUESTION:

With reference to many rural landowners who receive necessary interest subsidy relief administered via QRAA and as this subsidy is subject, in part, to farm viability confirmation by banks who hold financial interests in the respective properties—

What audit processes are in place within the department to review appeals by applicants whose financial institutions indicate non-viability where farmers question the bank's assessment?

ANSWER:

I am advised that when assessing applications for Exceptional Circumstances (EC) interest subsidy, Queensland Rural Adjustment Authority (QRAA) must be satisfied that the enterprise has prospects of viability in the long term.

When assessing the long-term viability of an enterprise, the Authority looks at:

- the last three year's financial statements (profit & loss accounts, balance sheets, depreciation schedules); and
- the cash flow estimates for the current year, which is based on the current seasonal conditions;

The above information is analysed thoroughly in conjunction with telephone discussions with the producer and the producer's banker. Whilst it is important to obtain the opinion of the banker towards the viability of an enterprise, it is QRAA's independent analysis that ultimately determines the viability decision.

If a situation arises that the banker's opinion of viability differs from that of QRAA, the difference will be discussed in detail during the assessment process. If the differences remain, QRAA would carry out an on-farm assessment of the enterprise, following which the matter would again be discussed with the banker.

I understand there have been no instances, to date, where a banker has not been prepared to commit to 12 month's support of an enterprise that has been approved interest subsidy.

In the reverse situation, where the bank sees viability and QRAA does not, the same procedure would be followed.

Applicants who have been declined have the opportunity to appeal, firstly to a QRAA internal Appeals Committee and, finally, to the QRAA Board of Directors.

All of QRAA's assessment processes are subject to audit by both the contracted internal auditors of the Authority and the external auditors.

QUESTION ON NOTICE
ASKED ON FRIDAY 9 NOVEMBER 2001
NO.699

MRS E CUNNINGHAM ASKED THE MINISTER FOR PRIMARY INDUSTRIES AND
RURAL COMMUNITIES (MR PALASZCZUK) -

QUESTION:

With reference to Queensland Rural Adjustment Authority payments to farmers in
Queensland, how many applications in the current financial year were refused
because banks holding interests in the properties ruled them unviable?

ANSWER:

The Queensland Rural Adjustment Authority only makes payments to producers
through the Exceptional Circumstances Scheme.

I am advised that there have been no applications for Exceptional Circumstance
assistance refused by the Authority on the grounds that their bank has "ruled them
unviable".



IN THE FEDERAL COURT OF AUSTRALIA)
QUEENSLAND DISTRICT REGISTRY)

No: Q7001 of 2001

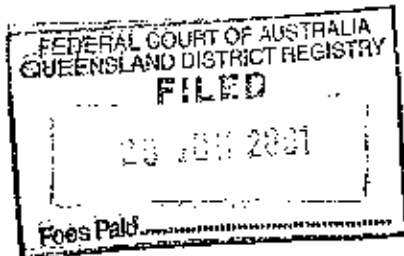
In the matter of Lynton Noel Charles Freeman

NATIONAL AUSTRALIA BANK LIMITED
(ACN 004 044 937)

Applicant

LYNTON NOEL CHARLES FREEMAN

Respondent



AFFIDAVIT OF EMMA SUSAN COSTELLO

I, EMMA SUSAN COSTELLO, of Level 30, 1 Eagle Street, Brisbane Queensland, Solicitor, make oath and say as follows:-

- 1 I am a solicitor in the employ of Mallesons Stephen Jaques ("MSJ"), solicitors for the applicant, and I have the care and conduct of this matter under the supervision of my partners. Accordingly, I am duly authorised to make and swear this affidavit on behalf of the applicant.
- 2 Exhibit "ESC1" to this affidavit is a true copy of the list of documents filed by the applicant in Supreme Court of Queensland proceedings number 4013 of 1998.
- 3 Exhibit "ESC2" to this affidavit are true copies of correspondence received from Mr Freeman together with MSJ's response.

5127160 1.doc

Page 1

Taken by:

Filed on behalf of the applicant

MALLESONS STEPHEN JAQUES
Level 30
Waterfront Place
1 Eagle Street
BRISBANE QLD 4000

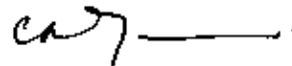
DX 311, BRISBANE
Tel: (07) 3244 8000
Fax: (07) 3244 8999
Ref: ESC:MDS:04-0078-4995

4 All the facts and circumstances deposed to in this affidavit are within my own knowledge
save such as are deposed to from information only and my means of knowledge and sources
of information appear on the face of this my affidavit.

SWORN by Emma Susan Costello on
21 June 2001 at Brisbane in the presence of:



Deponent



~~Barrister/Solicitor/Justice of the Peace/~~
Commissioner for Declarations

IN THE FEDERAL COURT OF AUSTRALIA)
QUEENSLAND DISTRICT REGISTRY)

No: Q7001 of 2001

In the matter of Lynton Noel Charles Freeman

NATIONAL AUSTRALIA BANK LIMITED
(ACN 004 044 937)

Applicant

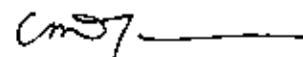
LYNTON NOEL CHARLES FREEMAN

Respondent

Exhibit "ESC1" to the affidavit of EMMA COSTELLO sworn 25 June 2001



Deponent



Solicitor/Barrister/Justice of the Peace/
~~Commissioner for Declarations~~

FILE COPY

**IN THE SUPREME COURT
OF QUEENSLAND**

No. 4013 of 1998

ORIGINAL ACTION

**BETWEEN: NATIONAL AUSTRALIA BANK LIMITED
ACN 004 044 937**

Plaintiff

AND: LYNTON NOEL CHARLES FREEMAN

Defendant

COUNTERCLAIM

BETWEEN: LYNTON NOEL CHARLES FREEMAN

Plaintiff by Counterclaim

**AND: NATIONAL AUSTRALIA BANK LIMITED
ACN 044 044 937**

Defendant by Counterclaim

LIST OF DOCUMENTS DISCLOSED BY THE PLAINTIFF

**LIST OF
DOCUMENTS**

The following is a list of documents relating to the matters in question in this action, which are or have been in the possession or power of the plaintiff and defendant by counterclaim and which is served in compliance with Order 35 rule 10(4) of the Rules of the Supreme Court.

Delivered the 16th day of June 1999:

**MALLESONS
STEPHEN JAQUES**

Solicitors
Level 30
Waterfront Place
1 Eagle Street
BRISBANE QLD 4000
Tel: (07) 3244 8000
Fax: (07) 3244 8999
Ref: MDS/JWP

No	Description	Date
D1.	Bank File 1	
1	National Australia Bank (NAB) - Internal Memorandum	22.01.98- 02.02.98
2	NAB - Internal Memorandum	undated

No	Description	Date
3	NAB - Internal Memorandum	19.12.97- 21.01.98
4	NAB - Internal Memorandum	15.10.97- 25.11.97
5	NAB - Internal Memorandum	26.11.97- 18.12.97
6	NAB - Internal Memorandum	23.09.97- 06.10.97
7	NAB - Internal Memorandum	08.09.97
8	NAB - Internal Memorandum	05.09.97- 12.09.97
9	NAB - Internal Memorandum	01.09.97
10	NAB - Internal Memorandum	25.08.97
11	NAB - Internal Memorandum	22.08.97
12	NAB - Internal Memorandum	18.08.97- 21.08.97
13	NAB - Internal Memorandum	18.08.97
14	NAB - Internal Memorandum	15.08.97
15	NAB - Internal Memorandum	14.08.97- 19.08.97
16	NAB - Internal Memorandum	12.08.97
17	NAB - Internal Memorandum	11.08.97
18	NAB - Internal Memorandum	06.08.97
19	NAB - Internal Memorandum	01.08.97
20	NAB - Internal Memorandum	31.07.97
21	NAB - Internal Memorandum	11.07.97
22	NAB - Internal Memorandum	08.07.97
23	NAB - Internal Memorandum	24.06.97

No	Description	Date
24	NAB - Internal Memorandum	10.06.97
25	NAB - Internal Memorandum	01.05.97
26	NAB - Internal Memorandum	11.03.97
27	NAB - Internal Memorandum	03.03.97
28	NAB - Internal Memorandum	24.02.97
29	NAB - Internal Memorandum	17.02.97
30	NAB - Internal Memorandum	17.02.97
31	NAB - Internal Memorandum	02.12.96- 09.12.96
32	NAB - Internal Memorandum	06.11.96
33	NAB - Internal Memorandum	30.10.96
34	NAB - Internal Memorandum	28.10.96
35	NAB - Internal Memorandum	21.08.96
36	NAB - Internal Memorandum	09.07.96- 07.08.96
37	NAB - Internal Memorandum	12.06.96- 14.06.96
38	NAB - Annual Review	10.05.96
39	Customer Interview Record	04.04.95- 05.07.95
40	NAB - Annual Review	17.03.95
41	Customer Interview Record	28.11.94- 21.12.94
42	Customer Interview Record	05.10.94- 14.11.94
43	Customer Interview Record	16.03.93- 16.12.93
44	Customer Interview Record	17.11.92- 03.12.92

No	Description	Date
45	Customer Interview Record	12.11.92
46	Letter to Asset Structuring Unit from Rural Finance Manager	20.04.98
47	NAB Bad and Doubtful Debt Report	08.04.96
48	Handwritten file note	14.04.98
49	Facsimile to Rural Finance Manager Bundaberg from Asset Structuring Unit	27.03.98
50	Business Credit Submission	08.12.97
51	Standard Credit Memorandum	08.12.97
52	Letter to Rural Finance Manager from Asset Structuring Unit	05.12.97
53	Deed	04.12.97
54	Facsimile to Rural Finance Manager from Asset Structuring Unit	09.09.97
55	Higher Risk Categorized Lending Report - watch loan	15.08.97
56	Letter to Rural Finance Manager from Asset Structuring Unit	04.07.97
57	Higher Risk Categorized Lending Report - watch loan	10.06.97
58	Letter to LNC Freeman from Rural Finance Manager	09.06.97
59	NAB Internal Memorandum	11.03.97
60	NAB Internal Memorandum	18.02.97
61	NAB Internal Memorandum	06.11.96
62	NAB- External Credit Memorandum	30.08.96
63	Rural Customer Rating System Report	30.08.96
64	Cash flow report	28.10.96
65	Cash flow report	undated
66	Financial Ratios report	11.06.97
67	Detailed Financials Report	11.06.97
68	Cash flow report	11.06.97

No	Description	Date
69	Cash management report	11.06.97
70	Fast Advisor Report	undated
71	Fast Advisor Report - Quick Call Summary	11.06.97
72	Customer statement of position	09.05.96
73	Business Credit Submission	30.08.96
74	Profit and loss account	30.06.95
75	1995 Expense summary list	undated
76	Balance sheet	30.06.95
77	Livestock Schedule	undated
78	Business Credit Submission	13.06.96
79	Business Credit Submission	13.06.96
80	Extended Credit Memorandum	13.06.96
81	Rural Customer Rating System Report	13.06.96
82	Cash flow report	09.05.96
D2.	Bank File 2	
1	Business Credit Submission	02.01.96
2	Standard Credit Memorandum	02.01.96
3	Rural Customer Rating System Report	02.01.96
4	Livestock Schedule	undated
5	Cash Flow Report	06.10.95
6	NAB - Customer Statement of Position	17.03.95
7	Business Credit Submission	06.10.95
8	Standard Credit Memorandum	06.10.95
9	Rural Customer Rating System Report	15.03.95
10	Detailed Financials Report	20.03.95

No	Description	Date
11	Financial Ratios Report	20.03.95
12	Cash Flow Report	20.03.95
13	Cash Management Report	20.03.95
14	Standard Credit Memorandum	20.03.95
15	Cash Flow Report	20.03.95
16	Livestock Schedule	01.04.95- 31.03.96
17	NAB - Internal Memorandum	30.01.95
18	Standard Credit Memorandum	10.10.94
19	Rural Customer Rating System Report	10.10.94
20	NAB - Schedule of Securities	20.05.92
21	NAB - Customer Statement of Position	24.02.94
22	Cash Flow Report	undated
23	Standard Credit Memorandum	02.03.94
24	Rural Customer Rating System Report	02.03.94
25	Cash Flow Report	01.03.94
26	Livestock Schedule	01.03.94- 28.02.95
27	Detailed Financials Report	02.03.94
28	NAB - Internal Memorandum	19.08.94
29	NAB - Internal Memorandum	04.02.94
30	NAB - Application for line of credit	03.02.94
31	NAB - Application for line of credit	08.02.94
32	NAB - Summary of Approvals under Delegated Authority	00.00.93
33	NAB - Application for line of credit - commercial	12.11.93
34	NAB - Application for line of credit - commercial	11.05.93

No	Description	Date
35	NAB - Application for line of credit	11.05.93
36	Statement of Transfer Pricing rates	19.05.93
37	NAB - Application for line of credit - commercial	11.05.93
38	Cash Flow Report	11.05.93
39	Livestock Schedule	30.05.93- 30.05.94
40	Livestock Schedule	30.05.94- 30.05.95
41	NAB - Application for line of credit - commercial	07.12.92
42	NAB - Customer Statement of Position	03.12.92
43	Livestock Schedule	01.12.92- 30.11.93
44	Cash Flow Report	03.12.92
45	Rural Customer Rating System Report	07.12.92
46	NAB - Application for line of credit - commercial	20.05.92
47	NAB - Customer Statement of Position	29.05.92
48	Livestock Schedule	01.06.92- 31.05.93
49	Cash Flow Report	23.05.92
D3.	Bank File 3	
1	Facsimile to Philip Luck (Asset Structuring) from Rural Finance - Bundaberg	30.04.98
2	Letter to Mrs L Cunningham MLA from GJ Loane (Business Financial Services)	22.04.98
3	Letter to GJ Loane (Business Financial Services) from Mrs L Cunningham MLA	17.04.98
4	Letter to Mrs L Cunningham MLA from GJ Loane (Business Financial Services)	17.04.98

No	Description	Date
5	Letter to GJ Loane (Business Financial Services) from Mrs L Cunningham MLA	06.04.98
6	Letter to NAB - Bundaberg from LNC Freeman	06.04.98
7	NAB Bad and Doubtful Debt Report	08.04.98
8	NAB - Internal Memorandum to Philip Luck (Asset Structuring Unit) from Rural Finance Manager	08.04.98
9	Facsimile to Nev Werder from John Adler (Rural Finance - Bundaberg)	17.03.98
10	Letter to LNC Freeman from Phillip Luck	22.01.98
11	Facsimile to LNC Freeman from Peter Scurr (Rural Finance - Bundaberg)	20.01.98
12	Letter to LNC Freeman from Philip Luck (Asset Structuring)	28.01.98
13	Letter to Manager (Primac Elders Limited) from Philip Luck (Asset Structuring)	19.01.98
14	Letter to LNC Freeman from Philip Luck (Asset Structuring)	24.12.97
15	NAB - Customer Interview Record	19.12.97
16	Valuation Report of "Glassford Vale"	08.12.97
17	Letter to LNC Freeman from Philip Luck (Asset Structuring)	08.12.97
18	NAB - Internal Memorandum to Rural Finance - Bundaberg from Asset Structuring Unit	25.11.97
19	Facsimile to Philip Luck (Asset Structuring) from Peter Scurr	06.10.97
20	Letter to Director of Legal Aid Office - Qld from Philip Luck (Asset Structuring)	25.09.97
21	Letter to Philip Luck (Asset Structuring) from Peter Cousins (Farm Finance Legal Officer)	23.09.97
22	Letter to LNC Freeman from Philip Luck (Asset Structuring)	22.09.97
23	Facsimile to Asset Structuring Unit from LNC Freeman	12.09.97
24	Letter to LNC Freeman from Philip Luck (Asset Structuring)	17.09.97
25	Letter to LNC Freeman from Philip Luck (Asset Structuring)	15.09.97

No	Description	Date
26	NAB - Internal Memorandum to Leasing and Fleet Services from Rural Finance - Bundaberg	17.09.97
27	High Risk Categorized Lending Report from Rural Finance - Bundaberg	05.09.97
28	Letter to LNC Freeman from Philip Luck (Asset Structuring)	09.09.97
29	Facsimile to LNC Freeman from Robert Collins (Rural Finance - Bundaberg)	18.08.97
30	Letter to Rural Finance Manager from Mrs AM Bennett (Hyne and Son Pty Ltd)	15.08.97
31	Facsimile to LNC Freeman from John Adler (Rural Finance - Bundaberg)	06.08.97
32	Facsimile to LNC Freeman from John Adler (Rural Finance - Bundaberg)	01.08.97
33	Transaction listing for LNC Freeman	01.08.97
34	NAB - Internal Memorandum to Manager of Set "E" from John Adler (Rural Finance - Bundaberg)	08.07.97
35	Letter to LNC Freeman from John Adler (Rural Finance - Bundaberg)	08.07.97
36	Letter to LNC Freeman from John Adler (Rural Finance - Bundaberg)	08.07.97
37	Letter to LNC Freeman from John Adler (Rural Finance - Bundaberg)	08.07.97
38	NAB - Farm Management Account Facility Renewal Advice	08.07.97
39	Letter to Rural Finance Manager from LNC Freeman	27.06.97
D4.	Bank File 4	
1	Letter to Rural Finance Manager from LNC Freeman	04.09.97
2	Reply to RCS Report and Covering Letter	26.08.97
3	Timber Summary for "Glassford Vale"	undated
4	Statement of Carcass Details from the Australian Meat Holdings	24.07.97
5	Bailai Peoples Native Title Claim	undated

No	Description	Date
D5.	Bank File 5	
1	Farm Business Plan for LNC Freeman - "Glassford Vale prepared by Resource Consultancy Services Pty Ltd	00.08.97
D6.	Bank File 6	
1	NAB - Internal Memorandum to Credit Controller (Asset Structuring Unit) from John West (Credit Manager - Rockhampton)	13.06.97
2	Facsimile from Resource Consultancy Services Pty Ltd to Robert Collins (NAB)	12.06.97
3	Higher Risk Categorized Lending Report to Credit Manager - Rockhampton from Rural Finance Manager	10.06.97
4	Letter to LNC Freeman from John Adler (Rural Finance - Bundaberg)	09.06.97
5	Professional Advice Grants by the Qld Rural Adjustment Authority	undated
6	List of Rural Consultants	undated
7	Letter to LNC Freeman from John Adler (Rural Finance - Bundaberg)	01.05.97
8	Letter to Credit Manager (Qld Central)from John Adler (Rural Finance - Bundaberg)	11.03.97
9	Letter to LNC Freeman from John Adler (Rural Finance - Bundaberg)	11.03.97
10	Facsimile to LNC Freeman from Rural Finance - Bundaberg	21.02.97
11	Letter to Rural Finance Manager from LNC Freeman	undated
12	Letter to Credit Manager (Qld Central)from John Adler (Rural Finance - Bundaberg)	18.02.97
13	Letter to LNC Freeman from John Adler (Rural Finance - Bundaberg)	18.02.97
14	Letter to LNC Freeman from Bob Philips (Farm Financial Counsellor - DPI)	07.02.97

No	Description	Date
15	Letter to LNC Freeman from Bob Philips (Farm Financial Counsellor - DPI)	07.02.97
16	Facsimile to Rural Finance Manager from LNC Freeman	18.02.97
17	Letter to AM O'Dea (Lending Manager - Qld Rural Adjustment Authority) from LNC Freeman	05.02.97
18	Facsimile to LNC Freeman from Rural Finance - Bundaberg	07.02.97
19	Schedule of Debit/Credit Account/Creditors Declaration - QRAA	17.02.97
20	Facsimile to John Adler (Rural Finance - Bundaberg) from Bob Philips (Farm Financial Counsellor - DPI)	14.02.97
21	Letter to LNC Freeman from John Adler (Rural Finance - Bundaberg)	09.01.97
D7.	Bank File 7	
1	Letter to LNC Freeman from John Adler (Rural Finance - Bundaberg)	03.12.96
2	Letter to Credit Manager (Qld Central) from John Adler (Rural Finance - Bundaberg)	06.11.96
3	Letter to LNC Freeman from John Adler (Rural Finance - Bundaberg)	04.09.96
4	Letter to LNC Freeman from John Adler (Rural Finance - Bundaberg)	01.11.96
5	Letter to LNC Freeman from John Adler (Rural Finance - Bundaberg)	04.09.96
6	NAB - Internal Memorandum to John Adler (Rural Finance - Bundaberg) from Luke Oxenham (Treasury Account Manager)	02.09.96
7	Letter to Manager (Treasury Queensland) from John Adler (Rural Finance - Bundaberg)	29.08.96
8	Letter to LNC Freeman from John Adler (Rural Finance - Bundaberg)	29.08.96
9	Letter to LNC Freeman from John Adler (Rural Finance - Bundaberg)	02.08.96

No	Description	Date
10	Letter to LNC Freeman from John Adler (Rural Finance - Bundaberg)	22.07.96
11	Letter to LNC Freeman from Neil Fraser (Business Banking Manager)	22.07.96
12	NAB - Farm Management Account Facility Approval Advice	22.07.96
13	Letter to LNC Freeman from RF Collins (Rural Finance Analyst)	24.06.96
14	NAB - Farm Management Account Facility Approval Advice	24.06.96
15	Letter to LNC Freeman from W Carlson (Rural Finance - Bundaberg)	17.04.96
16	Letter to LNC Freeman from AM O'Dea (Lending Manager - Qld Rural Adjustment Authority)	09.02.96
17	Letter to Rural Finance Manager from AM O'Dea (Lending Manager - Qld Rural Adjustment Authority)	09.02.96
18	Letter to LNC Freeman from W Carlson (Rural Finance - Bundaberg)	17.01.96
19	NAB - Farm Management Account Facility Approval Advice	03.01.96
20	Letter to Manager (Qld Rural Adjustment Authority) from W Carlson (Rural Finance - Bundaberg)	14.12.95
21	Letter to LNC Freeman from W Carlson (Rural Finance - Bundaberg)	25.10.95
22	Letter to Manager (Primac Association Limited) from W Carlson (Rural Finance - Bundaberg)	12.10.95
23	Letter to LNC Freeman from IN Arden (Rural Finance Analyst - Bundaberg)	28.06.95
24	Letter to Capricornia Electricity Board from BT Byrne (Rural Finance Manager)	17.05.95
25	Letter to NAB - Bundaberg from AM O'Dea (Lending Manager - Qld Rural Adjustment Authority)	18.04.95
26	Letter to Manager (Qld Rural Adjustment Authority) from NAB - Bundaberg	22.03.95

No	Description	Date
27	Qld Rural Adjustment Authority Statement of Position	17.03.95
28	Letter to LNC Freeman from Karen Kennedy (Qld Rural Adjustment Authority)	01.03.95
29	Letter to Capricornia Electricity Board from W Carlson (Rural Finance - Bundaberg)	21.03.95
30	Letter to Manager (NAB - Bundaberg) from AM O'Dea (Lending Manager - Qld Rural Adjustment Authority)	07.02.95
31	Capricornia Electricity Revenue Guarantee from LNC Freeman	undated
32	NAB - Internal Memorandum to Regional Offices from W Carlson (Rural Finance - Bundaberg)	25.11.94
33	Qld Rural Adjustment Authority Application Form	24.11.94
34	Application for Individual Droughted Property Declaration	06.10.94
35	Letter to LNC Freeman from W Carlson (Rural Finance - Bundaberg)	12.10.94
36	NAB - Internal Memorandum to Credit Manager (Qld Central)from Rural Finance - Bundaberg	19.08.94
37	Letter to LNC Freeman from W Carlson (Rural Finance - Bundaberg)	19.08.94
38	NAB - Internal Memorandum to District Office - Rockhampton from W Carlson (Rural Finance - Bundaberg)	30.06.94
39	NAB - Internal Memorandum to Credit Manager (Qld Central)from W Carlson (Rural Finance - Bundaberg)	28.04.94
40	Letter to LNC Freeman from RJ Anderson (Business Lending Officer - Bundaberg)	21.06.94
41	Letter to Manager (NAB - Bundaberg) from NR Price (Scheme Lending Manager - Qld Industry Development Corporation)	14.04.94
42	Letter to LNC Freeman from NR Price (Scheme Lending Manager - Qld Industry Development Corporation)	15.04.94
43	Letter to Manager (Qld Industry Development Corporation) from W Carlson (Rural Finance - Bundaberg)	01.03.94

No	Description	Date
44	NAB - Internal Memorandum to Credit Manager (Qld Central) from W Carlson (Rural Finance - Bundaberg)	04.02.94
45	Relative Adult Equivalents Table	undated
46	NAB - Client Referral Form	11.05.93
47	Letter to Manager (Qld Industry Development Corporation) from W Carlson (Rural Finance - Bundaberg)	19.07.93
48	Application form for Government Assistance	19.07.93
49	Letter to LNC Freeman from AE Evans (Lending Officer - Bundaberg)	11.06.93
50	NAB Watch List Report to Credit Manager (Qld Central) from W Carlson (Rural Finance - Bundaberg)	28.05.93
51	Letter to LNC Freeman from W Carlson (Rural Finance - Bundaberg)	14.05.95
52	Letter to W Carlson (Rural Finance - Bundaberg) from Bandidt and Biggar Solicitors	01.02.93
53	NAB - Internal Memorandum to District Center - Mackay from W Carlson (Rural Finance - Bundaberg)	11.01.93
54	Letter to LNC Freeman from W Carlson (Rural Finance - Bundaberg)	08.12.92
55	Facsimile to Doug Downing (Zurich/N&G Insurance) from Tom Cuskelly (Rural Finance - Bundaberg)	undated
56	Letter to LNC Freeman from Tom Cuskelly (Rural Finance - Bundaberg)	15.06.92
57	Letter to LNC Freeman from W Carlson (Rural Finance - Bundaberg)	25.05.92
58	Cash Flow Management Chart for LNC Freeman	undated
59	NAB - Customer Interview Record for LNC Freeman	11.05.92
D8.	Bank File 8	
1	Qld Rural Adjustment Authority Adjustment Program Guidelines	undated

No	Description	Date
D9. Bank File 9		
1	Qld Rural Adjustment Authority Interest Subsidy Program Brochure	undated
2	Qld Rural Adjustment Authority Application Form for Rural Schemes of Support	undated
D10. Bank File 10		
1	NAB - Farm Management Account Facility Letter	25.05.92
2	Letter to Mr Freeman from W Carlson, Rural Finance Manager	25.05.92
3	Letter to Mr Freeman from W Carlson, Rural Finance Manager	14.05.93
4	Fixed Rate Interest Only Loan Letter of Offer	17.05.93
5	Fixed Rate Interest Only Loan letter of Offer	17.05.93
6	Fixed Rate Interest Only Loan Letter of Offer	20.06.94
7	Loan Conditions: Persons and Partnerships	26.05.92
8	Loan Conditions: Persons and Partnerships	26.05.92
D11. Documents from Flower & Hart's files		
1	Deed between NAB and LNC Freeman	04.12.97
2	Memorandum of Fees - Douglas QC	08.12.97
3	Mediation Chronology Handwritten Notes	undated
4	Letter to Douglas QC from Flower & Hart enclosing documents for mediation	03.12.97
5	Letter to Flower & Hart from Douglas QC enclosing Mediation Agreement	02.12.97
6	Facsimile to Baker O'Brien & Toll from Flower & Hart enclosing index to Documents for Mediation	21.11.97
7	Letter from Baker O'Brien & Toll to Flower & Hart enclosing Financial Statements for 1995 and 1996	03.12.97
8	Handwritten notes titled "Conference"	02.12.97
9	Filenote - telephone call between Bill Haseler and Chris Rowe	02.12.97

No	Description	Date
10	Freeman Mediation Chronology	undated
11	Facsimile to Baker O'Brien & Toll from Flower & Hart	01.12.97
12	Facsimile to Flower & Hart from Baker O'Brien & Toll enclosing Mediation Agreement	01.12.97
D12. Documents from Stephen Lumb's files		
1	Handwritten notes for purposes of mediation	undated
2	Typed notes of meeting between Stephen Lumb and Lyn Freeman	undated

Malcolm Stephen Taylor

.....
Solicitors for the plaintiff

IN THE FEDERAL COURT OF AUSTRALIA)
QUEENSLAND DISTRICT REGISTRY)

No: Q7001 of 2001

In the matter of Lynton Noel Charles Freeman

NATIONAL AUSTRALIA BANK LIMITED
(ACN 004 044 937)

Applicant

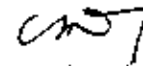
LYNTON NOEL CHARLES FREEMAN

Respondent

Exhibit "ESC2" to the affidavit of EMMA COSTELLO sworn 25 June 2001



Deponent


~~Solicitor/Barrister/Justice of the Peace/~~
~~Commissioner for Declarations~~

Mallesons Stephen Jaques ,
Waterfront Place ,
1 Eagle Street ,
Brisbane , 4000

P.O.Box 1476 ,
Gladstone.
. 4680
14.6.2001



Dear Sir,

National Australia Bank -v- Freeman (Bankruptcy)

With reference to the above . Please make available all documents instruments and references dealing whatsoever in the above action .

These particularly to include All Bill Instruments , All Bank Statements , The Banks Lending Manual and all NAB Treasury Section documents whatsoever . The Realisation Account 4-568 45-109-1060, The Managers Suspense Account Litigation Accommodation , Red Ink Account and all other accounts containing information to the indebtedness of Lynton Noel Charles Freeman .

Obviously a need to include these in my case demands expediency thus they will be required by today 15.6.2001 .

Yours faithfully ,

L.Freeman.

Mallesons Stephen Jaques

SOLICITORS

Mr Lynton Freeman
PO Box 1476
GLADSTONE QLD 4680

20 June 2001

E Costello
Direct line
3244 8115
Partner
M Darian-Smith

Dear Mr Freeman

National Australia Bank Limited v Freeman

We refer to the directions conference before Registrar Baldwin in the Federal Court at Brisbane on Monday, 18 June 2001 and enclose for your reference a draft affidavit of service that has been forwarded to Mr Harms for execution and will be filed in the Federal Court. We note that Mr Harms original affidavit of service was sworn with a Supreme Court heading page rather than a Federal Court and was mistakenly filed in the Supreme Court

We confirm that we have received your correspondence dated 14 June 2001 requesting copies of the following documents:

- 1 All bill instruments;
- 2 All bank statements;
- 3 The Bank's lending manual;
- 4 The NAB Treasury section documents;
- 5 Realisation Account 4-568 45 - 109 - 1060;
- 6 The Manager's suspense account;
- 7 Litigation accommodation;
- 8 Red ink account; and
- 9 All other accounts containing information as to the indebtedness of Lynton Noel Charles Freeman.

We are unsure as to what Bill instruments you are referring to but presume that you are referring to the stock mortgage and real property mortgage that the Bank held. These documents have previously been provided to you however, if you require further copies of these documents please advise and we will be happy to forward them to you.

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WATERFRONT PLACE
1 EAGLE STREET
BRISBANE QLD 4000
AUSTRALIA
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ABN 55 001 462 299

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LONDON

Mr Lynton Freeman

20 June 2001

We are instructed by our client that they have provided you with a bank statement of your account up until 28 February 2001. If you have misplaced this copy please advise us and our client will be happy to forward to you another copy.

As you are aware our client is seeking from the Federal Court a sequestration order against yourself pursuant to the Bankruptcy Act 1966 (Cth) ("Act"). The amount claimed by our client as against yourself is not in dispute as it is based upon a judgment obtained in the Supreme Court of Queensland. Evidence was given during the Supreme Court hearing as to the amount owing by yourself to the Bank as at the date of judgment and this was accepted by His Honour Justice Ambrose. This is not a matter that is appropriate to be retried in the Federal Court as the Supreme Court is the appropriate forum.

The issues that are before the Federal Court for determination are:

- (a) is the amount claimed in the creditor's petition still outstanding; and
- (b) have you committed an act of bankruptcy pursuant to the Act.

Order 15 Rule 2(3) of the Federal Court Rules ("Rules") sets out what the Bank is required to disclose as being:

- (a) documents on which the party relies;
- (b) documents that adversely affect the party's own case;
- (c) documents that adversely affect another party's case;
- (d) documents that support another party's case; and
- (e) documents that the party is required by a relevant practice direction to disclose.

In our opinion, the Bank's lending manual and NAB treasury section documents are not relevant to the issues that are before the Federal Court for determination and do not come within the parameters of Order 15 Rule 3 of the Rules. These documents do not relate to the warrant of execution or any alleged solvency by yourself. If you disagree with this assertion please provide to us a detailed explanation of how these documents relate to the Federal Court Proceedings by reference to each of your objections contained within your notice of objection ("Notice") at which stage we will reconsider your request.

Any realisation account, managers suspense account, litigation accommodation and red ink account are internal accounts of our client and not relevant to the proceedings in the Federal Court for the reasons set out above. If you disagree please provide to us a detailed explanation of how these documents relate to the Federal Court Proceedings by reference to each of your objections contained within your Notice at which stage we will consider your request.

Malleons Stephen Jaques
SOLICITORS

Mr Lynton Freeman

20 June 2001

We enclose for your assistance a copy of Order 15 Rule 2 of the Rules together with the relevant Federal Court Practice directions relating to discovery.

Yours faithfully

Malleons Stephen Jaques

the International Civil Procedures Section of the Commonwealth Attorney-General's Department as to the most appropriate form of service in the country concerned and as to the legality under the law of the country concerned of service in the manner proposed.

The International Civil Procedures Section of the Attorney-General's Department may be contacted at:

International Civil Procedures
Attorney-General's Department
Robert Garran Offices
National Circuit
BARTON ACT 2600
Telephone: 06 250-6666

M.E.J. BLACK
Chief Justice
28 April 1997

14. Discovery

Practice Note No. 14 issued on 12 February 1999 is revoked and the following Practice Note No. 14 is substituted.

1. Practitioners should expect that, with a view to eliminating or reducing the burden of discovery, the Court:

- a. will not order general discovery as a matter of course, even where a consent direction to that effect is submitted;
- b. will mould any order for discovery to suit the facts of a particular case; and
- c. will expect the following questions to be answered:

i. is discovery necessary at all, and if so for what purposes?

ii. can those purposes be achieved:

- by a means less expensive than discovery?
- by discovery only in relation to particular issues?
- by discovery (at least in the first instance - see (iii)) only of defined categories of documents?

iii. particularly in cases where there are many documents, should discovery be given in stages, eg initially on a limited basis, with liberty to apply later for particular discovery or discovery on a broader

basis?

iv. should discovery be given in the list of documents by general description rather than by identification of individual documents?

2. In determining whether to order discovery, the Court will have regard to the issues in the case and the order in which they are likely to be resolved, the resources and circumstances of the parties, the likely cost of the discovery and its likely benefit.

3. To prevent orders for discovery requiring production of more documents than are necessary for the fair conduct of the case, orders for discovery will ordinarily be limited to the documents required to be disclosed by Order 15, rule 2(3).

M E J BLACK
Chief Justice
3 December 1999

15. Information to be provided to the Court to enable the appropriate treatment of persons coming before it

The Federal Court is concerned to ensure that all persons coming before it (including practitioners, litigants and witnesses) are treated in a manner that is appropriate and consistent with their reasonable expectations.

To this end, practitioners are expected to provide the following information in respect of all persons to be referred to or addressed by the Court. The information must be provided to the Court (via the associate of the presiding judge), and ordinarily to the other parties no later than 24 hours before any hearing (including a directions hearing) at which the information may be required.

1. Titles (eg. "Dr") and preferred form of address (eg. "Ms" or "Mrs").
2. If not already obvious, the correct pronunciation of names, and the identification of family names.
3. Details of any interpreting services to be relied upon in Court and of any special needs of the interpreter which the Court might have to meet.
4. If an oath is to be taken by a witness in a non-standard form - the form in which it is to be taken

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FEDERAL COURT RULES

- ORDER 15 RULE 1

Notice for discovery — Form 21

After a directions hearing pursuant to Order 10 and within any period limited by the Court for this purpose, any party may, unless the Court otherwise orders, by notice for discovery, in accordance with Form 21, filed and served on any other party, require any other party to give discovery of documents.

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FEDERAL COURT RULES
- ORDER 15 RULE 2
Discovery on notice

- (1) A party required to give discovery must do so within the time specified in the notice of discovery (not being less than 14 days after service of the notice of discovery on the party), or within such time as the Court or a Judge directs.
- (2) A party must give discovery by filing and serving:
 - (a) a list of documents required to be disclosed; and
 - (b) an affidavit verifying the list.
- (3) Without limiting rule 3 or 7, the documents required to be disclosed are any of the following documents of which the party giving discovery is, after a reasonable search, aware at the time discovery is given:
 - (a) documents on which the party relies; and
 - (b) documents that adversely affect the party's own case; and
 - (c) documents that adversely affect another party's case; and
 - (d) documents that support another party's case; and
 - (e) documents that the party is required by a relevant practice direction to disclose.
- (4) However, a document is not required to be disclosed if the party giving discovery reasonably believes that the document is already in the possession, custody or control of the party to whom discovery is given.
- (5) In making a reasonable search for subrule (3), a party may take into account:
 - (a) the nature and complexity of the proceedings; and
 - (b) the number of documents involved; and
 - (c) the ease and cost of retrieving a document; and
 - (d) the significance of any document likely to be found; and
 - (e) any other relevant matter.
- (6) If the party does not search for a category or class of document, the party must include in the list of documents a statement of the category or class of document not searched for and the

reason why.

Mallesons Stephen Jaques

SOLICITORS

Mr Lynton Freeman
PO Box 1476
GLADSTONE QLD 4680

28 June 2001

E Costello
Direct line
(61 7) 3244 8115
Partner
M Darian-Smith

Dear Sir

National Australia Bank Limited v Lynton Noel Charles Freeman

We refer to your correspondence of 22 June 2001 attached to your affidavit dated 22 June 2001 and forwarded to the Federal Court for filing.

To clarify the issues we advise that there is no issue in dispute in the Federal Court proceedings surrounding the original application for accommodation in 1992 until the date of deed of 4 December 1997 as suggested by yourself. These issues were argued before the Supreme Court of Queensland. Further, the conduct and history of your account with our client and the subsequent mediation are not an issue and have been determined and will not be re-examined in the Federal Court.

As we have previously outlined for you in our correspondence of 20 June 2001 the issues in dispute in the Federal Court are whether there has been an act of bankruptcy on your behalf, whether you are solvent and whether you were served correctly.

We respond to your request for further disclosure using the same headings as yourself.

1 Business banking handbook and other relevant manual

- 1.1 For the reasons outlined above any business banking handbook or manuals of our client relating to credit applications that may or may not exist are not relevant to the issues between yourselves and our client in the Federal Court.

2 Delegated lending authority

- 2.1 The conduct of your account under the rural finance manager, Mr JL Alder is not in issue between our client in the Federal Court proceedings. Issues of conduct on behalf of Mr Alder were raised by yourself in the Supreme Court proceedings and were dismissed by His Honour Justice Ambrose.

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JAKARTA
PORT MORESBY
LONDON

3 Bank statements

- 3.1 As you are aware in December 1997 pursuant to the mediation agreement all your facilities were rolled into one bill facility. We are advised by our client that you had been provided with a full statement of the bill facility account from that date up until February 2001. Our client is happy to provide you with a further copy if you require it.
- 3.2 We confirm that in the period that when you operated a farm management account, fixed rate interest only loan, fully drawn advance and overdraft account with our client the Bank you were provided with copies of statements regularly. Regardless, as these accounts were rolled into one bill facility account as a result of the mediation these statements are not relevant to the current Federal Court proceedings.

4 Red ink memorandum account - (alternative name - Shadow Ledger) Document D3-1

- 4.1 The information filed by yourself referring to red ink accounts and Shadow Ledger account held by our client are not relevant to the Federal Court proceedings.
- 4.2 Currently, the indebtedness of yourself to our client is not in issue as the creditor's petition that has been issued is based upon a judgment of the Supreme Court of Queensland, the amount of which was determined by His Honour Justice Ambrose.

5 Managers suspense accounts and realisation accounts - Lynton Noel Charles Freeman (office accounts)

- 5.1 We repeat and rely upon the statements set out in paragraph 4 herein.

6 Schedule of securities

- 6.1 Any further requested schedule of securities is not relevant to the proceedings in the Federal Court. We confirm that our client discovered all relevant documents in the Supreme Court proceedings and that a "schedule of securities" was disclosed in the list of documents that was prepared. A further copy can be provided to you of this document if you wish.

7 Watch list

- 7.1 We confirm that the list of documents filed in the Supreme Court by our clients comprises all relevant documents that our client had in their possession or control in relation to the Supreme Court proceedings and the issues raised herein.

8 National Australia Bank Limited (Head Office) and Central Queensland Credit Bureau

- 8.1 We fail to see how these files are at all relevant to the issues in dispute in the Federal Court without further explanation from yourself.

Mr Lynton Freeman

28 June 2001

- 9 The personnel files of Rural Finance Manager John Alder and Philip Fuhrman-Luck**
- 9.1 The personal files of these bank employees are not relevant to the issues in the Federal Court. Whilst you allege that their conduct is in question the reality is that the conduct of Mr Alder and Mr Fuhrman-Luck is not in question in the Federal Court or any Court.
- 10 The personal file of John Alfred Salmon**
- 10.1 Any personal file the Bank may hold for Mr Salmon relating to his employment with our client is not relevant to the proceedings in the Federal Court. Whilst you have filed an affidavit of Mr Salmon exhibiting a number of documents in the Federal Court, we have advised the Court and yourself, that as the material filed is in our opinion not relevant, we do not intend to cross-examine Mr Salmon upon his affidavit. As such Mr Salmon will not be required in the Federal Court to give evidence as his evidence is already filed.

We enclose a copy of an affidavit that has been filed in the Federal Court on 25 June 2001 pursuant to the orders of Registrar Baldwin.

Yours faithfully

Mallesons Stephen Jaques

Mallesons Stephen Jaques

SOLICITORS

Mr Lynton Freeman
PO Box 1476
GLADSTONE QLD 4680

3 August 2001

E Costello
Direct line
3244 8115
Partner
M Darian-Smith

Dear Sir

National Australia Bank v Freeman

We refer to your application filed in the Federal Court of Australia on 27 July 2001 and served upon us on 30 July 2001 requesting that our client produce for inspection the documents set out in your affidavit. We confirm that the documents requested in your affidavit were set out in your previous correspondence of 22 June 2001 to which we provided a detailed response.

We are concerned that, despite us attempting on a number of occasions, to explain the issues that are in dispute in the Federal Court, you continue to file material and make assertions that are quite simply "irrelevant". Despite this we will again endeavour to outline the issues at hand in the Federal Court and our client's reasons for not producing the requested documents.

1 Disclosure Generally

We confirm that in the Supreme Court proceedings heard before Ambrose J in October 2000, you were provided with a detailed list of documents from our client setting out the documents that our client had in their possession or control that were relevant to the proceedings between yourself and the Bank in the Supreme Court. We confirm that our client complied with their duty of disclosure pursuant to the Uniform Civil Procedure Rules and there was no suggestion to the contrary by your solicitors.

As the issues in the Federal Court are substantially narrower than the issues in the Supreme Court, being confined to the issues raised by the creditor's petition and your notice of objection ("Notice"), we confirm that there are no further documents to disclose.

2 The Current Federal Court Proceeding

As you are aware, our client has issued their creditor's petition based upon a failure by yourself to comply with the warrant of execution ("Warrant") issued by the Supreme Court subsequent to judgment being obtained against yourself pursuant to the Order of Ambrose J. We have set out in detail in the creditor's petition the Warrant details and the fact that your failure to comply with the

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PORT MORESBY
LONDON

Mr Lynton Freeman

3 August 2001

Warrant amounts to an act of bankruptcy pursuant to the Bankruptcy Act 1966 (Cth) ("Act").

As at the time of issuing the creditor's petition our client held security over your property. Accordingly, pursuant to the Act, our client was required to particularise the details of the security and estimate the value that they thought may be obtainable upon realisation. This was done by our client and our client claimed against yourself, in the creditor's petition, the difference between what they estimated at the time of filing the creditor's petition was the value of the security and the amount owing pursuant to the judgment, in essence the "unsecured amount".

It is this unsecured amount that our client proceeds upon. The property and cattle described in the creditor's petition are clearly identified and the appointment of a Receiver and Manager by our client in no way effects the fact that you failed to comply with the Warrant and as such, committed an act of bankruptcy pursuant to the Act.

The Notice filed by yourself sets out the grounds upon which you intend to oppose the creditors petition. The grounds as we understand them are, that the documents were improperly served, an appeal is pending, the monies are not owing, the property and cattle described in the petition are not yours and the Warrant was returned unsatisfied because our client had appointed a Receiver and Manager to your property. Whilst we agree that an appeal is pending to the judgment of the Supreme Court of Queensland, we are of the opinion that your prospects of success in the Appeal are so negligible as to be non-existent. We disagree with the balance of your objections.

3 The Material Filed by Yourself

You have, on a number of occasions filed voluminous material by yourself and Mr Salmon, which in our opinion, does not relate to any of the issues that are to be litigated before the Federal Court. Instead, the material filed by yourself and Mr Salmon proceeds to make a number of allegations against the Bank that are not supported by any factual basis and suggest that there should be re-hearing of the trial that was conducted in the Supreme Court last year. As previously advised, we presently do not intend to cross-examine Mr Salmon or yourself upon the material filed as we are of the opinion that the affidavit material does not address the relevant issues for hearing before the Federal Court.

We put you on notice that we intend to apply to strike out the majority of the paragraphs of Mr Salmon's affidavit which, in our opinion, take the form of oral submissions on your behalf rather than providing to the Court factual evidence upon which you intend to rely upon to oppose the petition filed by our client. Mr Salmon's affidavit and yours also refers to a parliamentary joint statutory committee on corporations and securities hearing which, as you are aware, is not a legally binding inquiry but rather a ventilation of issues in a committee forum. It is not an admissible document in these proceedings.

As is set out in our previous correspondence, our client is willing to provide you with a copy of the relevant bill facility, mortgages and a statement of your account pursuant to the bill facility from the date of its conception being December 1997. We confirm, however, that you have not requested us to provide to you a copy of these documents, however, they are available upon your request.

Mr Lynton Freeman

3 August 2001

Regardless, at all times the Bank has acted in accordance with its statutory obligation and under the terms and conditions of the facilities held between yourself and the Bank.

We will address the balance of issues raised in your affidavit as follows:

4 Business Banking Handbook and Other Relevant Manuals

Paragraph 12 of your affidavit requests that the Bank disclose all general and lending manuals. You refer to the decision of *Napier v National Australia Bank Limited (Unreported, Federal Court, 4 November 1994)* ("Napier") as supporting your request.

The decision of Napier is clearly distinguishable in relation to the creditor's petition filed by our client that you are opposing. Napier was concerned with a claim pursuant to section 52 and 53 of the Trade Practices Act (Cth) 1974, a claim that is vastly different from the creditor's petition filed by our client.

Mr Salmon's affidavit suggests that he requires the Bank's lending manuals to confirm the process of classifying an account from watch loan status to the asset structuring unit to bad and doubtful debt reporting and that there has been misconduct on behalf of the Bank. We confirm that there is no issue before the Federal Court of any such misconduct on behalf of the Bank in relation to your account and in any event it is irrelevant to the issues before the Federal Court.

As is set out above, our client has issued their creditor's petition pursuant to the provisions of the Act and there is no allegation before the Federal Court that our client was in breach of the Trade Practices Act. Accordingly, we see no basis for any general and/or lending manuals to be provided.

5 Delegated Lending Authority

Your affidavit or the affidavit of Mr Salmon does not set out how these documents may be relevant to the issues before the Federal Court. They do not appear to us to be relevant. Accordingly, in the absence of an explanation as to the relevance of these documents, they will not be disclosed.

6 Bank Statements

6.1 General Accounts prior to the entering of the bill facility in 1997

You have requested that the Bank provide to you all bank statements relative to your accounts held with the Bank since the granting of the mortgage in 1993.

As you are aware, in December 1997 a fresh bill facility was entered into with yourself and the Bank, whereby all your previous accounts held with the Bank were rolled into one facility to provide you with time to refinance your debts to the Bank or alternatively to sell Glassford Vale. Accordingly, the prior accounts are not relevant.

Mr Lynton Freeman

3 August 2001

As at 31 March 1998, as a result of your failure to comply with the terms of the bill facility and mediation agreement, you were in default of the bill facility. As such, proceedings were issued in the Supreme Court of Queensland by our client for recovery of possession of the property mortgaged to the Bank and recovery of the amount due and owing pursuant to the bill facility. It is inappropriate now to again raise issues when you have already had an opportunity to fully ventilate these issues. In any event it appears to us that this matter is irrelevant to the issues in the Federal Court.

A judgment was made in the Supreme Court of Queensland, based upon the December 1997 bill facility and mediation agreement, where both parties had an opportunity to present their evidence and were both legally represented. Pursuant to this judgment, the Warrant was issued which you failed to comply with therefore committing an act of bankruptcy pursuant to the Act.

Mr Salmon's affidavit appears to assert that you were not provided with bank statements at all. We confirm that this is not the case, and that our client has provided you with an up to date statement of the bill facility account you entered into with the Bank in December 1997. As previously advised, our client is more than happy to provide you with another copy of this statement if you require it.

6.2 *Red Ink Accounts, Realisation Account and MSA Litigation Account*

Your affidavit requests any red ink accounts, realisation accounts and litigation accounts that may be held by the Bank to establish the true amount of the debt owing by yourself to the Bank. We advise that the creditor's petition filed by our client together with the supporting affidavit of Philip Furnham-Luck is in accordance with the Act and carefully sets out the amount owed by yourself pursuant to the judgment.

A careful perusal of the creditor's petition will reveal that in accordance with the Act, the Bank has relied upon the amount owing under the Warrant (which is supported by a judgment), estimated the maximum value that they would obtain from the sale of Glassford Vale and your other property and claimed as against yourself, the unsecured amount, being the difference between the judgment debt and the estimated value of the securities. The Bank is, for the purposes of the creditor's petition and your bankruptcy, only relying upon the unsecured amount owed to them by you.

The receivership of your property has not been finalised. When the receivership has been finalised details of the receivership will be available to you from the Receiver and Manager. Despite this, we confirm the Receiver and Manager of your property is not an agent of the Bank rather he is your agent. As such, our client is not liable for his actions. Accordingly, any scrutiny by yourself of values obtained by the Receiver and Manager should be discussed with the Receiver and Manager as opposed to our client.

We concede however that the realisation account may be relevant to the level of the unsecured amount when the receivership is finalised. It appears that the amount realised from your property will be less than the estimated amount in the creditors petition and as such we expect that we will shortly be in a position to identify precisely the total realisation amount, at which time the realisation account will be disclosed and any necessary amendments to the petition made.

Mr Lynton Freeman

3 August 2001

As a result of your failure to show any correlation between your request for copies of any realisation, red ink and litigation accounts that may be held by our client, the creditor's petition filed by our client and your notice of objection we advise that we are of the opinion that our client is not obliged to disclose any further details of accounts that may or may not exist.

6.3 *Level of the Debt owed to our client*

This was a matter determined in the Supreme Court action. There is no justification for the Federal Court to allow you to re litigate this issue, given that there has been a contested trial in the Supreme Court at which you were represented and there was no contest that you were not advanced the very large sums of money that the judgment is based upon and that they were not repaid. No dispute in effect at all was raised in relation to this. Further, there is no evidence warranting the Federal Court going behind the judgment of the Supreme Court as to the amount of the debt. On the material the raising of this issue here seems to be a mere frolic. In any event, the precise level of the debt is not an issue in the proceedings in the Federal Court. What is significant is whether the unsecured amount exceeds the statutory minimum of \$2,000.00.

7 *Watch Lists*

We confirm that in the Supreme Court proceedings you were provided with copies of documents that related to your account and that, in those documents, copies of watch lists that your name appeared upon were included. Regardless, any alleged watch list held by our client are not relevant aside from what has been disclosed to you already.

8 *National Australia Bank (Head Office) and Central Queensland Credit Bureau Files in Total*

You have provided no explanation as to why the entire National Australia Bank (Head Office) and Credit Bureau files may be relevant to the Federal Court proceedings. Accordingly, as we can see no basis for your request, these documents have not been provided.

9 *Personnel File of Alder, Luck and Salmon*

Your affidavit material provides no explanation as to how the personnel files of the abovenamed individuals are at all relevant to your notice of opposition and to the creditor's petition. Accordingly, as these documents are not relevant to the proceedings in the Federal Court we do not intend to disclose them.

We note as a matter of interest that in the case referred to by yourself in your affidavit being Napier, as supporting your assertion that you are entitled to these documents where a similar request was made, Kiefel J declined to order such documents be provided and stated that they should only be available where there were claims of negligence. Clearly, in these proceedings where there is no claim of negligence, these documents cannot be relevant.

Mr Lynton Freeman

3 August 2001

In summary, our client position is that for the purposes of the creditor's petition and the notice filed by yourself, they have complied with all of their obligations of disclosure. We trust that this clarifies our client's position and obviates the need for your application on 14 August 2001 to proceed. Please confirm by return correspondence that due to the irrelevance of the documents set out in your affidavit, you will attend to having your application on 14 August 2001 dismissed.

Yours faithfully

Malleon Stephen Jaques

FEDERAL COURT OF AUSTRALIA

National Australia Bank v Freeman [2001] FCA 1783

**NATIONAL AUSTRALIA BANK LIMITED v LYNTON NOEL CHARLES
FREEMAN**

No Q 7001 of 2001

**SPENDER J
BRISBANE
10 DECEMBER 2001**

IN THE FEDERAL COURT OF AUSTRALIA
QUEENSLAND DISTRICT REGISTRY

Q 7001 OF 2001

BETWEEN: NATIONAL AUSTRALIA BANK LIMITED
APPLICANT

AND: LYNTON NOEL CHARLES FREEMAN
RESPONDENT

JUDGE: SPENDER J

DATE: 10 DECEMBER 2001

PLACE: BRISBANE

REASONS FOR JUDGMENT

1 By a notice of motion filed on 27 July 2001, Lynton Noel Charles Freeman sought an order that the National Australia Bank produce for inspection documents that were referred to in an affidavit which was attached to that notice of motion. In the affidavit filed 27 July 2001, Mr Freeman referred to correspondence from Mallesons Stephen Jaques including a letter dated 20 June 2001 in relation to this aspect of the matter where Ms Costello referred in the first page to a request by Mr Freeman for nine categories of documents.

In respect of each of those categories, the bank responded. On 22 June Mr Freeman wrote to Ms Costello and set out a request for 11 categories of documents. The first category was Business Banking Handbook and other relevant manuals; the second was delegated lending authority of two persons who occupied the position of Rural Finance Manager. Mr Freeman next wanted bank statements of bank accounts that were held and conducted by the National Australia Bank, Red Ink memorandum account (Shadow Ledger), manager's suspense accounts and realisation accounts, schedule of securities, watch lists, National Australia Bank in Queensland (Head Office) and Central Queensland Credit Bureau files in total, the personnel file of a particular named Rural Finance Manager, as well as two other personnel files of other bank officers, and the personnel file of a bank officer who had retired from the National Australia Bank and who was advising Mr Freeman.

3 The request in the notice of motion seeking discovery of documents was heard by

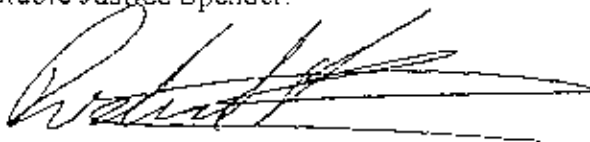
7 The Court will go behind a judgment only where there is substantial reason given for questioning whether in truth and reality there is a debt owing by the debtor to the petitioning creditor.

8 In circumstances where there had been a contested trial over four days before Ambrose J, and where there has been a contested appeal to the Court of Appeal, it is quite unlikely that a reason can be made out why a Court in bankruptcy should go behind the judgment. In this case, Mr Freeman is seeking to re-litigate the question of whether he owes a debt to the National Australia Bank. That misunderstands the circumstances in which a Court of bankruptcy will exercise its discretion to go behind a judgment. Those circumstances plainly have not been made out in the present case.

9 I am satisfied that the documents sought by Mr Freeman ought not be the subject of an order for discovery under O 15 of the Federal Court Rules in the Federal Court proceedings. The documents that he seeks have not been shown to me to be relevant to any issue in the Federal Court proceedings, apart from the issue of the indebtedness of Mr Freeman to the bank. In reviewing the decision of Registrar Baldwin on 26 September 2001, I do not consider it necessary for the bank to provide Mr Freeman with the documents referred to in the attachments to his affidavit of 27 July 2001. The motion filed by him on 10 October 2001 in that respect should be dismissed with costs.

I certify that the preceding nine (9) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Spender.

Associate:



Dated: 13 December 2001

IN THE FEDERAL COURT OF AUSTRALIA
QUEENSLAND DISTRICT REGISTRY

7001 OF 2001

NATIONAL AUSTRALIA BANK LIMITED (ACN 004 044 937)

Applicant

LYNTON NOEL CHARLES FREEMAN

Respondent

OUTLINE OF SUBMISSIONS ON BEHALF OF THE
APPLICANT, NATIONAL AUSTRALIA BANK LIMITED

Material to be read

Creditor's petition filed 18 January 2001

Affidavit of Philip Futerman-Luck filed 18 January 2001 verifying paragraphs 1, 2 & 3 of the creditor's petition.

Affidavit of John Barlow filed 18 January 2001 verifying paragraph 4 of the creditor's petition.

Supplementary affidavit of John Barlow filed 19 February 2001 verifying paragraph 4 of the creditor's petition.

Affidavit of service of petition and supporting affidavits of Sergeant Owen Harms filed 13 July 2001

Affidavit of Emma Susan Costello filed 14 August 2001

Reasons for judgment of Deputy District Registrar Baldwin dated 26 September 2001

Reasons for judgment of the Queensland Court of Appeal in NAB v Freeman [2001]

QCA 473

Nature and Outline of Application

1. The Respondent:

- (a) Applies for leave to amend his notice of defence in contested bankruptcy proceedings; and
- (b) Appeals the order of Deputy District Registrar Baldwin dated 26 September 2001 to refuse the Respondent an order for discovery of Bank documents.

2. The Applicant objects to both orders on the bases that:

- (a) The additional grounds all, bar one relating to the alleged non-provision of bank statements, relate to matters which have been the subject of a Supreme Court trial and Appeal. In both *fori*, the Respondent's claims have been rejected; and
- (b) The appeal against discovery is merely a delaying tactic by the Respondent to prevent the hearing of the bankruptcy petition.

Jurisdiction

- 3. The Deputy District Registrar has power under s35A(1)(c) of the Federal Court of Australia Act ("Act") to make orders relating to discovery. This Court may review the decision under s35A(6). It is a hearing *de novo*¹.

Background Facts

- 4. The following facts are relevant:-
 - (a) In May 1998, the Applicant commenced proceedings against the Respondent for recovery of possession of mortgaged land and for a debt owing by the Respondent to the Applicant under an expired bill facility;
 - (b) The action was heard over 4 days in September 2000. The Respondent was represented throughout the trial by solicitors and Mr Lindsay Bowden of Counsel.
 - (c) On 11 October 2000, Ambrose J handed down judgment in favour of the Applicant for recovery of possession of the Respondent's property and for the sum of \$1,427,890.08, together with indemnity costs ("Judgment");
 - (d) Since then the Respondent has sold the property, through receivers appointed by it, and petitioned for the Respondent's bankruptcy. The petition is based on the unsatisfied return of an enforcement warrant in February 2001;

¹ *Martin v Commonwealth Bank* [2001] FCA 87

(e) The Respondent has appealed, unsuccessfully, to the Queensland Court of Appeal against the judgment and now seeks to oppose the creditor's petition on similar grounds to those which were aired in the Supreme Court trial and hearing, namely:

(i) That the Bank had agreed not to enforce its securities over the Respondent's property;

(ii) That the Bank didn't promptly credit to his account a payment of \$2205 when he sent it the Bank;

Application to amend the grounds of opposition to the creditor's petition

5. The original grounds for the Respondent's defence to the petition are found in his affidavit filed 26 February 2001. There are 5 grounds, namely:

(a) Improper service of the petition and supporting affidavits;

(b) the Judgment being subject to an appeal pending in the Queensland Court of Appeal;

(c) The moneys said to be owing under the Judgment "are not owing";

(d) The property described as security in the petition does not belong to the Respondent; and

(e) The warrant was returned unsatisfied because the Applicant's receiver was in possession of all assets.

6. To these grounds, the Respondent now seeks to add grounds described as "*fraud, intention to defraud, deceit, false pretences, giving false testimony, fabricating evidence, attempting to pervert justice, perverting justice, aiding and abetting, Trade Practices Act 1974 deceptive and misleading conduct, unconscionable conduct and negligence*".

7. There is no substance to any of the original grounds, for the following reasons:

- (a) The alleged "improper service" is dealt with uncontrovertibly by a supplementary affidavit of Sergeant Harms filed 13 July 2001;
- (b) The Queensland Court of Appeal has dismissed the Respondent's appeal and noted "*There is no substance in any of the grounds of appeal raised by the appellant in the extensive written submissions or in his oral submissions*" (per White J at page 16);
- (c) If, which is not conceded, some property has been included in the enforcement warrant as being the subject of security and it is not in fact secured,² then that works to the benefit of the Respondent in so far as it has the effect of decreasing the amount of the unsecured debt which is owed to the Applicant. Note that the claim about whether livestock are secured or not seems to depend on where the brand is located on the animal³; and
- (d) The fact that a receiver was in possession of secured assets is similarly irrelevant to whether the Respondent has unsecured assets available to satisfy the enforcement warrant.

8. The affidavits in support of the new grounds include:

- (a) Three affidavits of Mr Salmon filed 29 May 2001, 2 July 2001 and 20 July 2001. Mr Salmon professes to be a consultant who specialises in assisting victims of banking malpractice. His claimed expertise is having been employed by the National Australia Bank for 37 years, prior to his retirement in 1986³. The affidavits and annexures are wholly irrelevant to the issue of whether the enforcement warrant was returned unsatisfied;
- (b) Affidavits of Mr Freeman filed 27 July 2001, 10 October 2001 (*2), & 31 October 2001; and

² The stock mortgage is exhibited to Mr Freeman's affidavit filed 10 October 2001, as part of Ex D (being an affidavit of the Bank solicitor Mr J Sennitt). The Respondent's description of which animals are the subject of the stock mortgage are set out in ESC7 to the affidavit of Castello filed 28 March 2001.

³ See page 126 of JAS1 to affidavit of Salmon filed 29 May 2001.

(c) Affidavit of Mr Quinlan filed 2 November 2001.

9. It is worthwhile noting that each of the matters the subject of these affidavits, with the exception of the alleged failure to provide bank statements, was raised in the Supreme Court trial and appeal, as is evident from the reasons for judgment of Ambrose J and the Court of Appeal judgment.
10. In essence, the affidavit material reveals no matters which have not already been the subject of the mediation in December 1997, the Supreme Court trial in September 2000 or the Queensland Court of Appeal hearing on 31 August 2001.
11. So far as the Respondent's complaint about the non-provision of bank statements is concerned, the Applicant relies on the judgment debt as being the amount owing as at October 2000. Issues relating to the debt before that date were the subject of the Supreme Court trial. Since that date, the Applicant relies on statutory interest under the *Supreme Court Act 1995*, in respect of which bank statement need not be issued. In any event, the Bank has provided the Respondent with details of the indebtedness by letter in February 2001⁴ and the creditor's petition. Correspondence has been sent by the Applicant's solicitors to the Respondent about the current debt, taking into account interest and security realisations since then.

Appeal against order refusing discovery

12. On 22 June 2001, the Respondent sought discovery of 11 classes of documents said to be relevant to the creditor's petition. The Applicant explained its refusal to provide the documents in its solicitor's letter dated 28 June 2001⁵.
13. The Respondent filed a notice of motion on 27 July 2001 seeking discovery of the documents. By written reasons dated 26 September 2001, Deputy District Registrar Baldwin refused to order the discovery.
14. Practice Note 14 dated 3 December 1999 makes it clear that the Court will consider the issues in the case in considering whether discovery is necessary at

⁴ See ESC1 to affidavit of Costello filed 14 August 2001

⁵ ESC1 to affidavit of Costello filed 14 August 2001

all, and if so for what purposes. The Deputy District Registrar dealt with the matter fully in the reasons and the Respondent does not seek in any way to complain that the Deputy District Registrar has erred in any way; rather this is simply another attempt to re-ventilate the same issues which have been raised in the past.

15. The documents which the Respondent seeks to have discovered are all entirely irrelevant to the issues creditor's petition, for the following reasons:

- (a) The Applicant's judgment is based on the breach of a mediation agreement and bill facility both dated December 1997. Any documents prior to December 1997 cannot be relevant;
- (b) In any event, to the extent that any documents prior to December 1997 could possibly be relevant, the Respondent has already had disclosure in the Supreme Court proceedings. The list of documents is in evidence⁶;
- (c) To the extent that there is any dispute about the amount of the debt, the Respondent has been give extensive details about how the debt is calculated, by provision of a bank statement of all transactions up to 28 February 2001⁷.
- (d) The personnel files of any Bank officer are simply irrelevant. It is inconceivable how the personnel file of Mr Salmon (the Respondent's adviser) could be relevant to the issues on the creditor's petition.

16. The Respondent appears to be determined to seek to go behind the Supreme Court judgment. He has had numerous opportunities to air his complaints, including:

- (a) The mediation held in December 1987, at which he was represented by solicitor/clerk and Counsel (Mr Stephen Lumb);

⁶ ESC1 to affidavit of Costello filed 25 June 2001

⁷ MSJ letter dated 20 June 2001 to Mr Freeman, being ESC2 to affidavit of Costello filed 25 June 2001

- (b) The Supreme Court trial, again at which he was represented by solicitors and Counsel (Mr Bowden instructed by Creswicks Lawyers), and where he had their assistance to cross examine all relevant Bank officers (including Mr Alder, Mr Carlson and Mr Fuhrman-Luck) about the allegations which he now seeks to re-agitate; and
 - (c) The Court of Appeal hearing, at which he appeared himself but in respect of which he had the assistance of Counsel (Mr Bowden again) and instructing solicitors to prepare his grounds of objection.
17. Despite those opportunities, he has been unable to establish any wrongdoing on the part of the Bank and the time has come for him to accept that there is no legal or factual basis for his complaints or any basis which would justify going behind the judgment.
18. The Respondent's application to amend the grounds of opposition to the creditors petition should be refused and the appeal against the order to refuse discovery should be dismissed, with costs. The creditor's petition should be brought back on to be determined as soon as possible.

15

IN THE FEDERAL COURT OF AUSTRALIA)
FILED IN COURT BY LEAVE OF)
DISTRICT REGISTRY)
02 MAY 2001
DISTRICT REGISTRY matter of Lynton Noel Charles Freeman

No: Q7901 of 2001

NATIONAL AUSTRALIA BANK LIMITED
(ACN 004 044 937)

Applicant

LYNTON NOEL CHARLES FREEMAN

Respondent

AFFIDAVIT OF EMMA SUSAN COSTELLO

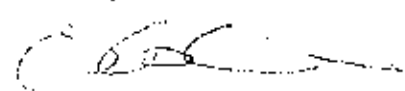
I, EMMA SUSAN COSTELLO, of Level 30, 1 Eagle Street, Brisbane Queensland, Solicitor, make oath and say as follows:-

- 1 I am a solicitor in the employ of Mallesons Stephen Jaques ("MSJ"), solicitors for the applicant, and I have the care and conduct of this matter under the supervision of my partners. Accordingly, I am duly authorised to make and swear this affidavit on behalf of the applicant.
- 2 On 19 April 2001 I telephoned Creswicks Lawyers, the solicitors for Mr Freeman in relation to the appeal in the Court of Appeal and asked to speak to Mr Jim Mackenny. I was advised by the receptionist at Creswicks and verily believe to be true that Mr Mackenny was away for two weeks and that Anthony Creswick would be looking after his matters. Accordingly, I left a message for Mr Creswick to call me about the Freeman matter.

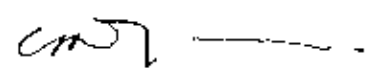
BRISBANE/3027473.01

Page 1

Signed:



Taken by:



Filed on behalf of the applicant

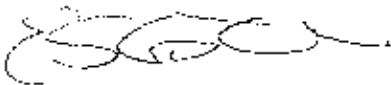
MALLESONS STEPHEN JAQUES
Level 30
Waterfront Place
1 Eagle Street
BRISBANE QLD 4000

DX 311, BRISBANE
Tel: (07) 3244 8000
Fax: (07) 3244 8999
Ref: ESC:MDS:04-0078-4995

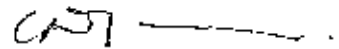
- 3 On 19 April 2001 I telephoned Anita at the Supreme Court, Court of Appeal in relation to making enquiries about the status of the appeal index. Anita informed me and I verily believe to be true that Creswicks was preparing the appeal index themselves and that I would have to liaise with them in relation to the status of it.
- 4 On 20 April 2001 I contacted Brett at Creswicks, the person who was looking after the preparation of the appeal index on behalf of Mr Freeman, whom I informed me and I verily believe to be true as follows:
- (a) he had no concrete instructions to proceed at this stage with the appeal index as the client had other concerns that he was attending to; and
 - (b) he was unaware that Creswicks had any instructions in relation to the Federal Court proceedings but he would have to check with his partner, Mr Creswick about this. I left a message with Brett for Mr Creswick to telephone me.
- 5 I have not received a telephone call from Anthony Creswick about the Freeman matter.
- 6 On 30 April 2001 I telephoned Mr Jim Mackenny who had returned from sick leave. I asked Mr Mackenny if he could provide me an update as to what was going on in the Freeman matter.
- 7 I advised Mr Mackenny that I had spoken with Brett from Creswicks last week who had advised me that he did not have any instructions to proceed with the appeal. Mr Mackenny informed me and I verily believe to be true that this was true.

- 8 I advised Mr Mackenny that the creditor's petition was listed for directions in the Federal Court on Wednesday this week and that I would need to advise the Court what was going on. He informed me and I verily believe to be true that he or Creswicks did not have instructions to act on behalf of Mr Freeman in relation to the Federal Court proceedings. He further informed me and I verily believe to be true that they have advised Mr Freeman that unless "he puts money in the cash box" they would not be doing any more work on his behalf in relation to the appeal.
- 9 Mr Mackenny advised me and I verily believe to be true that Mr Freeman will be attending at the Federal Court on Wednesday and I notified Mr Mackenny that I would advise the Federal Court of the details of this conversation.
- 10 All the facts and circumstances deposed to in this affidavit are within my own knowledge save such as are deposed to from information only and my means of knowledge and sources of information appear on the face of this my affidavit.

SWORN by Emma Susan Costello on 2 May 2001
at Brisbane in the presence of:



Deponent



Barrister/Solicitor/Justice of the Peace/
Commissioner for Declarations--

8/2/98

07-3234-5916 FROM THE BUNDEBERG RD

07-3234-5916 P.01



National Australia
Bank Limited
ACN 004044927

D3-1

Facsimile Message

Date 30/4/98

Phil Luck RE LNC FREEMAN

Company/Department Asset Structuring

Facsimile Number 07-3234-5916

From Rural Finance Office - Bundaberg

Phone No 07-4150-7368 Fax No 07-4150-7324

Number of pages (inclusive) 1

Message

Phil can you confirm the following for me, a few things have changed while I was on holidays, thanks.

- In the file there is a warrant for \$2,203-. Your advice of 14/4/98 said to hold until demand has been severed. Has this happened yet? If so credit funds to LNC Freeman's account 28-028-66477
- We've received a drawing from the Banks solicitors for \$5,962.55 with a notice to debit the suspense account maintained in relation to Freeman. Would this be the MSA Realisation account? (4-568 45-109-1060).
- This realisation account is currently irregular as it is \$13,992.31 overdrawn. Should there be an office limit recorded on this account?
- Lastly I believe that John Alder may have asked if an office limit is to be recorded on the account No 28-028-6647 but I'm unable to locate a copy of the request or any reply.

ADVICE HAS BEEN ISSUED TO CREDIT TO THE LNC HAVE RAD INR ASING CARD

NO PLEASE OPEN MBSA SUSP. ACC - LITIGATION ACC

Done 9/5/98

ITS AN OFFICE ACC. NO.

Peter Scott
RFA

PLEASE REWARD LIMIT \$1,020,000
EXPIRING 30/6/99. THIS
ADVICE WILL SUPERCEDE ANY
PREVIOUS.

ASSET STRUCTURING UNIT 21/4/98
Phillip Luck
Manager - Watch Loans 'C'

COPY



The Parliament of the Commonwealth of Australia

**REPORT ON 'SHADOW LEDGERS'
AND THE PROVISION
OF BANK STATEMENTS
TO CUSTOMERS**

**PARLIAMENTARY JOINT STATUTORY
COMMITTEE ON
CORPORATIONS AND SECURITIES**

OCTOBER 2000

TABLE OF CONTENTS

Membership of the Committee	iii
Duties of the Committee	v
Table of Contents	vii

REPORT ON 'SHADOW LEDGERS' AND THE PROVISION OF BANK STATEMENTS TO CUSTOMERS

Background to action by the Parliamentary Joint Statutory Committee on Corporations and Securities (PJSC)	1
Allegations against the Commonwealth Bank	2
Evidence from the complainants	2
Evidence of the Financial Services Consumer Policy Centre	2
The response of the Commonwealth Bank	4
Evidence of the Australian Taxation Office and the Australian Competition and Consumer Commission	6
Supplementary submissions by the FSCPC and Mr Bruce Ford	7
Additional submission by the Commonwealth Bank	8
Summary	9
Conclusions and Recommendations	9

APPENDIX 1 - Submissions received by the Committee

APPENDIX 2 - Witnesses at hearings

APPENDIX 3 - Questions on notice from Senator Andrew Murray

The Parliament of the Commonwealth of Australia

REPORT ON 'SHADOW LEDGERS'
AND THE PROVISION
OF BANK STATEMENTS
TO CUSTOMERS

PARLIAMENTARY JOINT STATUTORY COMMITTEE ON
CORPORATIONS AND SECURITIES

OCTOBER 2000

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MEMBERSHIP OF THE COMMITTEE

Senator Grant Chapman, (Chairman)
Mr Bob Sercombe, MP, (Deputy Chairman)
Senator Stephen Conroy
Senator Barney Cooney
Senator the Hon Brian Gibson
Senator Andrew Murray
Ms Julie Bishop, MP
Mr Ross Cameron, MP
Mr Kevin Rudd, MP
Dr Andrew Southcott, MP

DUTIES OF THE COMMITTEE

Section 243 of the *Australian Securities and Investments Commission Act 1989* sets out the duties of the Committee as follows:

The Parliamentary Committee's duties are:

- (a) to inquire into, and report to both Houses on:
 - (i) activities of the Commission or the Panel, or matters connected with such activities, to which, in the Parliamentary Committee's opinion, the Parliament's attention should be directed; or
 - (ii) the operation of any national scheme law, or of any other law of the Commonwealth, of a State or Territory or of a foreign country that appears to the Parliamentary Committee to affect significantly the operation of a national scheme law;
- (b) to examine each annual report that is prepared by a body established by this Act and of which a copy has been laid before a House, and to report to both Houses on matters that appear in, or arise out of, that annual report and to which, in the Parliamentary Committee's opinion, the Parliament's attention should be directed; and
- (c) to inquire into any question in connection with its duties that is referred to it by a House, and to report to that House on that question.

Report on 'Shadow Ledgers' and the provision of bank statements to customers

Background to action by the Parliamentary Joint Statutory Committee on Corporations and Securities (PJSC)

1.1 On 21 June 2000 Senator Grant Chapman, the Chairman of the PJSC, placed before the PJSC allegations which he had received about alleged practices of the Commonwealth Bank in relation to its commercial dealings with a group of rural and regional customers.

1.2 As a consequence the PJSC unanimously decided to hold a one-off hearing, on 16 August 2000, into the following allegations:

- that the bank failed to inform rural customers that their debts had been written-off;
- that the bank used a 'shadow ledger' system to improperly claim tax benefits;
- that the bank wrote off loans as bad debts while still receiving interest payments to service those debts; and
- that the bank refused to issue account statements to customers.

1.3 The PJSC decided to invite as witnesses representatives of the customers, the Commonwealth Bank, the Australian Taxation Office and the Australian Competition and Consumer Commission.

1.4 In undertaking this inquiry the Committee considered the allegations against the Commonwealth Bank in light of what is regarded as the accepted commercial practice under which it is not usual or even prudent for a corporation to inform its customers of the different types of internal accounting entry which reflect the status of their debts.

1.5 The PJSC is cognisant that there may be a number of these entries, which are necessary to comply with accounting standards and reporting for tax purposes but where it would not be commercially advisable for a corporation to inform a customer that its debt had been written-off. The Committee understands that commercial organisations in general do not inform customers of internal accounting procedures.

1.6 The PJSC received 17 submissions in relation to its hearing, a list of which is set out in Appendix 1. A list of witnesses at the hearing is set out in Appendix 2. A set of questions on notice asked by Senator Murray of the Commonwealth Bank are set out in Appendix 3.

Allegations against the Commonwealth Bank

Evidence from the complainants

1.7 At its hearing the PJSC heard evidence from Mr Bruce Ford, Ms Wendy Murray and Mr Bernard Madigan about their experiences as customers of the Commonwealth Bank. These witnesses spoke for two hours, giving very detailed accounts of their individual dealings with the Bank, which they claimed substantiated their allegations. The witnesses also tabled bank statements from other customers. The PJSC is most grateful to those witnesses for their assistance.

1.8 Mr Bruce Ford raised issues of concern in respect to the treatment of his company's loans with the Commonwealth Bank. In particular Mr Ford was concerned that he had not been provided with statements despite requests and that when statements were provided they contained inaccurate information. Mr Ford described the statements as 'fabrications'.

1.9 Mr Ford stated in his submission that there is a lack of transparency and honesty in the bank's practice of withholding statements and that "when these issues are raised with the Commonwealth Bank, the bank deliberately covers up its practice and engages in dishonest conduct."

1.10 In order to gain information, Mr Ford alleges that the Bank told him that he would need to litigate. Mr Ford stated to the Committee that it was "an extraordinary situation where we need to sue them for the truth."

1.11 Mr Bernie Madigan advised the Committee that he was currently in litigation with the Commonwealth Bank over a number of matters, including bank statements.

1.12 Mr Madigan alleged that the Bank had refused to provide him with a closing statement of his account, which it continued to debit even though it had informed him that the account was closed.

1.13 Mr Madigan stated that the Bank continued to keep the account open for improper purposes.

Evidence of the Financial Services Consumer Policy Centre

1.14 The most comprehensive material in relation to the allegations against the Commonwealth Bank was submitted by the Financial Services Consumer Policy Centre, a non-profit consumer research organisation. The FSCPC advised that it had been assisting persons who were having difficulty obtaining account statements. The basic position of the FSCPC was that statements formed the cornerstone of the relationship between bank and customer; full statements should always be provided, regardless of whether a customer has fallen behind in payments.

1.15 The FSCPC advised that their research showed evidence of a potential systemic difficulty involving farmers who have not received bank statements from, in most cases, the Commonwealth Bank, and in some instances from the National Australia Bank and the ANZ.

1.16 The FSCPC indicated that a typical dispute involved the bank sending bank statements less frequently or not at all. Bank staff appear reluctant to provide statements and payout figures are difficult to obtain and are often disputed. Where statements are provided they are often in a changed format. In particular, the statement would show a zero balance, although the bank claimed elsewhere that a large sum was due. As a result, customers were unable to complete tax returns and some found it difficult to budget and carry on business normally. Many experienced refinancing problems and some faced insolvency. These difficulties were not related to legal proceedings, with some customers receiving no statements for years, with no court action commencing.

1.17 The FSCPC noted that the Commonwealth Bank did not deny their use of shadow ledgers.¹ It is the view of the FSCPC that it was formal bank policy not to provide statements once a shadow ledger is opened, and that although the banks denied this, the bank has been inconsistent in its defence.

1.18 The FSCPC then took issue with a number of claims in relation to shadow ledgers which it attributed to the Commonwealth Bank.

1.19 The FSCPC disputed claims by the bank that statements were only withheld after litigation had commenced, stating that numerous complainants had reported not receiving statements despite no litigation being in existence.

1.20 The FSCPC disputed claims by the bank that statements were not issued because the Bank did not wish to inflame any dispute and that in any event the Bank will always issue statements on request. The FSCPC argued that the banks defence that providing statements could inflame a dispute made no sense and gave evidence of instances where it was banking policy not to provide statements once a shadow ledger was opened.

1.21 The FSCPC made eight recommendations in its conclusions. These were that:

- A survey should be conducted to ascertain how many customers have had problems receiving bank statements, and whether or not the problem is limited to the CBA.
- A round table of legislators and regulators, including ASIC, APRA and the ATO could consider whether legislation or accounting procedures need to change, in order to prevent any need or incentive for a bank not to issue statements.
- The Banking Code of Conduct should be amended to require the provision of statements in all circumstances short of litigation, and the provision of statements on request thereafter.

- Undertakings should be sought from the CBA that its internal procedures, instruction manuals and staff training will be amended to ensure that bank statements are issued regularly and on request.
- An independent arbitrator should be appointed to consider relevant cases. The arbitrator should have the ability to obtain statements for consumers, correct inaccurate entries and recommend compensation where appropriate.
- The terms of reference of the Australian Banking Ombudsman Scheme, including its independence, needs to be examined to determine why the scheme was unable to assist many of the complainants.
- A wider inquiry into rural finance should be conducted.
- Further inquiries about bank accounting standards should be made.

The response of the Commonwealth Bank

1.22 At the PJSC hearing the Commonwealth Bank circulated material and answered questions from members in relation to the allegations made against it. The Bank advised that in relation to these matters it continued to refute strongly any allegations of impropriety. The Bank stated that the circumstances in question related only to the very small number of customers who may have difficulty repaying their loans.

1.23 Mr Michael Ulmer, Group General Manager from the Commonwealth Bank provided the following explanation of 'shadow ledgers'.

"Where the bank or, for that matter, any other credit provider has formed the view that all or some of the debt owing will not be repaid, it will, to ensure compliance with accounting requirements, make an accounting entry to reflect provision for the possible loss or write off of this amount as a bad debt. Clearly, just because a credit provider forms the view that a debt is irrecoverable or bad does not extinguish the liability of the borrower to repay the moneys owed under the loan agreement. This would include interest that continues to accrue on the debt. In these instances, the credit provider will need to keep a separate record of the legal debt owed under the contract. It is this separate record that has been referred to as the 'shadow ledger'."

1.24 The response of the Bank to the specific allegations is set out below:

- **Allegation:** The Bank failed to inform some rural customers that debts had been written-off.

Response: The decision by a lender to write off all or part of a debt recorded in its books is to enable compliance with generally accepted accounting standards and regulatory requirements. A write-off does not reduce the amount legally due and payable by the defaulting borrower.

- Allegation: The Bank used a shadow ledger system to improperly claim tax benefits.

Response: The accounting system does not result in a taxation benefit, because it merely records the debt legally due and payable. If a lender incurs a loss on a loan, the taxation laws provide for an entitlement to a tax deduction. If the defaulting borrower subsequently repays all or part of the loan, the lender discloses the income in its accounts and pays tax in relation to it.

- Allegation: The Bank wrote off bad debts while still receiving interest payments to service those loans.

Response: Even where a lender has written off a debt, the borrower is still legally required to make the interest payments under the loan agreement. Tax is payable on any interest so received.

The bank advised that its independent auditors Ernst & Young had specifically reviewed the shadow ledger accounts and confirmed that the activity on those accounts is in accordance with accounting requirements and taxation requirements.

- Allegation: The Bank refused to issue statements to customers.

Response: The bank stated that "we are unaware of any circumstance where the customer has continued to service their loans in accordance with the loan agreement where the Commonwealth Bank has refused to issue statements, but when dealing with an impaired loan, the relationship between the bank and the borrower may be vexatious. The borrower may dispute the amount owed and the Commonwealth Bank may cease to issue statements as in the past there had been little purpose in providing information that the customer may perceive as incorrect and may further inflame the dispute that may be in place between the customer and the bank." The bank went on to say, "in dealing with business customers, we are aware of a small number of instances where officers of the Commonwealth Bank Group have refused to issue statements on request to borrowers who are in default of their loan obligations."

At the hearing the Bank advised the PJSC that it had already announced that it would provide the very small number of affected customers with details of their account indebtedness on request. The Bank also advised that it was now prepared to go further and to issue statements on those loan accounts in accordance with the borrower's regular statement cycle until there is either a Court judgment or an agreement between the parties, normally signified by a release document. The statement would set out fully the account indebtedness of the borrower, including the principal outstanding, interest, fees and costs, together with any interest rate changes. The Bank would introduce this new arrangement on 1 January 2001, or sooner if possible. Until that date the Bank would honour its commitment to issue statements on request.

Evidence of the Australian Taxation Office and the Australian Competition and Consumer Commission

1.25 The ATO provided the PJSC with a written submission and in addition gave both public and *in camera* evidence. The ATO advised that it was legally precluded from commenting on interaction with a specific taxpayer or from providing details about ATO practice in relation to bad debts. However, the ATO did confirm evidence received from the Commonwealth Bank about writing off amounts considered to be bad debts. The ATO advised that Tax Rulings TR 93/27, TR 92/18 and TR 94/32 covered the taxation of bad debts of banks. The established practice of the ATO for financial institutions is to examine whether the debt is bad, in whole or part. This requires more than a mere writing off in the accounts of a bank. The ATO must be satisfied that the amount is in fact bad; this is a commercial judgment looking at the circumstances of each case. For instance, if a debt was fully secured then the ATO would not accept a writing off as a bad debt.

1.26 The ATO advised that before a debt becomes bad, it may become doubtful or somehow impaired and that there is a banking practice of creating non-accrual line accounts, on which interest no longer accrues. The net effect in tax terms is that once the judgment is made and assuming that it was made on a reasonable basis, the accounting treatment for tax purposes changes from interest being included as assessable income as it accrues over the period of the loan to one where the interest is brought to account only when it is received. In other words it moves from an accrual basis of accounting to a cash basis of accounting. The reason for this is the judgment that there is something impairing the collection of the interest amount.

1.27 The ACCC made written submissions and gave evidence to the Committee, both in public and *in camera*. The ACCC told the PJSC that it was investigating complaints alleging possible contravention of the Trade Practices Act, but that this was still a work in progress. The ACCC stated that it was heartened by the great start of the Commonwealth Bank in that it would provide customer statements, but that the ACCC hoped that solutions would be industry-wide.

1.28 In answer to specific questions the ACCC representative advised that the problem was a consumer problem, which meant ways of trying to get a better outcome for consumers. The ACCC advised that it would not be shaming anyone, because the ACCC only did that if it concluded that there was a breach of the law or that something wrong had been done.

Supplementary submissions by the FSCPC and Mr Bruce Ford

1.29 Following the hearing the FSCPS made a supplementary submission to the Committee.

1.30 The FSCPC advised that when it conducted its initial survey it had received 20 responses, but after media attention following the announcement of the parliamentary inquiry, an additional 28 relevant matters had been raised with the group. Mr Chris Connolly stated, "in my opinion I believe that numerous farmers and small businesses have been affected by the withholding of statements, and that more than one hundred would bring their matters forward to an appropriate process established to resolve this issue."

1.31 The FSCPC believed that the Commonwealth Bank had missed the point in its evidence to the PJSC, with the Bank claiming that the only allegations against it were that it had failed to inform customers about written off amounts and failed to issue statements to customers who were still servicing their debts. The FSCPC advised that in fact consumers suffered loss as a result of the policy not to issue statements when a shadow ledger was opened and of the generally unsympathetic attitude of the Bank.

1.32 The FSCPC raised concerns about whether or not the accounting treatment of some monies resulted in the correct amount of tax being paid to the ATO. Mr Connolly stated, "I am still not sure from CBA's evidence before the inquiry what tax treatment Tratzea repayments received and how Tratzea should account for its repayments in its own accounting. I doubt very much whether the two returns would match up when the ATO receives tax returns from Tratzea and CBA."

1.33 In addition to its eight recommendations contained in its previous submission to the Committee, the FSCPC made a further three recommendations:

- That the Committee not ignore the allegations of illegal activity raised in the inquiry.
- That the Committee call for an update on activities resulting from the inquiry.
- That the Committee acknowledge the efforts of bank customers who have been investigating and fighting this issue for many years.

1.34 Mr Bruce Ford also raised a number of issues in response to the bank's submission to the inquiry. In particular he raised concern about whether the bank had declared \$134,000 in respect to his loans as interest income given the bank's acknowledgement that applying interest only payments to portion A of the debt was an 'oversight'. He also raised concern at what he believed to be the numerous contradictions in the bank's own statements to the inquiry stating, "the bank's inability to explain to the Committee their own process and provide clear answers as to how large sums of money simply disappear from peoples accounts without plausible justification is unacceptable banking practice."

Additional submission by the Commonwealth Bank

1.35 In response to the supplementary submission made by Chris Connolly the Commonwealth Bank made a further submission in which they advised the PJSC that due to the short time they had been given to respond, they addressed only the major issues that were relevant to the Committee's terms of reference.

1.36 In limiting its response in this way, the Bank advised the PJSC that it does not accept the wide ranging assertions and allegations made by Mr Connolly which:

- By his own admission, are based on a survey that is not representative nor of a size from which valid conclusions can be drawn. The 'survey' findings are based on responses by 20 borrowers.
- Fails to recognise the legitimate need for lenders to maintain a continuing record of a borrower's legal debt obligation.
- Ignores the regulatory and other safeguards such as the Farm Debt Mediation Act in NSW, the Banking Ombudsman and the Consumer Credit Code, which operates to protect borrowers.

1.37 With respect to the specific terms of reference, the Bank stated clearly in its evidence (CS 36) that *"the Commonwealth Bank Group has over 600,000 business customers and the number of customers at any one time where we may be looking at writing off all or part of their debt would today be of the order of 100"*. Thus the CBA concludes Mr Connolly is wrong in his claim that the Bank admitted that perhaps 100 borrowers had been affected by the withholding of statements. The reference quoted relates to an estimate of the number of borrowers in default at any one time where a write off is under consideration – not where statements have been requested and withheld. To the best of the Bank's knowledge, only 3-4 customers have had requests for statements denied following a breach of their contractual agreement with the Bank.

1.38 The Bank also claims that Mr Connolly has failed to acknowledge that the customers to which he refers have had large sums of debt written off by the Bank, typically in situations where the Bank has made numerous attempts to assist the customers with their respective businesses. Thus Mr Connolly gives no acknowledgment to the instances where the Bank has assisted borrowers who are in default of their obligations, to return to financial viability.

1.39 The Commonwealth Bank Group also state that its books and records are maintained in accordance with accepted accounting standards and other regulatory requirements and have been subject to independent audit. The Bank therefore rejects any assertion that there has been any impropriety on the part of the Commonwealth Bank Group in any of the matters referred to.

Summary

- 1.40 The Committee believes that as a principle, all bank customers must be able to accurately determine their financial position by receiving regular bank statements. The provision of bank statements is important, not just to customers who are meeting their loan obligations, but also to customers who are in default on their loan obligations.

Conclusions and Recommendations

- 1.41 The PJSC does not find that with regard to the instances before it and with regard to the material provided to it, either through written submissions or oral evidence, that a wrongful use of shadow ledgers occurred or that the failure to provide bank statements could have constituted unlawful behaviour.
- 1.42 The Committee notes that the Australian Tax Office covers the accounting practice of operating shadow ledgers in its tax ruling TR 94/32. This tax ruling allows that when banks classify a loan as non-accrual that any interest accruing thereafter will not be derived for income tax purposes until it is received. The Committee concludes that it is unlikely that a case could be made that the use of shadow ledgers by banks are not a proper accounting function.
- 1.43 The Committee notes the bank's advice that independent auditors Ernst & Young had specifically reviewed the shadow ledger accounts and confirmed that the activity on those accounts is in accordance with accounting requirements and taxation requirements.
- 1.44 While the Committee is satisfied by the findings of Ernst and Young, to ensure that any outstanding public concern is addressed about the administrative errors admitted by the bank in relation to Tratzee's accounts, the Committee asks the CBA to confirm the taxation treatment of monies in respect to Tratzee were correct.
- 1.45 The Committee concludes that the Commonwealth Bank by not automatically issuing account statements to some customers who were in default on their loan obligations exacerbated an already difficult situation for the customers, making it difficult for them to budget, re-finance loans and submit taxation returns.
- 1.46 The Committee believes that the Commonwealth Bank's explanation that they did not provide bank statements to customers because they did not wish to 'infiame a dispute' is poor banking practice. Evidence presented to the Committee also demonstrated that the confusion customers faced about the bank's practices in respect to 'shadow ledgers' was unreasonable.

- 1.47 The PJSC therefore concludes that the management practices of the Commonwealth Bank in relation to the non-provision of statements albeit to a small number of customers who had fallen behind with payments, were seriously flawed in terms of best practice customer relations.
- 1.48 The Committee acknowledges the efforts that witnesses to the inquiry such as Mr Bruce Ford have made in order to have their issues properly considered. The Committee notes that the need to hold an inquiry into 'shadow ledger accounts' represents a failure of the Commonwealth Bank to resolve some customer relation disputes internally.
- 1.49 The PJSC recognises that the commitment by the Commonwealth Bank to provide full statements to customers in default is a step forward. However, the Committee is disappointed that this commitment did not eventuate until this Parliamentary Inquiry was initiated.
- 1.50 While the Committee has investigated the practice of the Commonwealth Bank in respect to the treatment of bad debts and the creation of shadow ledger accounts it is evident that this practice is not limited to the Commonwealth Bank. Indeed in its evidence to the Committee the Commonwealth Bank stated that its practices are 'industry standards'. If this is indeed the case then it is appropriate that all banks commit to providing statements to customers who are in default on their loans when requested by the customer.
- 1.51 The PJSC believes that all financial institutions which do not already do so should adopt the announced intention of the Commonwealth Bank to provide full statements to all customers. Therefore the PJSC recommends that the automatic issuing of statements of account in all circumstances short of litigation, be considered for inclusion in the banking code of practice.
- 1.52 The PJSC believes that the statement should set out to the customer the total amount which the Bank believes that the customer owes in respect of the account in accordance with the terms and conditions on the account and should not reflect any write downs which the bank has made for internal accounting or taxation purposes. The Committee will refer the matter to the relevant parties undertaking the review of the banking code of practice.
- 1.53 The PJSC also notes that members of the Committee believe that on the evidence presented it is not possible to determine how many Commonwealth Bank customers have been affected by the bank's decision not to issue bank statements when loans are in default. The PJSC recommends that mediation services be offered by the CBA to affected customers where appropriate.

Labor and Democrat members believe that the Commonwealth Bank should appoint an independent mediator to resolve any outstanding disputes. Labor and Democrat members also believe that the appointment of the mediator

should be advertised in the national press and the Commonwealth Bank asked to report back on progress in resolving disputes.

- 1.54 The PJSC recommends that all banks, if they do not do so already, clearly inform customers about the procedures and processes which result in the case of troubled loans.

Senator Grant Chapman
Chairman

APPENDIX 3

Questions on notice from Senator Andrew Murray

At the PJSC hearing Senator Andrew Murray advised the Commonwealth Bank representatives that he would provide a list of written questions for the Bank's consideration. The questions and answers are set out below.

Q1 A debt that is written off may be deducted as a tax liability but can still be kept alive for the purpose of perhaps recovering the debt in due course, but a cancelled debt is dead and finished. What are the possible effects on the Bank and its customers if tax deductions were allowed only if debts were cancelled and not written off?

A1 The Bank would not ordinarily cancel a debt unless it is satisfied that the amount recoverable from the realisation of securities, less the cost of recovery, is less than the amount to be received under a compromise arrangement. Therefore, the likely effects would be an acceleration by the Bank of enforcement action and subsequent realisation of all amounts available under its securities. This would occur because this would be the only way that the Bank would be able to obtain a tax deduction for the amount which it expects to lose on the debt. To the extent to which a revised procedure increases its costs, the Bank may need to pass on the higher costs to its other customers who meet all their contractual obligations.

Q2

- Does the Bank operate a system of regular advice to business customers of the customer's actual liability and any contingent liabilities?
- Does the Bank provide an estimation for business customers of future liabilities for at least the following financial year?
- What are the full taxation consequences of the Bank operating the shadow ledger system?
- How does the second set of books affect the Bank's taxable income compared with the ways in which taxable income is affected by its standard set of books?

A2 When a loan is approved the customer is provided with documentation of all facilities, including contingent liabilities, that the Bank has approved. Any variation to these terms and conditions will be evidenced by appropriate documentation, which is acknowledged by all parties to the loan.

In the normal course the Bank will regularly review the facilities provided to an individual business customer and, subject to its assessment of the ongoing viability of the business and its capacity to honour its obligations proving satisfactory, the Bank will confirm continuation of those facilities for a further period. The Bank also provided the borrower, at a minimum, with account statements or letters on either a quarterly or half-yearly basis depending upon the type of facility provided. From this information the customer could estimate his or her future liability to the Bank. In accordance with the undertaking given to the PJSC customers who are having difficulty repaying their loan or who are in dispute with the Bank will also be given statements in line with the regular statement cycle, until there is either a court judgement or agreement between the parties. These statements will record the continuing accrual of interest on the debt due, together with any other costs associated with recovery of the debt that may be charged to the customer. These arrangements would be effective from 1 January 2001, although in the interim such statements would be available on request.

The shadow ledger merely records the defaulting borrower's continuing legal obligation where the Bank has written off all or part of a debt. It does not alter the Bank's taxation liability.

Q3 How many complaints or disputes in the nature of those made by Mr Ford and Mr Madigan did the Bank receive in the last financial year?

A3 The Bank is aware only of a very small number of customers, approximately four, who have raised similar complaints and who have not in fact received statements.

8/7/0



Asset Structuring Unit
Level 21, 255 Adelaide Street
BRISBANE QLD 4000
Phone: 07 3234 5885
Fax: 07 3234 5916

National Australia
Bank Limited
ABN 12 004 044 917

Ref: PL:Set C

26 March 2001

Mr L N C Freeman
PO Box 1476
Gladstone Qld 4680

Dear Mr Freeman

Your letter dated 7 March 2001 refers.

The Bank's position was correctly stated in our letter to you dated 26 February 2001.

We have sent the statements of your account as requested.

Realisation costs will be accounted to you when the realisation of the Bank's security is completed.

You have not correctly described the Bank's policy in relation to recommendations of the Parliamentary Joint Statutory Committee on Corporations and Securities.

Interest on your borrowing facilities was and is charged in arrears. Nothing in our letters dated 20 and 22 January 1998 says that interest is not charged in arrears.

Our letter dated 26 February 2001 was incorrect in the statement that the deposit of \$2,205 was credited to your account at the day it was received. In fact it was credited to the account at 12 May 1998. The deposit did not remedy the defaults on your borrowings, and the Demand issued at 20 April 1998 was valid. We note that you did not satisfy the Demand. The deposit was accounted for in the amount of the Judgement granted by the Supreme Court.

Mr Salmon's "report" does not accurately describe the Bank's procedures. His "report" is irrelevant to your dealings with and liabilities to the Bank.

We note that you have had the opportunity to raise the matters covered in your letter in Court. We note that you will have a further opportunity to raise the matters in any appeal of the Court's judgement. Please be aware that we will not respond to further correspondence from you on the subjects covered in your letter.

Yours faithfully

Phillip Luck
Senior Asset Structuring Manager



Asset Structuring Unit
Level 21, 255 Adelaide Street
BRISBANE QLD 4000
Phone: 07 3234 5885
Fax: 07 3234 5916

National Australia
Bank Limited
ABN 12 064 044 937

Ref: PL:Set C

26 February 2001

Mr L N C Freeman
c/- Mrs L Williams
"Skeleton Creek"
Miriam Vale Qld 4677

Dear Mr Freeman

Your letter dated 15/02/01 refers.

Your account was classified within the Bank's records as a "Non-Accrual Loan" at and from 7.4.98. Computer generated Statements of account were not thereafter sent to you because they did not reflect the full extent of your liability to the Bank. Statements of your account are, and always were, available on request. We are not aware of any request from you for a statement.

Interest on your facilities has always been charged in arrears.

The deposit of \$2,205 has been credited to your account at the day of deposit.

The issue of the Bank's provisioning of Bad and Doubtful debts is not open for discussion with you as it does not in any way effect your dealings with the Bank.

Yours faithfully

Phillip Luck
Senior Asset Structuring Manager

held, by leave, by Mrs E. Cunningham during an adjournment debate

Queensland Rural Adjustment Authority
GPO Box 1111
Brisbane QLD 4001
Telephone (07) 3370 0120
Facsimile (07) 3370 0120
Tel Fax (07) 3370 0120

LAID UPON THE TABLE OF THE HOUSE

12/12/01
FACSIMILE TRANSMISSION

THE CLERK OF THE PARLIAMENT
TO:

LYNN FREEMAN



FACSIMILE NO: (01) 662 052

FROM: PETER WHITLOCK
QUEENSLAND RURAL ADJUSTMENT AUTHORITY
Facsimile No: (07) 3370 0120

DATE: 18/9/97

NO OF PAGES (INCLUDING THIS PAGE): 1

MESSAGE:

- Refer to our phone conversation of today & advise the following:
- You ARE ELIGIBLE TO RE-APPLY FOR Exceptional Circumstances Drought SUBSIDY. HOWEVER, you will be required to advise the outcome of your application with your community leader - demonstrates CONTINUED SUPPORT.
 - You MAY ALSO APPLY FOR INTEREST SUBSIDY UNDER THE ENHANCING PRODUCTIVITY PROVISIONS OF THE RURAL ADJUSTMENT SCHEME IF YOU ARE UNDERTAKING A PROGRAMME TO INCREASE THE PRODUCTIVITY & PROFITABILITY of your ENTERPRISE. AGAIN the outcome of your application with your leader MUST BE FURNISHED BEFORE AN APPLICATION CAN BE LOANED. APPLICATIONS UNDER THIS SCHEME MUST BE RECEIVED IN THIS OFFICE BY 30/9/97 TO BE CONSIDERED.

Please let me know if all pages are not received - phone (07) 3370 0120
The information in this fax is private and confidential. Any misuse due to its being sent incorrectly will be liable to legal action.

QUESTION ON NOTICE

NO. 587

ASKED ON THURSDAY, 18 OCTOBER 2001



MRS E CUNNINGHAM ASKED THE MINISTER FOR PRIMARY INDUSTRIES AND RURAL COMMUNITIES (MR PALASZCZUK) :

QUESTION:

With reference to many rural landowners who receive necessary interest subsidy relief administered via QRAA and as this subsidy is subject, in part, to farm viability confirmation by banks who hold financial interests in the respective properties--

What audit processes are in place within the department to review appeals by applicants whose financial institutions indicate non-viability where farmers question the bank's assessment?

ANSWER:

I am advised that when assessing applications for Exceptional Circumstances (EC) interest subsidy, Queensland Rural Adjustment Authority (QRAA) must be satisfied that the enterprise has prospects of viability in the long term.

When assessing the long-term viability of an enterprise, the Authority looks at

- > the last three year's financial statements (profit & loss accounts, balance sheets, depreciation schedules); and
- > the cash flow estimates for the current year, which is based on the current seasonal conditions;

The above information is analysed thoroughly in conjunction with telephone discussions with the producer and the producer's banker. Whilst it is important to obtain the opinion of the banker towards the viability of an enterprise, it is QRAA's independent analysis that ultimately determines the viability decision.

If a situation arises that the banker's opinion of viability differs from that of QRAA, the difference will be discussed in detail during the assessment process. If the differences remain, QRAA would carry out an on-farm assessment of the enterprise, following which the matter would again be discussed with the banker.

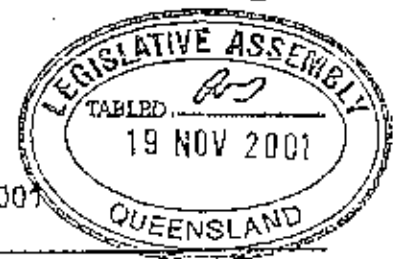
I understand there have been no instances, to date, where a banker has not been prepared to commit to 12 month's support of an enterprise that has been approved interest subsidy.

In the reverse situation, where the bank sees viability and QRAA does not, the same procedure would be followed.

Applicants who have been declined have the opportunity to appeal, firstly to a QRAA Internal Appeals Committee and, finally, to the QRAA Board of Directors.

All of QRAA's assessment processes are subject to audit by both the contracted internal auditors of the Authority and the external auditors.

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All of QRAA's assessment processes are subject to audit by both the contracted internal auditors of the Authority and the external auditors.

Mr R Katter, MHR
Member for Kennedy,
Mt. Isa.Q.

P.O.Box 1476,
Gladstone . 4680
11.12.2001.

Dear Sir,

Re; National Australia Bank and Govt. Drought Strategies.

I realise I am not part of your electorate but I lived in Clermont when your father was the Member and had several social meetings with him at the time . I have been involved with independents (Elizabeth Cunningham) for several years

Please find enclosed a copy of the Minister's reply in State Parliament to Mrs. Cunningham's Question about Rural Subsidies. The two Judgments by the Queensland Courts and the attitude of QRAA compared to the Minister's answer.

I have not given you the two QRAA reports but be it sufficient to say that both state I was viable at the time

My request would be that you write to NAB and confirm the dot point page attached . Then under the Bankruptcy Act and the Rural Adjustment Act (Cmnth) there is the opportunity (already in the Act) to have Bankruptcy stayed for persons receiving assistance . I believe for the Commonwealth this would be by regulation for the State a new Act .

Mrs Cunningham has a very good Act that has been held up for some time and I suggest that her Act may work in with anything you may be able to accomplish in Canberra .

I thank you for the time you may invest in this project and respectfully suggest that this may be one of the most important projects , you could undertake to reverse some of the onerous conditions imposed on your electorate by the Banking Sector and the Prime Minister's support for the status quo.

Yours faithfully,



L. Freeman.

B/C for your office
L. Freeman

A short chronology of events for Mr. R. Katter MHR between NAB and Lynton Noel Charles Freeman . Please accept this document and the signature at the bottom as my authority to request information about my file from NAB.

In 1992 I returned the whole of my Banking business to the NAB at Bundaberg.

In 1993 the NAB introduced me as part of a development package to Government Schemes

In 1996 the NAB departed from the expected outcome of the Legislation , demanding repayment .

The way it was done needs to be highlighted in Parliament as I believe it is definitely unaustralian.

That is they refused acceptance of my subsidy of \$54,500 on the 24.4.97 and demanded I pay into my overdraft account \$30,000 on the 1.5.97 by the 30.5.97 . I shall leave the name for this behaviour to your choice

They called me unviable so I could not shift from the Bank eventhough I was operating above the plan given to me by a previous manager to maintain , as acceptable to the NAB , in writing and expert evidence proved it was my last subsidy allocation

The Queensland Courts have supported their decisions as attached judgments show.

I am now proceeding in the High Court , but that will not help those others affected the same way with what is called engineered breaches

A report by John Salmon to the Joint Statutory Committee on Corporations and Securities in August, 2000 describes the method the NAB uses to manipulate the Court process . My case is an absolute carbon copy of the process. Nothing they say or write about me would surprise .

Mrs. Cunningham's Legislation will help to curb this situation and I hope if you take up this problem you can also help .

I hereby authorise Mr. R. Katter MHR to obtain copies of my file and references there to from the National Australia Bank , any where .

..... 11.12.2001, at Brisbane, Q.

THE SUPREME COURT

OF QUEENSLAND

No. 4013 of 1998

BETWEEN:

NATIONAL AUSTRALIA BANK LIMITED ACN 004 044 937

Plaintiff

AND:

LYNTON CHARLES FREEMAN

Defendant

REASONS FOR JUDGMENT

B.W. Ambrose J.

Delivered the Eleventh day of October 2000

Appearances: R Hanson QC with I Perkins for the plaintiff
L Bowden for the defendant

Solicitors: Maitlesons Stephen Jaques for the plaintiff
Creswicks Lawyers for the defendant

Hearing date: 25, 26, 27 and 28 September 2000

- (1) The plaintiff sues on a Bill Facility with a limit of \$1,020,000.00 provided to the defendant on 19 December 1997.
- (2) The facility commenced on 19 December 1997 and ended on 6 April 1998. Under clause 19 it was agreed that a number of mortgages over the defendant's rural property "Glasford Vale" together with registered stock mortgages should remain in full force and effect. In essence therefore the bill facility was secured by the mortgage documents itemised in item 13 of the Schedule.
- (3) On the material it is clear that the defendant defaulted in meeting his obligations under the bill facility.
- (4) On 1 May 1998, the plaintiff instituted proceedings for recovery of possession of the land and stock the subject of the securities given by the defendant over the years to which reference was made in clause 19 of the bill facility. The plaintiff sought to recover \$1,029,255.05 plus interest to the date of issue of proceedings with a further claim for interest falling due subsequent to the issue of proceedings.
- (5) The defendant admits default under the bill facility and seeks relief based upon events alleged to have occurred, representations and promises made, etc during the

(18) The defendant contends that at the time of the mediation on 4 December 1997 leading to the execution of the mediation deed on that day pursuant to which the bill facility was given:-

1. The defendant was in a poor financial position as a consequence of the matters previously pleaded in that defence and counterclaim.
2. He was in a weak bargaining position.
3. The plaintiff was in a strong financial position and a strong bargaining position.
4. The defendant's legal advisors' preparation for the mediation had been hurried and they were not aware of the strength of his claims.
5. He was under considerable pressure from the plaintiff who threatened to proceed immediately to sell the mortgaged property should some agreement not be reached at the mediation.

(19) The further facts upon which the defendant placed significant reliance was that during the mediation:-

1. He suffered from stress and anxiety.
2. He was mentally unable to cope with the pressures he was under and was unable to think clearly or to understand the documentation shown to him.
3. The plaintiff was or ought to have been aware of matters 1 and 2 above.
4. The plaintiff took advantage of its superior bargaining position during the mediation and "rejected out of hand each of the defendant's proposals for a fair compromise".
5. The plaintiff steadfastly refused to acknowledge that there was any validity whatever in the defendant's asserted claims against it.
6. The plaintiff took the stance that unless the defendant signed the mediation agreement it proposed, there would be no agreement reached and the plaintiff would proceed immediately against the defendant for full and immediate repayment of the monies secured and sell the mortgaged property under its power of sale.
7. It was further pleaded in the defence and counterclaim that the mediation agreement conferred substantial benefits on the plaintiff including:-

- (a) An absolute and unconditional release by the defendant of all and any claims the defendant might have against the plaintiff.
- (b) Committing the defendant to accepting that he was in default of the monies due under his facilities with the plaintiff.
- (c) Barring the defendant from even defending any subsequent

litigation that might arise should the plaintiff commence proceedings to recover possession of "Glasford Vale" and/or its livestock."

[20] The defendant contends that for the reasons already outlined the plaintiff applied pressure to induce him to sign the mediation agreement and he believed that he had no practical alternative to signing that agreement.

[21] In summary, it was contended that by reason of the matters to which I have referred, both the mediation agreement and the bill facility were obtained by:-

1. Unconscionable conduct on the part of the plaintiff; and
2. Conduct of the plaintiff in contravention of s 51AA and/or s 51AB of the *Trade Practices Act*.

Having regard to the terms of s 51AAB of that Act I give no consideration to those sections.

[22] It was contended at the end of the day that the Mediation Deed and bill facility should both be set aside and it was further contended that the bill facility "entailed the plaintiff unconscionably departing from the arrangement which the plaintiff had induced the defendant to believe he had with the plaintiff".

[23] It was contended that the mediation agreement and bill facility were avoided by the defendant as I have indicated.

[24] The defendant seeks a declaration that the plaintiff is estopped from enforcing its rights under the mortgages or from even making assertions that he is in default under his loan agreements with the plaintiff. He seeks injunctive relief to restrain the plaintiff from enforcing its contractual rights to repayment of money or from exercising its powers as mortgagee. He seeks an order that the Mediation Deed and bill facility be set aside. He also seeks damages for contravention of s 52 of the *Trade Practices Act* and/or for negligence.

[25] Psychiatric evidence was adduced at the trial from Dr Mulholland whose reports were tendered and who also gave oral evidence. Evidence was also called from Dr Cameron who was a neurologist.

[26] In arriving at his expert opinion, Dr Mulholland had regard to the matters appearing in paragraph 6 of his affidavit sworn on 1 July 1998 for the purpose of the defendant opposing an application for summary judgment by the plaintiff. That affidavit and his report dated 16 June 1998 is Exhibit 24.

[27] I will refer only to some of the information provided to Dr Mulholland as to behaviour of the defendant etc which would have been readily observable to persons in his presence or company on the day of the mediation. I will not analyse what he informed the doctor as to his emotional condition involving "intense anxiety and depression, fear and frustration". It may be, I suppose, that he could have had those reactions to the mediation as it progressed without them being detectable by persons with him.

- (25) Part of the material considered by Dr Mulholland included the defendant's account of his condition and behaviour at the mediation which included:-

"— I was angry at the bank's lawyer and the bank's representatives for belittling my case and threatening to kick me off the property; nobody was listening to me — it was as if they couldn't even hear me;

As a result:-

- (i) I was raising my voice and at times screaming and shouting.
- (ii) I was speaking disjointedly and I believe incoherently.
- (iii) I was unable to express myself properly.
- (iv) ---
- (v) ---
- (vi) I was shaking.
- (vii) I was attacking people at the mediation especially the bank's representatives.
- (viii) My mouth was dry and was sticking so that at times I couldn't talk properly or get my words out.
- (ix) I was foaming at the mouth at some stages and I was constantly wiping the sides of my mouth.
- (x) I was completely exhausted.
- (xi) ---
- (xii) I was extremely agitated.
- (xiii) ---
- (xiv) ---
- (xv) I became so upset that I couldn't see clearly. When I get really upset my vision starts to become blurred and I have to use my second set of glasses. At the meeting, I became so upset that even my second set of glasses was not powerful enough to correct my blurred vision.
- (xvi) ---
- (xvii) I was sweating so much that the sweat was running all over

my glasses which I was continually cleaning.

(xviii) I was constantly mopping my brow with my handkerchief which had become wet as a result.

(xix) I was gesturing in an accentuated way by bringing my hands down on the mediation table and throwing them all over the place.

(xx) ---

(xxi) ---

[29] Dr Mulholland examined the defendant once on 15 June 1998. The examination lasted for 1 hr 20mins. He was later given an extract from the defendant's affidavit used to oppose the summary judgment application.

[30] Importantly, Dr Mulholland confirmed that a person suffering from a "chronic adjustment disorder", a psychiatric disorder involving abnormal thoughts and feelings and emotional turmoil, may be able to keep these thoughts and feelings to himself. The condition may not be detectable at all to persons able to observe that person.

[31] Dr Mulholland confirmed that the only factual basis for his opinion was what he had been informed by the defendant.

[32] Dr Mulholland read paragraphs 141 - 154 of the affidavit sworn by the defendant on 1 July 1998 about 2 weeks after he had interviewed him. He agreed that the content of the affidavit demonstrated a detailed recollection of what went on at the mediation and that the fact that he asserted at the mediation that he "needed to get away from the bank" indicated that he was able to speak up for himself.

[33] In particular, Dr Mulholland agreed that when the defendant had a series of discussions with his legal representatives and the mediator and after those discussions instructed the mediator to make an offer to the bank to settle the dispute on the basis that he would pay \$360,000.00 less than the amount he owed to the plaintiff whereupon it would release all securities, the defendant was capable of rational thought. The doctor also agreed that when that first offer was rejected the fact that the defendant had the mediator make a second offer that he pay \$180,000.00 less than the amount owed also indicated that he was then capable of rational thought and had an ability to look after his own interests.

[34] In the course of the mediation, officers of the bank had asked to see a schedule of the breeding cattle which the defendant asserted he had been wrongly forced by the bank to sell. The defendant's case was that he gave bank officers such a schedule which however they declined to accept as evidence of forced sale rather than of sale in the ordinary course of running a cattle property. According to Dr Mulholland even at that stage, the defendant was capable of rational thought in the pursuit of his own self interest.

[35] It emerged in the evidence that in fact the offer that the defendant made to the bank

Dr Cameron agreed that the opinion he gave rested entirely on his acceptance of what the defendant had told him.

- [41] The defendant was the only one who gave evidence that he exhibited symptoms of the kind which both Dr Mulholland and Dr Cameron said indicated that he was incapable of protecting his own interest when the Deed of Mediation was agreed and executed. These symptoms were such as to be observable by any persons who had the opportunity to observe him if and while he was displaying them.
- [42] Evidence was called from the mediator who had the opportunity to observe the defendant during the course of the day on which the mediation was conducted and indeed up until the time of execution of the Mediation Deed. He said he did not observe any of the symptoms of which the defendant gave evidence. The defendant did not call either his counsel or solicitor who attended at the mediation with him and who had the opportunity to observe his condition and symptoms if any, displayed during the day of the mediation.
- [43] The plaintiff's solicitor and two senior bank officers attended on the mediation and the solicitor and the officer who eventually signed the Deed of Mediation with the defendant, gave evidence that on the occasions when they saw the defendant they observed no symptoms of mental incapacity of the sort he swore he then exhibited.
- [44] The reliability and persuasiveness of the medical evidence called by the defendant depends upon the reliability of the history of symptomatology which the defendant gave to both doctors and which he confirmed in evidence he gave trial.
- [45] The reliability of his evidence upon trial must be assessed in the light of the evidence given by the solicitor for the plaintiff, one of the officers of the plaintiff attending the mediation and the mediator, and in the light of his failure to call either his counsel or solicitor who attended at the mediation and had the opportunity to observe the symptoms which he said he displayed.
- [46] None of the persons who attended the mediation and who gave evidence gave any support whatever to the symptomatology of helplessness, mental instability, anxiety etc to which the defendant swore. In fact, the effect of the evidence was that no such symptomatology was observed by them at any time during the mediation. In particular, the mediator himself who had much more contact with the defendant than did any of the bank officers during the bigger part of the day of the mediation said that he observed no such symptomatology.
- [47] ~~It is~~ ~~imprudent~~ ~~on~~ the balance of probabilities that the defendant exhibited any of the indicia of mental incompetence or anxiety which both Dr Mulholland and Dr Cameron said would indicate a psychiatric disorder.
- [48] Whatever condition the plaintiff may have had which may arguably have affected his ability to look after his own affairs in a competent way at the time of the execution of the Deed of Mediation, ~~he was not~~ ~~imprudent~~ ~~on~~ ~~the~~ ~~balance~~ ~~of~~ ~~probabilities~~ ~~that~~ ~~there~~ ~~was~~ ~~any~~ ~~indication~~ ~~of~~ ~~any~~ ~~abnormality~~, of the sort he recounted to Dr Mulholland and Dr Cameron and about which he gave evidence observable to the mediator or to the officer of the plaintiff or its solicitor at that time.

- (47) In any event, the bill facility upon which the plaintiff brings its action was executed by the defendant in the office of his solicitor at Bundaberg about a fortnight after he executed the Mediation Deed. There is no evidence of any incompetence on his part at that time.
- (48) It is clear upon the evidence that the defendant did indeed attempt to negotiate his financial accommodation with another bank in accordance with his undertaking in the Mediation Deed. This attempt however appears to have been unsuccessful.
- (49) Exhibit 6 is a 35 1/2 page transcript of a tape recording of a discussion between the defendant and his counsel on the afternoon before the day the mediation occurred and the execution of the Deed of Mediation was effected.
- (50) It is clear from the content of that transcript, which I do not propose analyse in detail, that in the course of his discussion with his counsel, the defendant was fully seized of the strengths and weaknesses of his position at the forthcoming mediation. It is abundantly clear from the points of claim in the mediation (Exhibit "LNCF 64" to the affidavit of the defendant filed on 7 July 1998) that the points he sought to raise in the course of the mediation with the plaintiff included those which he later sought to litigate in his defence and counterclaim to the plaintiff's claim on the bill facility. In particular, point 4 reads:-
- "4. In all, three hundred females were lost to the defendant's operation resulting in an estimated loss in sales over a three year period of approximately \$360,000."
- (51) In the course of the mediation, the defendant attempted to persuade the plaintiff to allow him to set off the sum of \$360,000.00 allegedly suffered by way of damage as a consequence of the plaintiff's alleged breach of obligation to him.
- (52) In the course of mediation discussions he instructed the mediator to make two offers to the plaintiff. The first offer was to reduce his indebtedness by the sum of \$360,000.00 upon his undertaking to then refinance the balance with another institution. The bank officers however refused to agree to that proposal.
- (53) Eventually the defendant instructed the mediator to make a second offer to the plaintiff to reduce his indebtedness to it by the sum of \$150,000.00 by way of set off in respect of the alleged breaches of obligation to him.
- (54) The mediator duly made this offer to the plaintiff but it was also rejected.
- (55) The plaintiff then offered to enter into the mediation agreement which was ultimately executed by the parties. This involved allowing the defendant three months occupancy of his pastoral property to enable him to sell it or part of it or to refinance his indebtedness with another lending institution on condition that over that period of three months he give a bill facility of the sort which he did give and on condition also that the effect of the securities already held by the bank would be preserved.
- (56) Eventually the defendant accepted this offer, executed the Mediation Deed, and a couple of weeks later in his solicitor's office, executed the bill facility.

- [59] The plaintiff called the mediator who said that the mediation commenced at about 9.45am and continued through the day to evening with a break for lunch. The solicitor for the plaintiff, attended with 7 bank officers and the defendant attended with his barrister and instructing solicitor. The mediator was fully briefed on the ambit of dispute between the plaintiff and the defendant at that time - vide Ex 16.
- [60] The mediator said that it was common ground from the outset that the defendant was in default although he contended that Mr Carlson a bank officer, had promised that the plaintiff would not foreclose on the mortgaged property whilst drought conditions persisted. He said that this contention did not loom very large in the mediation. He said that the defendant complained about the plaintiff forcing him to sell off some of his best breeding stock to meet its demands for payment of money. He said that the defendant made these complaints himself in the presence of the plaintiff's officers.
- [61] The mediator said that at the outset of the mediation, he invited each party to state its position. He said that Mr Werder, one of the bank officers, tried to impress upon the defendant that the debt was owed and that the bank wanted its money but was prepared to give him some latitude with respect to time of payment.
- [62] He said it became clear to him that the mediation was getting nowhere while the parties were together in the one room. He arranged for them to move with their legal advisors to separate rooms. He said that he then spoke to the parties separately. He said he thought that he spoke first to the defendant and his barrister and solicitor.
- [63] He said that there were offers made "to and fro during the day" and that his recollection was that the defendant wanted a resolution which involved him paying a sum of money over a period of time which was less than that owed to the bank. He said that the defendant made it clear that he did not like the bank. He said he had no recollection of Mr Werder calling the defendant "a silver tail" as the defendant had deposed in his affidavit to resist summary judgment. He said that in his view, Mr Werder was a calm but firm person, well aware of the strength of the bank's case.
- [64] Whereas the defendant asserted that the mediator had told the parties that they had given away all their common law rights, he had no recollection of making such a statement at all. He recalled that there was a discussion about whether the defendant's cattle property had been overstocked. He could recall making 2 offers to the plaintiff on instructions from the defendant and his barrister to pay the plaintiff less money than he owed, and he recalled that the bank rejected both offers.
- [65] While the defendant asserted that the mediator had informed him that: even if he were successful with his claims against the plaintiff, the most that he could recover would be in the range of from \$100,000.00 to \$150,000.00, the mediator said that he did not recall saying that at all. He said that he informed the defendant that the plaintiff held securities and therefore had the upper hand and that the defendant appeared to be in default and should settle on the best terms that he could.
- [66] He said the parties were separated within the first hour of the commencement of the mediation and his recollection was that he spent the day conveying messages, offers etc "backwards and forwards". He said he had a clear recollection of the events of

the day:-

"It became clear to me pretty early on that the bank was prepared to give him some latitude but not in terms of a reduction of the debt. He also, from his point of view, would only make an arrangement which involved paying less than the amount the bank claimed."

He said that he thought that on one occasion he let the parties stay together without lawyers and without him being present. He said he wasn't sure about this but his recollection was that the defendant wanted to talk to the bank people himself. He said that finally agreement was reached late in the afternoon when the solicitor for the plaintiff produced a draft or pro forma agreement. He said that by the time agreement was reached, the defendant was sitting with his barrister and that his solicitor had probably gone by that stage. He said that during most of the day the parties had occupied separate rooms with their legal advisers.

[67] The mediator said that he recalled the actual signing of the Deed of Mediation. He said that Mr Werder's attitude had not changed during the day throughout which he had remained "very poker faced". He said the defendant became "a bit agitated from time to time during the day". He said that the defendant clearly did not like the plaintiff and thought that he had been treated badly. He said that his recollection was that the defendant ultimately agreed to the extension of time, during which a lower rate of interest would be payable, within which to pay the monies he owed to the plaintiff. He said that this had been the plaintiff's attitude from the very start of the mediation. He said that his impression was that the defendant seemed relieved when he signed the Deed of Mediation that "he had some time to get his house in order".

[24] When asked of the observable behaviour of the defendant as itemised in his affidavit, the mediator said he did not observe that sort of behaviour at all. He said from time to time the defendant raised his voice but he did not scream or shout. He said that although he became upset at times, the defendant did not speak disjointedly or incoherently. He said that while the defendant insisted that he had an arrangement with Mr Carlson about not foreclosing while drought conditions prevailed he also complained that good breeding stock had to be sold to meet the plaintiff's demand. He said that the only agitation he observed was when the defendant demonstrated his dislike for the plaintiff and its officers. He said that while the defendant may have thumped the table once or twice to emphasise a point, he did not observe any of the other indicia of mental or psychiatric disability the sort about which the defendant deposed in his affidavit, informed Dr Mullolland and Dr Cameron, and gave evidence upon trial.

[69] He said that there may have been more than one draft Deed of Mediation but certainly time elapsed between the final Deed of Mediation being produced and the defendant signing it. The mediator denied the defendant's assertion that he had told the defendant that he should sign the deed. He said that he did not say any such thing to the defendant. The mediator agreed that at some stage he informed the defendant that if some resolution of the dispute could not be achieved in the course of the mediation the plaintiff would almost certainly sell his property.

[73] The mediator said that one of the defendant's complaints was that the plaintiff had not properly dealt with an application he had made for an interest subsidy available to persons on the land affected by drought.

[74] Eventually, in the course of cross examination, the mediator summed up the strategy adopted by the parties to the mediation in these terms:-

"It really came down to a situation where Mr Freeman wanted to negotiate his way out as best he could, that is, by paying less than the debt the bank claimed. Ultimately, the bank would not come into that. He complained that the actions of the bank "cost him money" by reason of his forced sale of part of his herd and his failure to obtain an interest subsidy and "he wanted some tally up for that".

[75] The mediator rejected the defendant's contention that he became more agitated and his condition deteriorated as the afternoon progressed.

[76] The mediator who had extensive experience in conducting mediations said that at no stage did it occur to him that the defendant may not be in a fit state to make a rational decision on the mediation. He said that the defendant's barrister did not suggest to him, at any stage or even discuss with him the possibility that the defendant may not be able to make a rational decision in the mediation. The mediator said that at no stage did the defendant express any doubt as to whether he should sign the Deed of Mediation. He said that at no stage during the day was there anything in the behaviour of the defendant that might suggest the mediation should be adjourned or that he should give him a break to compose himself.

[77] Mr Werder who attended the mediation with another bank officer named Mr Luck and with the bank's solicitor denied that the defendant exhibited any of the indicia listed in his affidavit upon which Dr Mulholland based his opinion.

[78] According to Mr Werder, towards the end of the day the plaintiff through the mediator made an offer to the defendant and his legal representatives that it would allow time for a sale or refinance of the property obligations and that it would probably allow some interest concessions during the period of extension. He said that eventually the defendant suggested that the plaintiff's offer be put together in a deed. The plaintiff's solicitor had a precedent of some sort and the mediator's staff made a copy which was given to the defendant and his legal representatives. He said that there was "some fine tuning of that as to time and as to interest rates and responsibilities of the parties" and that eventually the defendant and his legal representatives indicated that the deed was acceptable. He said that it was signed by all parties in the boardroom which had been occupied during the day by the defendant and his legal advisers.

[79] Mr Werder's recollection was that the defendant spoke personally in the course of the mediation. His barrister also spoke on his behalf.

[80] Mr Werder said that no discussion of the schedule which the defendant gave to the mediator to give to the plaintiff's officers concerning this sale of cattle took place in the defendant's presence. Indeed, he said that when he had obtained the schedule from the mediator he and Mr Luck examined it together. He said that after he and

Mr Luck had analysed the document he asked the mediator to convey to the defendant that in the view of the plaintiff, the cattle sales evidenced in the handwritten schedule indicated that he had only sold sufficient cattle to provide for the normal operation of the property. I accept the evidence of Mr Weirder.

[78] Looking at the evidence given by persons who attended the mediation and considering the terms of the lengthy discussion the defendant had with his legal representative the day before the mediation which is recorded in Exhibit 6, and considering the negotiations that took place at the instance of defendant at the mediation and the fact that he signed the required bill facility a fortnight later in the office of his solicitor, I am unpersuaded upon the whole of the evidence that:-

1. The defendant did have any incapacity or had a reduced capacity to protect his own interests or to understand the effect of the agreement he made reflected in the Deed of Mediation which resulted from mental abnormality whether or not due to anxiety or undue pressure brought to bear upon him by the plaintiff in an unconscionable way or indeed that any such pressure was brought to bear upon him at any material time.
2. That he gave any observable indication whatever to the mediator, the officers of the bank, or to anybody else for that matter who attended upon the mediation that he had any such incapacity or reduced capacity. In *Imperial Loan Co v Stone* [1892] 1 QB 599 Lopes LJ pointed out at 603:-

"A defendant who seeks to avoid a contract on the ground of his insanity must plead and prove not merely his incapacity but also the plaintiff's knowledge of that fact and unless he proves these two things he cannot succeed."

[79] In my view, the defendant has simply failed to establish any facts whatever which could justify a finding that the Mediation Deed and/or the bill facility which he signed as a consequence of that agreement was voidable at his option.

[80] In my view, upon the evidence, the bill facility is perfectly valid and enforceable and the matters raised by way of defence to it, have not been established.

[81] As a consequence of the enforceability of the mediation deed (Exhibit "LNCF 65" to the affidavit of the defendant filed 7 July 1998) it operates to release the plaintiff from all the claims which the defendant seeks to pursue in his action on the basis that the mediation deed be set aside, because he to the knowledge of the plaintiff was mentally incapable of protecting his own interests at the time he executed it.

[82] Some days were spent upon trial canvassing the various allegations contained in the first half of the defence and counterclaim. In the light of the conclusion to which I have come that the mediation deed and the bill facility pursuant to its terms were and remain legally effective and impose the obligations on the defendant which the bank seeks to enforce in its action, it is unnecessary for me to deal in detail with the matters upon which the defendant sought to rely to avoid his obligation under the various facilities made available to him by the plaintiff. I will not therefore analyse in detail the factual matters canvassed at length upon the trial but will summarise briefly the nature of the matters upon which the defendant sought to rely.

- [13] In 1992, the defendant refinanced with the plaintiff certain obligations he owed to other institutions with respect to advances made for and indebtedness incurred with respect to his pastoral activities.
- [14] At that time, he dealt with a bank officer of the plaintiff named Carlson who was then stationed at Bundaberg.
- [15] It was the case for the defendant that there was a representation made from the earliest association he had with Mr Carlson that the plaintiff would "carry" him upon the mortgages it took over his land and property until his cattle, timber and mineral sales reached \$240,000.00 per annum and/or the drought which commenced in about 1993, ceased. It was his case that relying upon this representational promise by Mr Carlson he increased borrowings and spent money purchasing cattle, improving pastures and securing and installing certain irrigation equipment on his property.
- [16] On the other hand, Mr Carlson said that there was never any such agreement or representation. He said that in the course of discussions with the defendant, the two of them worked out that the defendant would need to bring in gross proceeds of \$240,000.00 per annum to "break even" - i.e. to meet his bank interest payments and pay the operational overheads etc involved in conducting his pastoral activities.
- [17] In the course of discussions etc between the defendant and Mr Carlson, Mr Carlson advised the defendant that he might be entitled to an interest subsidy while the drought persisted. I will not analyse the lengthy evidence given on that point. One of the arguments advanced by the defendant was that when Mr Carlson was replaced by another bank officer Mr Alder, Mr Alder declined to fill in an application form for the interest subsidy or indeed to indicate that the bank would undertake not to take recovery proceedings for monies due under its mortgage over the ensuing period of twelve months to which the interest subsidy would relate.
- [18] It was the defendant's case that when Mr Alder replaced Mr Carlson about mid-1996, he required that the defendant reduce an indebtedness for \$120,000.00 in one of the outstanding accounts to \$90,000.00. The defendant gave evidence that to make the required payment he had to sell a number of cattle which affected adversely the potential of his grazing block to maintain a breeding herd sufficient to exploit adequately its carrying capacity.
- [19] In spite of all the evidence that was given no contemporaneous sales dockets or other such documentary evidence was led by the defendant to support his oral evidence that he sold the 300 head of cattle or breeders to which the points of claim upon the mediation referred. Indeed, some of the material he relied upon indicated that no breeders whatever were sold in the 12 month period after September 1996.
- [20] In the course of his pre-mediation conference with his counsel on the afternoon of 3 December 1997 he said that in fact he had sold \$50,000 worth of heifers or breeding stock because he was at the time of sale carrying too many. It later emerged that he had not reduced the loan facility by the sum of \$30,000 as required by Mr Alder or indeed by any sum, whatever the proceeds of sale may have been of any cattle which in fact he did sell - whether \$30,000 or \$50,000.

[90] There is much contemporaneous correspondence between the plaintiff and the defendant and/or the defendant's then legal representative in which no reference is made to the matters raised in the defence and counterclaim to support a claim under the *Trade Practices Act* or to raise matters of estoppel. These matters seem largely to have emerged and evolved subsequent to the execution of the Deed of Mediation. As I have indicated, there is no persuasive evidence that any cattle were in fact sold by the defendant in the period from late 1996 to late 1997 for the purpose only of meeting the bank's demands – which on the evidence were not met in any event. Moreover the evidence adduced by the defendant himself with a view to calculating the effect on the profitability and viability of his cattle breeding operation of the sale of such breeding stock in the year commencing September 1996 does not reveal that any breeders were sold in that period of time.

[92] On the whole of the material, I am quite unpersuaded that the defendant made out the case or cases pleaded on the assumption that he would succeed in avoiding the effect of the Deed of Mediation and the bill facility which he executed pursuant to its terms. This conclusion gives me comfort in reaching my ultimate conclusion that the defendant was capable of deciding that execution of the Deed of Mediation was arguably at least in his best interest.

[93] I found the evidence of both Mr Carlson and Mr Alder persuasive and supported in essence by the content of contemporaneous correspondence.

[94] I take the view that it would be most improbable that bank officers of their experience and holding the offices that they did, would make representations and give undertakings of the sort which the defendant gave evidence about – particularly when making such representations and giving such undertakings would be quite inconsistent with the terms of the contemporaneous correspondence passing between the bank and the defendant.

[95] I found the defendant's evidence less persuasive than that of Mr Carlson and Mr Alder and inconsistent with the terms of contemporaneous correspondence and indeed inconsistent (by omission) with the content of the letter he had his legal representative write to the plaintiff on 23 September 1997 only a couple of months before the mediation held on 4 December 1997 (vide EX 16 at p 26) in which no mention was made of matters pleaded to support his case based upon breach of obligation under s 52 of the *Trade Practices Act* or upon promissory estoppel but was confined really to the matters ventilated on the mediation.

[96] At the end of the day, I am unpersuaded that the defendant had any real prospects of success upon the various causes of action pleaded in his defence and counterclaim had clause 9 of the Deed of Mediation not absolutely barred those causes of action. However, in the light of the conclusion to which I have come on the enforceability of both the Mediation Deed and the bill facility upon which the plaintiff relies, it is unnecessary for me to analyse in more detail the evidence canvassed upon those causes of action.

[97] I give judgment for the plaintiff for recovery of possession of the property itemised in clause 19 of the bill facility dated 19 December 1997 and for the sum to which it is currently entitled pursuant to that bill facility. Counsel indicated that the precise sum would be advised when reasons for judgment were delivered. It will obviously

be in excess of the \$1,026,255.00 plus interest which was the sum claimed to owing on 1 May 1998.

(38) I dismiss the defendant's counterclaim and his claim to set off any sum against the plaintiff's claim.

(39) I order that the defendant pay the plaintiff's costs of and incidental to the action (including reserved costs, if any) to be assessed.

be assessed on ordinary basis

SUPREME COURT OF QUEENSLAND

CITATION: *NAB v Freeman* [2001] QCA 473

PARTIES: NATIONAL AUSTRALIA BANK LIMITED (ACN 004 044 937)
(plaintiff/respondent)
v
LYNTON NOEL CHARLES FREEMAN
(defendant/appellant)

FILE NO/S: Appeal No 9718 of 2000
SC No 4013 of 1998

DIVISION: Court of Appeal

PROCEEDING: General Civil Appeal

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 2 November 2001

DELIVERED AT: Brisbane

HEARING DATE: 31 August 2001

JUDGES: Davies and Thomas JJA, White J
Separate reasons for judgment of each member of the Court, each concurring as to the order made

ORDER: Appeal dismissed with costs

CATCHWORDS: APPEAL AND NEW TRIAL - PRACTICE AND PROCEDURE - QUEENSLAND - POWERS OF COURT - FURTHER EVIDENCE - application for leave to tender bank memorandum with indecipherable annotation, disclosed but not utilised at trial - application for leave to tender parliamentary committee report, published after trial

EQUITY - GENERAL PRINCIPLES - UNDUE INFLUENCE AND DURESS - DURESS - whether Deed of Mediation should be set aside on basis of economic duress and special disadvantage - whether trial judge applied appropriate test in determining whether the appellant was suffering from stress and anxiety at the time of mediation - further requirement that other party has knowledge of incapacity - whether the appellant was able to satisfactorily conduct his affairs and protect his own interests - whether the Deed of Mediation was compromised

EQUITY - GENERAL PRINCIPLES - FRAUDULENT AND INNOCENT MISREPRESENTATION - MATERIALITY, INDUCEMENT AND RELIANCE UPON

REPRESENTATION – whether alleged misrepresentation as to value of property – alleged deliberate claim for false amount – alleged deceptive conduct in refusal to support interest subsidy application

PROCEDURE – SUPREME COURT PROCEDURE – QUEENSLAND – PRACTICE UNDER RULES OF COURT – AMENDMENT – whether trial judge should have allowed plaintiff/respondent to amend reply and answer, where no prejudice to defendant/appellant

PROCEDURE – COSTS – APPEALS AS TO COSTS – DISCRETION – whether trial judge erred in exercising discretion to award costs on an indemnity basis

APPEAL AND NEW TRIAL – APPEAL – GENERAL PRINCIPLES – IN GENERAL AND RIGHT OF APPEAL – NATURE OF RIGHT – SUBSTANTIVE RIGHT OR MATTERS OF PROCEDURE – Statutory restriction prohibiting appeal against costs order without leave of trial judge

Supreme Court Act 1995 (Qld), s 253
Uniform Civil Procedure Rules (Qld), r 689(1), r 704(1),
 r 704(3)

AGC (Advances) Ltd v West; Cranston (1985-6) 5 NSWLR 301, considered

Barton v Armstrong [1976] AC 104, considered

Begbie v State Bank of New South Wales Ltd (1994) ATPR 41-288, considered

Brunskill v Sovereign Marine & General Insurance Co. (1985) 62 ALR 53, distinguished

Crescendo Management v Westpac (1988) 19 NSWLR 40, considered

Devries v Australian National Railways Commission (1993) 177 CLR 472, considered

Re Golden Casket Art Union Office [1995] 2 Qd R 346, considered

Imperial Loan Co v Stone [1892] 1 QB 599, considered

Sandtara Pty Ltd v Australian European Finance Corporation Ltd (1990) 20 NSWLR 82, considered

Westpac v Cockerill (1998) 152 ALR 267, considered

COUNSEL: The appellant appeared on his own behalf
 R V Hanson QC for the respondent

SOLICITORS: The appellant appeared on his own behalf
 Mallesons Stephen Jaques for the respondent

- 3
- [1] DAVIES JA: I agree with the reasons for judgment of White J and with the orders she proposes.
 - [2] THOMAS JA: I agree with the reasons of White J and the order which she proposes.
 - [3] WHITE J: The appellant, who argued the appeal himself, appeals on a number of grounds against the judgment given in the Trial Division in favour of the respondent ("the Bank") which had sued on a bank facility provided to him on 19 December 1997. Judgment was for \$1,427,890.08 with costs to be assessed on an indemnity basis and an order was made that the appellant deliver up possession of certain land and livestock. The appellant's claims by way of counter-claim and set-off were dismissed.
 - [4] The bill facility arose out of a mediation agreement ("the Deed of Mediation") made on 4 December 1997 between the appellant and the Bank. The appellant sought to have the Deed of Mediation and the bill facility set aside on the grounds that his agreement was obtained by economic duress and because he was suffering a special disadvantage due to his mental incapacity of which the Bank took unconscionable advantage. If he were successful in setting aside the Deed of Mediation and the bill facility, the appellant contended that the Bank could not enforce its rights under various antecedent mortgages and loans on a variety of bases but essentially because it had represented to him that it would not do so until the drought ended and his business interests achieved a particular gross annual income or his rural property achieved its maximum stock carrying capacity neither of which had occurred. The appellant also alleged negligence by the Bank in failing to support his claim for a rural subsidy.
 - [5] The learned trial judge found that the Deed of Mediation and the bill facility were enforceable against the appellant. He further found that no representations or agreement about deferred repayment of the borrowings as alleged had been made by officers of the Bank.
 - [6] The appellant's case in negligence was based on an allegation that the Bank had refused to support his interest subsidy application and he therefore had to sell breeding stock to meet the Bank's demand to reduce one of his facilities instead of using the interest subsidy. His Honour found that there was no promise by the Bank to support the subsidy application; that even if the appellant had sold the breeding cattle, of which his Honour had some doubt, at the relevant time, it was not because of the failure to receive the subsidy; further that the appellant had failed to apply the proceeds of sale or part thereof in reduction of the facility as the Bank required.
 - [7] For the most part these conclusions were based on detailed findings of credit in which, on every relevant issue, his Honour preferred the evidence of the Bank's witnesses to that of the appellant. His Honour also found that whatever documentation there was supported the witnesses called by the Bank. In such circumstances an appellant faces a difficult task, *Devries v Australian National Railways Commission* (1993) 177 CLR 472.

- [8] At the hearing of the appeal the appellant was given leave to amend his grounds of appeal to add further particulars to the existing grounds without objection. He was also given leave to supplement the appeal record to add further documents which were before the court below. The court reserved its decision in respect of a Bank memorandum disclosed below but not utilised because an annotation was indecipherable and refused leave to tender a report from a parliamentary committee enquiring into banking, published after judgment.
- [9] A customer/banker relationship existed between the appellant and the Bank from mid-1992. The appellant was the registered lessee of just under 10,000 hectares of grazing land known as "Glassford Vale" situated approximately 100km south-west of Gladstone, used for cattle rearing, some crops, timber getting and the extraction of gravel and mining for metal ("the property"). In mid-1992 the appellant refinanced with the Bank the obligations which he had incurred with other financial institutions to operate the property. To that end he granted a mortgage to the Bank over the land. The loan was repayable on demand and if in default of the terms of the mortgage, the Bank could enter and take possession of the land. The appellant also granted the Bank various stock mortgages over cattle on the property with similar terms. The mortgages secured the appellant's indebtedness in respect of a farm management account, a fixed rate interest only loan account, a fully drawn advance account and an overdraft account. The indebtedness was in the vicinity of \$480,000 at the commencement of the appellant's relationship with the Bank.
- [10] The bank officer with whom the appellant dealt at the Bundaberg office was a Mr Wayne Carlson who was in charge of rural finance for the area. The appellant maintained that Mr Carlson, on behalf of the Bank, represented to him in 1992 and again in 1993 that the Bank would support him in his plan to build up cattle numbers which would entail holding back from sale female breeders which would reduce the property's cash flow. However the Bank would require interest only repayments until the number of cattle reached 2,500 or 1,000 female breeders or the operations on the property as a whole generated a gross annual income of \$240,000. The appellant maintained that in reliance on these representations he increased his borrowings to purchase more cattle and to make improvements to the property.
- [11] The property was declared drought stricken in mid 1993. By this time the appellant had borrowed approximately \$800,000 from the Bank. He had discussed with Mr Carlson the future of the property. He contended that Mr Carlson agreed, in effect, "to carry" him until the drought ended or he reached \$240,000 gross annual income or achieved the cattle numbers mentioned above.
- [12] Mr Carlson denied that he had made those representations or entered into any agreement with the appellant in those terms although there were regular discussions between them about the appellant's indebtedness, interest subsidies from the Queensland Rural Assistance Authority ("QRAA") and the development of his cattle holdings. He said that he had discussed with the appellant the need to achieve a gross annual income of \$240,000 to break even, that is, to make his interest repayments and to pay the overheads associated with running the various activities on the property.
- [13] The appellant received drought assistance subsidies from the QRAA from 1993 to 1996. Relevantly, to qualify for an interest subsidy the farmer's financier had to

indicate to QRAA that it would continue to support the farmer for the next 12 months. The interest subsidy operated from April to April with applications being made by the end of September of the previous year.

- [14] The appellant contended that his difficulties with the Bank began when Mr Carlson was replaced by a Mr John Alder in mid-1996. Mr Alder required the appellant to reduce his bank overdraft from \$120,000 to \$90,000 by the end of November 1996, although Mr Carlson had already started mentioning the need to address debt reduction. The appellant's major complaint was that in meeting this demand he had to sell breeders. This depleted his herd and adversely affected his capacity to adhere to his productivity plan. He maintained that the money sought by Mr Alder could have come from the interest subsidy which he would have received the following April had the Bank given him the necessary support. There was also some suggestion that funds might have been forthcoming at some time from timber and mineral exploration on the property of which the Bank was aware.

- [15] The complaint about the requirement to reduce debt was allied with the complaint about Mr Alder's failure to support the appellant's application for an interest subsidy for 1997. It appears that Mr Carlson had given the appellant more assistance with actually filling out the QRAA forms than Mr Alder was prepared to do, but in any event, on Mr Alder's examination of the appellant's accounts and because, in his opinion, the appellant had not made any firm proposal for addressing repayment of the debt, he regarded the operation as unviable and declined to guarantee the Bank's support for the requisite 12 months. The Bank document which the appellant sought leave to tender contained a handwritten endorsement dated variously June and July 1996. It is not decipherable but the appellant said, and Mr Hanson QC for the Bank did not disagree, that it reads

"Reduction of debt is not negotiable. Our file comments 3/1/96 remain relevant. This is primarily a holding operation and should seasonal conditions, commodity prices not have improved by expiry date to enable commencement of a realistic amortisation program for customer .. sale of assets as is".

- [16] The appellant contended that this annotation demonstrated that the Bank through Mr Alder, even though the accounts had just been renewed on an interest only basis, had a plan in place not to support him as agreed. There are two observations to make about the admissibility of this document - it could have been utilised below had it been read but, even so, its availability to his Honour could not have influenced any conclusion to which he came about this aspect of the case. Whether or not Mr Alder did "a review" of the accounts prior to making a decision about support for the appellant for the purposes of the subsidy, Mr Alder had an understanding of the appellant's financial affairs, he noted that he had been unable to operate without incurring further debt even with subsidies in the past and there was no prospect for an improvement in the future and his Honour accepted Mr Alder's evidence.

- [17] Leave should not, therefore, be given to tender the document.

- [18] The appellant gave evidence that he had sold 300 breeders between September and December 1996 (or in the 12 months from September 1996) realising \$60,000. The evidence, as his Honour found, was far from clear that that had occurred or for the

reason advanced. For example, he told his counsel in a taped conversation that he sold the breeders because he had too many and was vague as to why he did not instead sell steers. None of the money was used to reduce by \$30,000, or in any amount, the overdraft as required.

- [19] During 1997 the Bank continued to seek to have the appellant improve his debt position and indicated that unless an acceptable proposal was received by the end of September 1997, proceedings would be commenced.
- [20] The Legal Aid Office (Queensland) wrote to the Bank on behalf of the appellant on 23 September 1997 proposing a change of financiers but at a "discounted payout figure" of \$360,000 to take account of the appellant's alleged losses from the sale of the breeder cattle. In response the Bank was not prepared to release its securities without full payment of principal and interest, and required an acceptable plan to deal with the debt. The Bank invited the appellant to enter into a mediation.
- [21] The appellant contended that he had understood the mediation would deal with a limited range of issues and doubted that he had seen the document setting out the issues for resolution annexed to the signed mediation agreement. He also complained that the process was more adversarial than he believed it would be. The terms of the mediation agreement were set out in a written document signed by the parties on 27 November 1997. The issues for resolution were in schedule "A"
- "1. The Plaintiff considers that it was the Bank's responsibility to consider his Application for ARAA interest subsidy assistance in 1996 using proper and due care and diligence in each case.
 2. The Plaintiff says that in October of 1996, the bank failed to observe those principles in failing to support his Application for subsidy assistance when budget cash flow figures and financial statements indicated that he was deserving of support.
 3. In failing to receive interest subsidy assistance, the Plaintiff was forced to sell breeding females which has had and will continue to have a snow balling effect upon future production in cattle numbers.
 4. In all, 300 females were lost to the Plaintiff's operation resulting in an estimated loss in sales over a 3 year period of approximately \$360,000.00.
 5. The Bank maintains that cash flow projections provided by the Plaintiff in October of 1996 did not evidence the viability of the Plaintiff's business even if interests subsidy had been paid in the quantum of the previous year's subsidy."
- [22] These were the issues which had been agitated between the appellant and the Bank over the past months. It is unreasonable of the appellant to argue that this meant that the question of the appellant giving up his property or repaying the debt was

never intended to be the subject of the mediation agreement. Mediation had been proposed by the Bank after it had indicated in writing that it would exercise its rights under the mortgages if the debt was not paid. The mediation was proposed by the Bank, pursuant to an agreement between the Queensland Farmers Federation and the Australian Bankers' Association. It set out broad parameters for mediation but left it to the parties to agree the terms and conditions. The Bank proposed the standard form of agreement for mediation approved by the Queensland Law Society which the appellant signed.

[23] The appellant attended the mediation before Mr R.R. Douglas QC (as his Honour then was) on 4 December 1997 with his barrister and a solicitor or clerk who, it would appear, was the town agent for his own local solicitor. The Bank was represented by its solicitor and two officers. The mediation lasted a full day during which the appellant made two offers to the Bank - the payment of the debt less \$360,000 and, subsequently, less \$180,000 to represent the losses associated with the alleged forced sale of his breeding cattle and the Bank's failure to support his application for interest subsidy in 1996. The Bank was not prepared to settle for less than the full amount owed but was prepared to do so on terms and at the end of the day an agreement in writing was produced which the parties executed.

[24] Relevantly, the Bank agreed to re-finance all the appellant's facilities on a commercial bill facility with interest at the Bank's bill rate of the day, or the day of draw down and/or rollover, with a rollover period no greater than 35 days. By cl 4 the appellant was to use his best endeavours to re-finance the debt or sell the property with the written approval of the Bank before 4 March 1998 with settlement no later than 6 April 1998. In default of either re-financing or sale the appellant agreed to deliver vacant possession of the property to the Bank by 6 April 1998. By cl 7 the parties agreed

"7.1 In the event that [the appellant] does not comply with the provisions of the Deed, [the appellant] agrees that the Bank is entitled to commence proceedings so that a Writ of Possession for the property may issue.

7.2 [The appellant] agrees that he will not take any active part in the proceedings including, without limitation the filing of the defence of the proceedings."

The Bank agreed not to enforce the mortgages except as provided for in the Deed.

[25] By cl 9

"9.1 By the execution of this Deed [the appellant] immediately, absolutely and unconditionally releases the Bank, its officers and agents, from all claims which [the appellant] now has, or but for this Deed might have had against the Bank, its officers and agents, in respect of the Facilities, the Mortgages, the Proceedings or any other matters referred to in the Recitals TO THE INTENT THAT this Deed may be pleaded by the Bank as a complete and absolute bar to any claims by [the appellant] in respect of the matters released by this Deed.

9.2 Clause 9.1 above applies to the Bank *mutatis mutandis*."

- [26] Two weeks later the appellant executed the bill facility at the office of his solicitor in Bundaherg which included terms that it was secured by the mortgage over the land and the stock mortgages. It was available to the appellant until 6 April 1998 whereupon he was obliged to pay the face value of any bill of exchange drawn under it. It was an event of default under the bill facility if the appellant failed to comply with the provisions of the Deed of Mediation or failed to pay to the Bank the face value of any bill of exchange drawn under the bill facility. If an event of default occurred the Bank could serve a notice of termination whereupon all amounts outstanding under the bill facility were immediately due and payable.
- [27] The appellant attempted unsuccessfully to re-finance and at 4 March 1998 was in default under the Deed of Mediation and therefore under the bill facility. On 7 April 1998 the Bank sent a notice of termination of the bill facility, the bill having expired on 6 April 1998. The appellant failed to pay the Bank the value of the bill of exchange on its maturity date.
- [28] There was no dispute that the appellant was in default under the bill facility.

Setting aside the Deed of Mediation

- [29] The appellant raises a number of grounds as to why the learned trial judge's findings about the mediation ought to be set aside. At trial the appellant advanced his contention that the Deed of Mediation was voidable on the basis of economic duress and his position of special disadvantage vis-a-vis the Bank. His case with respect to economic duress was expressed in the amended defence and counter-claim as follows:

- "43 (a) The defendant was in a poor financial position, in part by reason of the conduct of the plaintiff as pleaded above;
- (b) The defendant was in a weak bargaining position, in that the rights of the plaintiff were largely enshrined in its written loan and mortgage documentation, whereas the claims of the defendant were largely based on unwritten promises from Mr Carlson made years before, to which claims the plaintiff refused to give any credence;
- (c) The plaintiff was in a strong financial position and in a strong bargaining position;
- (d) The defendant's legal advisers' preparation for the mediation had been hurried and they had not become aware of the strength of the claims the defendant had against the plaintiff;
- (e) The defendant was under considerable pressure from the plaintiff, by reason of the plaintiff's stance that unless some

agreement was reached at the mediation, the plaintiff would proceed immediately to sell up the defendant."

- (30) The appellant alleged that during the mediation he suffered from stress and anxiety and was thereby mentally unable to cope with the pressure; was unable to think clearly or to understand the documentation shown to him and the Bank was or ought to have been aware of those matters.
- (31) Psychiatric evidence was adduced at the trial from Dr P Mulholland who had given a report to use in resisting a summary judgment application by the Bank. The appellant had told Dr Mulholland of his behaviour at the mediation which, had it occurred, as his Honour commented, would have been readily observable to persons in his presence or company on the day of the mediation. He told Dr Mulholland that he was raising his voice and at times screaming and shouting; "speaking disjointedly and ... incoherently"; "unable to express [himself] properly"; "shaking"; "attacking people at the mediation, especially the Bank's representatives"; "foaming at the mouth at some stages and ... constantly wiping the sides of his mouth"; "completely exhausted"; "extremely agitated"; "sweating so much that the sweat was running all over [his] glasses which [he] was continually cleaning"; "constantly mopping [his] brow with [his] handkerchief which had become wet as a result"; "gesturing in an accentuated way by bringing [his] hands down on the mediation table and throwing them all over the place".
- (32) The learned trial judge carefully analysed Dr Mulholland's evidence including that a person could suffer from a "chronic adjustment disorder" but be able to keep those thoughts and feelings to himself and not be detectable at all to persons able to observe that person. Dr Mulholland was shown paragraphs of the appellant's affidavit sworn two weeks after he had interviewed him on 15 June 1998 and agreed that the content of the affidavit demonstrated a detailed recollection of what had gone on at the mediation. He was also taken through the chronology of the mediation with the offers made by the appellant and concluded that the appellant was capable of rational thought in the pursuit of his own self interest. His Honour concluded that Dr Mulholland's view ultimately was that the appellant was functioning satisfactorily at the time when the negotiations, upon his instructions, were being conducted. There is no error in that conclusion.
- (33) The appellant called Dr J Cameron, a consultant neurologist, who had prepared a report for the summary judgment application. From what the appellant had told him in a consultation in June 1998 Dr Cameron had concluded that the appellant was suffering "a very acute anxiety disturbance at the time he was involved in dealings with the ... Bank in early December 1997" and that the appellant was compromised at the time of signing the Deed of Mediation. Dr Cameron agreed in oral evidence that his opinion was dependent upon what the appellant had told him.
- (34) The appellant was the only witness who gave evidence that he exhibited symptoms of the kind which both medical specialists said indicated that he was incapable of protecting his own interests. Those symptoms, as his Honour found, would have been observable by any persons if in his presence while he was displaying them. But no other witness did so.

- [35] The experienced mediator observed and spoke with the appellant throughout the day. He had a good recollection at the trial of what had transpired. He did not observe any of the symptoms about which the appellant gave evidence or of which he had spoken to the two medical specialists.
- [36] Although from time to time, the mediator said, the appellant raised his voice he did not scream or shout. The mediator said that the appellant became upset at times but he did not speak incoherently or disjointedly. The only time that the mediator observed agitation by the appellant was when he showed his dislike for the Bank and its officers. At no time did the mediator think that the appellant was not in a fit state to make a rational decision on the mediation nor did the appellant's barrister make any such suggestion or seek an adjournment. The mediator said the appellant at no time expressed any doubt as to whether he should sign the Deed of Mediation.
- [37] His Honour noted that the appellant did not call either his counsel or the solicitor who attended at the mediation with him and who had had ample opportunity to observe his condition and symptoms, if any, during that day. The appellant had consulted with his counsel in his chambers on the day before the mediation after he had driven to Brisbane. A transcript of that consultation was introduced into evidence during cross-examination of the appellant, without objection, as exhibit 6. The issues which they discussed were those which were dealt with during the mediation and were consistent with the appellant's stance with the Bank over the past months.
- [38] The Bank's solicitor and one of the two Bank officers who attended at the mediation and who had signed the Deed of Mediation with the defendant, gave evidence that they observed no symptoms of mental incapacity of the kind which the appellant described.
- [39] His Honour concluded
 "The reliability of [the appellant's] evidence upon trial must be assessed in the light of the evidence given by the solicitor for [the Bank], one of the officers of the [Bank] attending the mediation and the mediator, and in the light of his failure to call either his counsel or solicitor who attended at the mediation and had the opportunity to observe the symptoms which he said he displayed.
- None of the persons who attended the mediation and who gave evidence gave any support whatever to the symptomatology of helplessness, mental instability, anxiety, etc to which the [appellant] swore. In fact, the effect of the evidence was that no such symptomatology was observed by them at any time during the mediation. In particular, the mediator himself who had much more contact with the [appellant] than did any of the bank officers during the bigger part of the day of the mediation said that he observed no such symptomatology." [45] and [46].
- [40] His Honour considered the evidence of the mediator and the other witnesses very carefully. It could not be said that his Honour misused his position of advantage in assessing the witnesses or failed to take advantage of that position. This was not a

case of drawing inferences from established facts, *Brunskill v Sovereign Marine & General Insurance Co.* (1985) 62 ALR 53, and neither could it be said that his Honour's assessment of credibility was inconsistent with facts incontrovertibly established by the evidence, *Devries v Australian National Railway Commission* (1993) 177 CLR 572 at 579.

- [41] The appellant contended that the learned trial judge applied the wrong test when he relied on a passage from *Imperial Loan Co. v Stone* [1892] 1 QB 599 per Lopes LJ at 603 that

"A defendant who seeks to avoid a contract on the ground of his insanity must plead and prove not merely his incapacity but also the plaintiff's knowledge of that fact and unless he proves these two things he cannot succeed."

The appellant submitted that the correct test was stated by Drummond J in *Begbie v State Bank of New South Wales Ltd* (1994) ATPR 41-258 at p 41, 896

"It is also clear from the statements in *Amadio* that if one person has actual knowledge that another occupies a position of special disadvantage in relation to an intended transaction or, without actual knowledge is aware of the possibility that the situation of special disadvantage may exist or is aware of facts that would raise that possibility in the mind of a reasonable person, then that person's conduct in entering into the transaction from which he benefits against such a background of knowledge or awareness on his part will be unconscionable".

- [42] The appellant's case was rather different. He contended that there was overt conduct by him such as to indicate that his capacity to exercise judgment about his own best interests was flawed and that that conduct was readily observable to persons in his presence on the day of the mediation. That his Honour considered both the common law rules about the effect of unsoundness of mind on the enforceability of a contract and equitable considerations is apparent from these passages in his reasons for judgment

"Looking at the evidence given by persons who attended the mediation and considering the terms of the lengthy discussion the defendant had with his legal representative the day before the mediation which is recorded in Exhibit 6, and considering the negotiations that took place at the instance of defendant at the mediation, and the fact that he signed the required bill facility a fortnight later in the office of his solicitor, I am unpersuaded upon the whole of the evidence that:-

1. The defendant did have any incapacity or had a reduced capacity to protect his own interests or to understand the effect of the agreement he made reflected in the Deed of Mediation which resulted from mental abnormality whether or not due to anxiety or undue pressure brought to bear upon him by the plaintiff in an unconscionable way or indeed that any such pressure was brought to bear upon him at any material time.

2. That he gave any observable indication whatever to the mediator, the officers of the bank, or to anybody else for that matter who attended upon the mediation that he had any such incapacity or reduced capacity. In *Imperial Loan Co v Stone* [1892] QB 599 Lopes LJ pointed out at 603:-

"A defendant who seeks to avoid a contract on the ground of his insanity must plead and prove not merely his incapacity but also the plaintiff's knowledge of that fact and unless he proves these two things he cannot succeed."

In my view, the defendant has simply failed to establish any facts whatever which could justify a finding that the Mediation Deed and/or the bill facility which he signed as a consequence of that agreement was voidable at his option." [78] [79].

- [43] The approach to economic duress as a means of setting aside an agreement was expressed by McHugh JA in *Crescendo Management v Westpac* (1988) 19 NSWLR 40 at 46

"The proper approach in my opinion is to ask whether any applied pressure induced the victim to enter into the contract and then ask whether the pressure went beyond what the law is prepared to countenance as legitimate? Pressure will be illegitimate if it consists of unlawful threats or amounts to unconscionable conduct. But the categories are not closed. Even overwhelming pressure, not amounting to unconscionable or unlawful conduct, however, will not necessarily constitute economic duress."

His Honour referred to the dissenting advice of Lord Wilberforce and Lord Simon of Glaisdale in *Barton v Armstrong* [1976] AC 104 at 121 where their Lordships said

"... in life, including the life of commerce and finance, many acts are done under pressure, sometimes overwhelming pressuring, so that one can say that the actor had no choice but to act. Absence of choice in this sense does not negate consent in law: for this the pressure must be one of a kind which the law does not regard as illegitimate. Thus, out of the various means by which consent may be obtained, advice, persuasion, influence, inducement, representation, commercial pressure – the law has come to select some which it will not accept as a reason for voluntary action: fraud, abuse of relation of confidence, undue influence, duress or coercion."

- [44] As was noted by Kiefel J in *Westpac v Cockerill* (1998) 152 ALR 267 at 290 relief will not be granted only on the basis of an inequality "even a great inequality, of bargaining position". Here the inequality of the bargaining position did not flow from disparity substantially brought about by the Bank's antecedent conduct. Although the learned trial judge did not make detailed findings directly on this point he found that there had been no agreement or representations, as alleged made by Mr Carlson, and the Bank's approach to the appellant's financial

difficulties was as described by Mr Alder and not by the appellant. His conclusion that the appellant had not entered into the Deed of Mediation "due to ... undue pressure brought to bear upon him by the [Bank] in an unconscionable way ..." was clearly open on the evidence.

- [45] The appellant does not appeal against the finding below that the bill facility ought not to be set aside but the orders sought by him do so. His Honour noted that the appellant had executed that document some two weeks later in the office of his solicitor and there was no evidence to indicate that at that time he suffered from any of the incapacitating disabilities of which he had complained at the mediation. There is no basis to disturb his Honour's findings on the validity of the bill facility executed by the appellant.

The Appellant's Counter-Claim

- [46] To a large extent the appellant's oral submissions on appeal revolved around his action against the Bank based upon misleading and deceptive conduct and/or equitable estoppel and negligence and that his Honour erred in not making the necessary findings of fact to support those allegations. In summary the appellant contended that the learned trial judge should have found that a series of representations were made to the him by the Bank acting through Mr Carlson and that through Mr Alder, the Bank unconscientiously repudiated those representations or promises and, further, made no reasonable effort to support the appellant's application for interest subsidy through QRAA. By his amended grounds of appeal the appellant contended that the learned trial judge ought to have found that Mr Alder represented to QRAA that he would do a review of the appellant's finance facilities in May 1997 but did not do so and that if he had, he would have supported the appellant's application for the subsidy. If he had received the subsidy the appellant's facilities would not have been in default and there would have been no mediation.
- [47] In view of his Honour's conclusion about the enforceability of the Deed of Mediation and the bill facility he did not deal in detail with the matters upon which the appellant sought to rely to avoid his obligations under the various facilities made available to him by the Bank. Nonetheless, his Honour summarised the evidence about the alleged representations and the course of the relationship with Mr Alder. His Honour found both the evidence of Mr Carlson and Mr Alder persuasive and supported in essence by the contemporaneous correspondence. His Honour thought the lack of any reference to the representations in correspondence emanating from the appellant at any time prior to the mediation significant. He noted that the appellant led no contemporaneous sales dockets or other documentary evidence to support his oral evidence that he had sold 300 head of breeders to accommodate the Bank's requirements. These were conclusions open to his Honour and a perusal of the whole of the evidence does not suggest that any other conclusion presents itself.
- [48] Another matter which the appellant agitated on appeal concerned the letter of demand of 21 April 1998 sent by the Bank, allegedly deliberately for a false amount. Had his Honour made this finding, the appellant submitted, then he would have concluded that the appellant was not then in default. It is irrelevant to any issue before his Honour or this court. The appellant paid the amount of \$2,205 into his accounts with the Bank on 6 April 1996, on his explanation, as an interest

payment to extend the bill facility. That was the date the bill facility was terminated in accordance with the terms of the Deed of Mediation which required the appellant to re-finance the debt or exchange Bank approved contracts of sale for the property no later than 4 March 1998. If neither occurred the appellant was to deliver vacant possession of the property by 6 April 1998. It is not the case, as the appellant contended, that had the sum been credited to his account on the day it was paid in, he would not have been in default. It was held in suspense until the notice of demand was attended to and subsequently credited to the amount outstanding.

- [49] The appellant also contends that the Bank misrepresented to him that at the time of the mediation the value of the property, stock, plant and machinery was \$1.6 million. The Bank had a valuation from Herron Todd White dated 8 December 1997 that the valuation based on fair market value in aggregation was \$1.5 million, in subdivision was \$1.6 million and at a forced sale \$1.3 million. The submission was not developed and it is not apparent what use his Honour might have made of such a finding since it can have had no effect on his conclusion.
- [50] By ground 10 of the amended grounds of appeal the appellant contends that the learned trial judge ought not to have granted an application by the Bank to amend its reply and answer in para 22(a) to add the words "and relies on the release referred to in paragraph 46(b)(1)(i)" [of the amended defence and counter-claim].
- [51] The appellant had referred to the Deed of Mediation in his amended defence and counter-claim and in para 46(b) described the benefits conferred on the Bank by its terms including
- "(1) an absolute and unconditional release by [the appellant] of all and any claims [the appellant] might have against [the Bank]".

The application to amend came at the end of the trial. The appellant's counsel was instructed to oppose leave being given but offered no basis for doing so. The learned trial judge thought the amendment probably unnecessary but allowed it. There was no prejudice to the appellant in so doing. At most it tidied up what was quite clear on the existing pleadings. There was no error in allowing the amendments.

- [52] By ground 11 of the amended grounds of appeal the appellant complains of the order that costs against him were to be assessed on an indemnity basis. The award of costs is discretionary, r 689(1) *Uniform Civil Procedure Rules*. By s 253 of the *Supreme Court Act 1995*
- "No order made by any judge . . . as to costs only which by law are left to the discretion of the judge shall be subject to any appeal except by leave of the judge making such order."

Leave to appeal against the order about costs made below was not obtained from the learned trial judge. There is thus a statutory restriction on any appeal against that order, *Re Golden Casket Art Union Office* [1995] 2 Qd R 346 at 348-9. But even had leave been sought and granted his Honour's approach was correct.

- [53] By r 704(1) of the *Uniform Civil Procedure Rules* ("UCPR") a court may order costs to be assessed on an indemnity basis. Such costs equate to the former solicitor

and client costs, r 704(3). By item 8 of the Memorandum of Mortgage between the appellant and the Bank the appellant covenanted to repay the sums advanced in accordance with the schedule. By cl 34 of the schedule "the monies hereby secured" included in (e) "the amount of any costs ... incurred by the Bank ... and also the amount of any charges and disbursements for legal advice and assistance to the Bank as between solicitor and client".

[54] The application for costs to be assessed on the indemnity basis was, by inference, made when judgment was delivered on 11 October 2000. The transcript at R 365 suggests that further submissions from counsel were made after his Honour had ordered the appellant to pay the Bank's costs "to be assessed". His Honour then ordered that those costs "be assessed [on] an indemnity basis". There are no reasons transcribed in the record.

[55] At general law a mortgagee is entitled to "party and party costs" only (which equate under the UCPR to assessment on the standard basis), *AGC (Advances) Ltd v West, Cranston* (1985) 5 NSWLR 301 at 305 per Hodgson J and *Sandtara Pty Ltd v Australian European Finance Corporation Ltd* (1990) 20 NSWLR 82 at 97 per Cole J. That principle is subject to specific agreement, *ibid*. In *AGC (Advances) Ltd* Hodgson J allowed costs on a solicitor and client basis where that expression, as here, appeared in the mortgage.

[56] There was no error in the exercise of his Honour's discretion in ordering costs on the indemnity basis.

[57] In ground 12 of the amended grounds of appeal the appellant complains of a failure by the learned trial judge to grant an adjournment of the trial.

[58] The application made by the appellant's counsel was to stand the matter down for two days. The problem appeared to arise because the appellant had changed solicitors about a month earlier and he had deposed that he was not ready for trial. However, counsel indicated that the real difficulty lay with the issue of quantum. The application to adjourn was opposed. The learned trial judge proposed, without dissent from the appellant's counsel, that the Bank could proceed with its case which would be short and formal and then the appellant, whose evidence it was said would substantially follow that of his extensive affidavit filed in the Bank's summary judgment application, would give evidence and other witnesses relating to the issue of liability would be called. His Honour proposed

"If something goes wrong, an adjournment could be sought, if witnesses have to be met and interviewed and further enquiries have to be made."

In response counsel for the Bank agreed that there could be an adjournment of a "couple of days if needs be" for the appellant to be ready to proceed on the quantum issue.

[59] There was no further request for adjournment of the trial and in accordance with the course proposed by his Honour and agreed to by both counsel, evidence on quantum was heard at the conclusion of the evidence on liability and after approximately a half day adjournment, from the afternoon of the third day until 10.00 a.m. the following day, as requested by counsel for the appellant. There was

no suggestion that the appellant's case was in any way compromised by the course that the trial had taken.

- [60] His Honour's exercise of discretion that the trial should proceed on its listed date brought about no disadvantage to the appellant that was articulated before his Honour. Since his Honour expressed the view that if any problems arose in the course of the trial he would be sympathetic to an application there was no prejudice to the appellant and his Honour's approach was entirely correct.
- [61] There is no substance in any of the grounds of appeal raised by the appellant in the extensive written submissions or in his oral submissions. The appeal should be dismissed with costs.

75
17 OCT 2000
FILED
BRISBANE

REGISTRY: BRISBANE

NUMBER: **S 4013/98**

Plaintiff: NATIONAL AUSTRALIA BANK LIMITED ACN 004 044 937

AND

Defendant: LYNTON CHARLES FREEMAN

ORDER

Before: AMBROSE J

Date: 11 October 2000

Initiating document: Trial

THE ORDER OF THE COURT IS THAT:

1. The Plaintiff recover as against the Defendant possession of property described as:
 - (i) Lot 4 on Crown Plan CTN 1444 in the County of Clinton, Parish of Rule being title reference 17567135;
 - (ii) Lot 7 on Crown Plan CTN 1168 in the County of Clinton, Parish of Bompa being title reference 17625049;
 - (iii) Lot 8 on Crown Plan CTN 1466 in the County of Clinton, Parish of Bompa being title reference 17625051;
 - (iv) Lot 9 on Crown Plan CTN 1846 County of Clinton, Parish of Bompa being title reference 17625050
 - (v) Lot 19 on Crown Plan CTN 1169 in the County of Clinton, Parish of Bompa being title reference 17567134
 - (vi) 1,200 head of cattle as itemised in stock mortgaged dated 19 December, 1997.

ORDER
Prepared in the Office
of the Registrar
Form 59

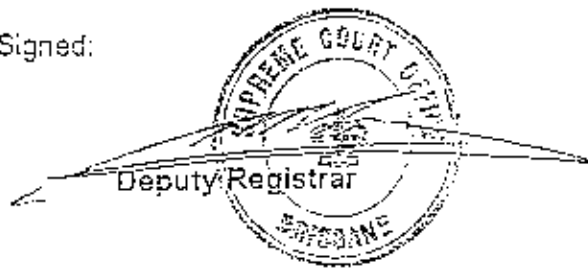
MALLESON STEPHEN JAGUES
Solicitors
Level 30, Waterfront Place
1 Eagle Street
BRISBANE QLD 4000



and situated at " Glasford Vale " Buliyah in the State of Queensland.

2. The Plaintiff recover against the Defendant the sum of \$1,427,890.08.
3. The Defendant pay the Plaintiff's costs of and incidental to the action including reserved costs to be assessed on an indemnity basis.
4. The Defendant's counterclaim and his claim to set off any sum against the Plaintiff's claim be dismissed.

Signed:



H H Judge White,
Supreme Court ,
Brisbane.

P.O.Bundaberg.

27.11.2001

Dear Judge White ,

Re; NAB -v- Freeman 4013/98 CA 9718/2000.

With reference to the above , I have been trying to avoid writing this letter but unfortunately I can't .

In sections 18 and 47 of your judgment you mention the failure to produce the necessary documents to prove the loss of 300 head of females..

These documents are and always have been in the Supreme Court Registry. I do not know how his Honour missed them at the trial but the table constructed from them is in the Further and Better Particulars . The numbers will not be exactly 300 because in drought ,cattle are prepared and sold on consignment , so the cattle being prepared for sale are included in the numbers some weeks ahead and obviously values estimated in September,1997 to December,1997 being prepared .

However sufficient detail is there to show the number thereabouts losses of 610 Females for \$152607-44 by 29.3.99.

The reason the sale details (account sales) were not before you was because the Appeal Books had to be quickly put together and the Court of Appeal Registry gave them to me to have printed after they prepared a copy.

When I arrived back at the Registry , they had talked to Mallessons and I believe Emma Costello had said some wording that meant , the sale details would not be required . They could not now be copied in time for Court next morning . .

I asked for an adjournment so I could go through the Appeal Book and find all the details that were missing . I filed in Affidavit the ones I had picked up previously .

This means I have been to Trial and Appeal both times hurried . the first Barwicks just would not complete discovery (Bank Statements to prove the deposit , of the sale proceeds etc.) and the accounts not in the demand etc. after 2 years and \$120,000 then about \$50,000 with Creswicks. The second time in your Court , the ACCC had started to investigate the situation and the Bank immediately applied to have the Appeal brought on.

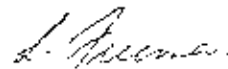
The Court of Appeal Registry normally takes a month to prepare the Books so the effort to have them ready has to be appreciated .

The problem I have is simply I now have to go to the High Court for Leave to Appeal . This means I have paid for two very expensive Legal procedures and because of an administrative situation beyond my control have to prepare for a third.

Is there any other option available other than a High Court Appeal at this stage bearing in mind the situation clearly arose in the Court , Registry.

The most frustrating thing about the whole situation is I have been charged ,by the Bank with stealing my Children's cattle and a small number belonging to a company, this depended obviously on your decision , as to whether it goes to Court and I have no doubt the way the situation has been phrased in judgment , it will appear I stole the cattle .

Yours faithfully,

A handwritten signature in cursive script, appearing to read 'L. Freeman'.

L. Freeman.

TRANSACTION REPORT

28-NOV-2001 08:21

FOR: 45277367318253YING CONT. 49 745 479

SEND

DATE	START	RECEIVER	PAGES	TIME	NOTE
28-NOV	08:20	49723205	1	52"	OK

TRANSACTION REPORT

28-NOV-2001 08:26

FOR: 45277367318253YING CONT. 49 745 479

SEND

DATE	START	RECEIVER	PAGES	TIME	NOTE
28-NOV	08:22	49723205	3	3'47"	OK

The Chief Justice,
Supreme Court of Queensland
George Street,
Brisbane.

P.O Box 1476,
Gladstone 4680
18/9/2003.

Dear Sir,

Re: J. N. C. Freeman and National Australia Bank.

With reference to our previous correspondence. On the 18/2001 I wrote to you explaining the NAB had applied when an ACCC inquiry was commencing into their behaviour in my accounts to have an Appeal set down. The reason I was suspicious was after selling the property why would they insist on an expensive Court procedure at that time?

They then pushed the action quickly into Bankruptcy and brought a criminal trial for cattle stealing. I was very lucky that the prosecutor asked their main witness the questions that made her divulge the numbers of cattle handled and the dates these tallied with the way bills the truck driver used so the truth in the criminal trial came out.

As a judge you may see what has happened everyday and consequently it may not be as serious as I believe. But I am enclosing a document by the Australian Banking Ombudsman that states and it appears from the circumstances that the behaviour of the NAB with the accounting and statements and procedures prior to the original court case of October, 1998 may have been Misleading and Deceptive and have given rise to waiver and estoppel.

This document was distributed to the Banks in December, 2000 which means the NAB would have been aware that I had an unlitigated defence against their behaviour as my bankers that may have been admitted by the industry generally.

It appears the Bank in February, 2001 may have issued me false bank statements to cover up the situation as they had me charged in November, 2000 but for some strange reason the Police did not attend the Court for the March, 2001 call over, the charges were dropped and I was recharged.

After the Appeal I wrote to you in February, 2002 enclosing the letters they wrote stating they would have provided bank statements at any time if requested. However I had requested my bank statements and those provided in February, 2001 for the period to June, 1998 and those provided to June, 1998 at the time were very different.

Could you please tell me if the use of the Police and charging me when the Bank was aware of this situation is correct or not and should I pursue any course of action.

I am writing to you in this way realising the sensitivity of your Office but also because in my humble opinion they successfully from their point of view , misled your Courts as well.

Enclosed are copies of my original letters to save you time

Yours faithfully,

A.Freeman.



Australian Banking Industry Ombudsman Limited

A.B.N. 48 050 970 034

Level 5, 31 Queen Street, Melbourne 3000

GPO Box 3A, Melbourne, 3001

DX 232 MELBOURNE

Tel: (03) 9613 1373 Toll Free: (1800) 337 444 Fax: (03) 9613 1345

With Compliments

17

Att: Mr L. Freeman.

BULLETIN NO. 27 - DECEMBER 2000

BAD OR DOUBTFUL DEBTS AND "SHADOW LEDGERS"

The decision to write off or write down a debt

When a debt is assessed as bad or doubtful, it is common practice for financial institutions (and others) to write the debt down to its assessed realisable value for balance sheet purposes. Interest on the debt is then not taken to profit until it is actually collected.

This is in accordance with accounting standards, which require that:

- Income including interest which is or may be deemed uncollectable, is included in the profit in the year it is actually collected; and
- An asset such as a loan made by a bank should be shown in a Balance Sheet at the assessed realisable value where that is lower than its current value.

Interest continues to accrue to the debt however and most banks will maintain a system record of the accrued interest for future use, ie if the debtor's circumstances change and the debt and interest are subsequently deemed to be collectable.

Practice differs however as to what the customer is told at the time the debt is written off and what information is then provided about the continuing status of the debt. Statements to and communication with the customer may cease for an extended period even though interest will continue to accrue to the debt, at least in the bank's internal records.



BULLETIN

The Australian
Banking Industry
Ombudsman Limited
GPO Box 3A
Melbourne 2001
Tel: (03) 9613 7375
or toll-free
1800 334 777
Fax: (03) 9613 7345

A 3.24 48 250 170 234

What are the customer's expectations when a debt is written off?

A customer's reasonable expectation of what their liability is and will be for a written off debt will be strongly influenced by how the decision is communicated and the nature of the information given to them about their future liability. For example, the way in which the decision is communicated may convey an impression either that the bank will not seek recovery of the debt or that the interest will not continue to accrue on the debt. If some years later the customer then receives a demand for the debt, and interest which has accrued in the meantime, there is the potential for a claim that the customer was misled.

Complaints received

This office from time to time receives complaints from bank customers who claim to have been misled by bank statements and/or conduct, in relation to 'written off' debts, into believing that the bank has waived the debt or at least waived continuing interest. Part of the problem appears to be that the expression 'written off' suggests to customers unfamiliar with accounting practice that the debt will not be collected.

The conduct complained about may be:

- Telling the customer the debt has been written off without explaining that this is an accounting term and does not mean the debt will 'cease to exist';
- Sending a statement that shows the written down amount as the final balance and then ceasing to send further statements;
- Entering into a repayment arrangement for a sum expressed to be the 'total due' without making it clear that interest will continue to accrue on the unpaid amount and the repayment period extended accordingly.

Legal issues

Ceasing to send statements

Ceasing to send statements will not usually be unlawful if a debt has been in default for a sustained period. In most cases ceasing to send statements in such circumstances is allowed under the Uniform Consumer Credit Code (Credit Code) - see s 31(3)(d) & (e) although care should be taken by banks to apply the correct provisions because there are different 'triggers' for continuing credit contracts such as credit card contracts.

Misleading and deceptive conduct

Although a bank may be entitled to cease sending statements, it would be in the view of this office likely to be misleading to send a 'final' statement to a customer which shows a written down or written off balance without further comment. This will be the case particularly where the last statement received by the customer shows a zero balance.

Entering into a repayment arrangement where a 'total amount due' is agreed to be paid by regular instalments may also be misleading if the customer is not told that interest will continue to accrue or given regular information about the progress of the debt which makes it clear that interest is being added to the balance outstanding.

Telling a customer that a debt has been written off, without further explanation may also be misleading if it is or ought to be clear that the customer takes this to mean that liability will cease.

Waiver and estoppel

The principles of waiver and estoppel may also be relevant to a complaint about a bank's conduct in communicating a decision to write off a debt. The express terms of the contract may however impact on whether the customer can rely on any apparent waiver of the right to call up the debt in the future.

Establishing loss

The need to show loss may be a difficulty for many customers claiming to have been misled. Similarly the need to show detriment may prevent a claim succeeding under principles of estoppel. It will not usually be enough that the customer is later required to pay a debt that they believed had been waived.

In particular, if a customer could not have paid off the debt even if the true position had been made clear, it may be that they cannot be said to have suffered detriment.

If the customer can show however that they could have made payments off the debt or paid the debt off faster and minimised the accrual of interest to some extent this would in most cases be sufficient to attract compensation.

What will be good banking practice?

In preparation for this Bulletin, the banking adviser to the Ombudsman carried out a survey of member banks to ascertain good banking practice in the handling of the above issues. The survey was directed to the information provided to customers when a debt was written off, both at the time of write off and in the future and included questions about the information provided to customers about:

- The future treatment of interest;
- Provision of bank statements; and
- Recovery action that may be considered either at that time or in the future.

Member banks were also asked whether information was routinely provided about the progress of a debt, even if statements were not sent.

The banking adviser's conclusions were as follows:

Best Practice

It is best practice for a bank to:

- Continue to issue statements showing interest and fees accruing, reflecting the actual liability of the customer to the bank;
- Not communicate the changed status of the debt;
- Confine the decision to write off the debt to the bank's accounting records - ie maintain the actual ledger balance for Balance Sheet purposes at the assessed realisable value and not take uncollected interest income to profit.

Best practice was demonstrated by one of the banks surveyed. Member banks are encouraged to adopt best practice.

Acceptable Minimum Practice

Two methods employed by banks surveyed constituted, in the banking adviser's opinion, acceptable minimum standards.

Method 1

At the time an account is designated as bad or doubtful, the bank:

- Ceases charging interest to the account;
- Maintains an interest accrual figure in the system for future use (ie, if interest subsequently deemed to be collectable);
- Issues a letter to the debtor, which:
 - States that future bank statements will not issue;
 - Provides details of a nominated person to contact for details of the outstanding debt;
 - Warns that in the event that a statement is issued in error, it may not show all the interest payable, and therefore may not reflect the true position of the account.
 - States that the bank's action is for its internal purposes only, and without prejudice to the bank's right to charge the interest later.

Method 2

Write off the debt and not send the final statement showing the write off but also 'cap' the debt at the amount of write off, ie, do not aim to collect any interest beyond the written off debt.

Where judgement is obtained, any future interest beyond the date of judgement is calculated at the court rates.

If either of the above methods are used, it will still be good practice to ensure that, on request, information is provided to the customer including the loan balance and details of how it has been calculated - ie debits, including interest, and credits to the account for the period covered by the request. If the information is required for refinancing, it is good practice to provide it in the form of a statement where practicable.

Unacceptable Practice

Issuing bank statements showing the write off but continuing to add interest to the debt.

Related Systemic Issue

Even if statements may cease a bank still has an obligation under the Credit Code to provide information on request about the amount owing

As a separate matter, banks should be aware of their obligations under the Credit Code to provide information *on request* about the amount owing and how it has been calculated - see s 34. Strict time limits apply. This obligation continues even where the bank may be entitled to cease sending statements and is an obligation, which cannot in the view of this office, be delegated even if the debt has been referred to a collection agency. To refuse to do so is a breach of the Credit Code and is an offence under the Code.

Complaints have been received about refusal by a customer's bank to provide up to date information about a debt once statements cease. The debt may not have been written off and the customer may still be making payments but the bank has refused to provide information about the current balance and the way that has been calculated.

This has in one case been identified as a systemic issue within a bank arising from a misunderstanding by the bank concerned of its obligations under the Code. As a result of raising the issue with the bank in accordance with the ABIO Guidelines on systemic issues, the bank concerned agreed to change its procedures and advise all call centre staff of the need to respond to such a request for information even when the account had been referred to a mercantile agent for collection of the debt.

GUIDE LINES FOR MEDIATION

Introduction

1. Following the Parliamentary Joint Statutory Committee ("PJSC") hearing on *Shadow Ledgers and the Provision of Bank Statements to Customers* and the recommendations of the PJSC published in October 2000, the Commonwealth Bank of Australia ("the Bank") offers on request to mediate claims from present or former customers in respect of pecuniary loss which they incurred as a result of:
 - 1.1. not receiving bank statements in line with their regular statement cycle; and/or
 - 1.2. receiving statements which did not accurately disclose the legal indebtedness of the customer to the Bank.

Request for mediation

2. Customer or former customers who believe they have an entitlement to compensation for pecuniary loss as a result of the above may submit requests for mediation directly to:

Chief Manager
Credit Management Unit
Group Risk Management Division
Commonwealth Bank of Australia Group
Level 8, Pitt Street and Martin Place
Sydney 2000.

3. At the time of making the application, the customer or former customer should:
 - 3.1. identify the bank facility or facilities to which unprovided or incorrect statements relate;
 - 3.2. briefly particularise

3.2.2. the nature of the pecuniary loss which is said to have been suffered; and

3.2.3. the basis upon which it is claimed that such loss arises out of the Bank's failure to provide bank statements or the provision of bank statements which did not accurately disclose legal indebtedness;

3.3. provide an estimated quantification of that loss

Mediation procedure

4. Mediation is a voluntary process, succinctly described by the former Chief Justice of NSW as, "aimed at enabling the parties to a dispute to discuss their differences in total privacy with the assistance of a neutral third party (mediator) chosen by them", Sir Laurence points out that the procedures followed are very flexible but, as a guide, the Bank envisages that mediations would be modeled on those required to be conducted under the Farm Debt Mediation Act 1994 (*which, in turn, follow widely adopted practice in commercial mediations*).

4.1. the mediator will be a person appointed by agreement between the customer and the Bank who is

4.1.1. independent of the customer and the Bank;

4.1.2. qualified and experienced in alternative dispute resolution;

4.1.3. not disqualified by any perceived conflict of interest; and

4.1.4. acceptable to both customer and Bank as neutral to the issue in dispute

4.2. the mediator's fee and the cost of hiring rooms in which to conduct the mediation will be agreed in advance and borne equally by the customer and the Bank. [Note: with a view to minimising costs, the Bank is willing to provide a venue for the conduct of a mediation at no charge. However, if the customer considers this not to be "neutral territory" the usual procedure of dividing the cost of hiring other facilities would operate.]

5. Prior to the mediation (in accordance with a timetable agreed between the parties and the mediator) the customer and the Bank will each provide to the other and to the mediator a "position paper" setting out in summary form their respective contentions. Specifically, the customer would be expected to

5.1. accurately quantify the loss allegedly sustained as a result of the non-provision of, interrupted supply of, or the provision of supposedly inaccurate, bank statements or pay-out figures; and

5.2. outline the facts which establish a nexus (ie, a casual link) between the loss said to have been sustained and the non-provision of, interrupted supply of, or provision of supposedly inaccurate, bank statements or pay-out figures.

6. The mediation proceedings will be

6.1. informal;

6.2. kept confidential by the customer and Bank;

6.3. protected from disclosure in subsequent litigation should the mediation fail;

6.4. terminable at will by either customer or the Bank.

Limitation of the scope of the mediation

7. Mediation will *not* be available in circumstances where the customer's dispute with the Bank in respect of the loan facility for which statements were not provided or an interrupted supply or inaccurate statements were provided has already been the subject of:

7.1. litigation or arbitration in which judgment or a final award has been entered; or

7.2. mediation at which a settlement has been reached; or

7.3. negotiation and settlement evidenced by the signing of terms of settlement, the granting or acknowledgment of a release or the acceptance of an offer of compromise.

8. The limitations described in paragraph 7 will not apply to any situation where:

8.1 the customer's dispute with the Bank has been the subject of informal discussions only (ie, without formal mediation) at which no settlement was reached; or

8.2 the customer did not become aware, until after litigation, arbitration, mediation or settlement that one or more statements of account had previously been withheld or did not reflect accurately the customer's indebtedness to the Bank; and

8.3 the customer is able to demonstrate loss arising additionally and independently of any quantified loss which was the subject of the prior litigation, arbitration, mediation or negotiation settlement.

BULLETIN NO. 27 - DECEMBER 2000

BAD OR DOUBTFUL DEBTS AND "SHADOW LEDGERS"

The decision to write off or write down a debt

When a debt is assessed as bad or doubtful, it is common practice for financial institutions (and others) to write the debt down to its assessed realisable value for balance sheet purposes. Interest on the debt is then not taken to profit until it is actually collected.

This is in accordance with accounting standards, which require that:

- Income including interest which is or may be deemed uncollectable, is included in the profit in the year it is actually collected; and
- An asset such as a loan made by a bank should be shown in a Balance Sheet at the assessed realisable value where that is lower than its current value.

Interest continues to accrue to the debt however and most banks will maintain a system record of the accrued interest for future use, ie if the debtor's circumstances change and the debt and interest are subsequently deemed to be collectable.

Practice differs however as to what the customer is told at the time the debt is written off and what information is then provided about the continuing status of the debt. Statements to and communication with the customer may cease for an extended period even though interest will continue to accrue to the debt, at least in the bank's internal records.

What are the customer's expectations when a debt is written off?

A customer's reasonable expectation of what their liability is and will be for a written off debt will be strongly influenced by how the decision is communicated and the nature of the information given to them about their future liability. For example, the way in which the decision is communicated may convey an impression either that the bank will not seek recovery of the debt or that the interest will not continue to accrue on the debt. If some years later the customer then receives a demand for the debt, and interest which has accrued in the meantime, there is the potential for a claim that the customer was misled.

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The conduct complained about may be:

- Telling the customer the debt has been written off without explaining that this is an accounting term and does not mean the debt will 'cease to exist';
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Although a bank may be entitled to cease sending statements, it would be in the view of this office likely to be misleading to send a 'final' statement to a customer which shows a written down or written off balance without further comment. This will be the case particularly where the last statement received by the customer shows a zero balance.

Entering into a repayment arrangement where a 'total amount due' is agreed to be paid by regular instalments may also be misleading if the customer is not told that interest will continue to accrue or given regular information about the progress of the debt which makes it clear that interest is being added to the balance outstanding.

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This has in one case been identified as a systemic issue within a bank arising from a misunderstanding by the bank concerned of its obligations under the Code. As a result of raising the issue with the bank in accordance with the ABIO Guidelines on systemic issues, the bank concerned agreed to change its internal rules and advise all customers that if the bank is unable to provide a response for a particular issue within the required time limits, it will refer the matter to the appropriate dispute resolution body.

QUESTION ON NOTICE

NO. 587

ASKED ON THURSDAY, 18 OCTOBER 2001



MRS E CUNNINGHAM ASKED THE MINISTER FOR PRIMARY INDUSTRIES AND RURAL COMMUNITIES (MR PALASZCZUK) -

QUESTION:

With reference to many rural landowners who receive necessary interest subsidy relief administered via QRAA and as this subsidy is subject, in part, to farm viability confirmation by banks who hold financial interests in the respective properties—

What audit processes are in place within the department to review appeals by applicants whose financial institutions indicate non-viability where farmers question the bank's assessment?

ANSWER:

I am advised that when assessing applications for Exceptional Circumstances (EC) interest subsidy, Queensland Rural Adjustment Authority (QRAA) must be satisfied that the enterprise has prospects of viability in the long term.

When assessing the long-term viability of an enterprise, the Authority looks at:

- > the last three year's financial statements (profit & loss accounts, balance sheets, depreciation schedules); and
- > the cash flow estimates for the current year, which is based on the current seasonal conditions;

The above information is analysed thoroughly in conjunction with telephone discussions with the producer and the producer's banker. Whilst it is important to obtain the opinion of the banker towards the viability of an enterprise, it is QRAA's independent analysis that ultimately determines the viability decision.

If a situation arises that the banker's opinion of viability differs from that of QRAA, the difference will be discussed in detail during the assessment process. If the differences remain, QRAA would carry out an on-farm assessment of the enterprise, following which the matter would again be discussed with the banker.

I understand there have been no instances, to date, where a banker has not been prepared to commit to 12 month's support of an enterprise that has been approved interest subsidy.

In the reverse situation, where the bank sees viability and QRAA does not, the same procedure would be followed.

Applicants who have been declined have the opportunity to appeal, firstly to a QRAA Internal Appeals Committee and, finally, to the QRAA Board of Directors.

All of QRAA's assessment processes are subject to audit by both the contracted internal auditors of the Authority and the external auditors.



Transcript of Proceedings

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State Reporting Bureau
Date 3/1/10

DISTRICT COURT

APPELLATE JURISDICTION

JUDGE NOUD

No D4343 of 2002

ZINACE PTY LTD

Appellant

and

DENNIS TOMLIN

First Respondent

and

ADAM NOEL FREEMAN

Second Respondent

and

KRISTEN LYNNE FREEMAN

Third Respondent

and

JEFFREY EARL GRADY and
PHILLIP ARTHUR HENNESSY

Fourth Respondents

and

NORMA PURSER

Fifth Respondent

and

NATIONAL AUSTRALIA BANK LIMITED

Sixth Respondent

BRISBANE

.. DATE 08/01/2003

WARNING: The publication of information or details likely to lead to the identification of persons in some proceedings is a criminal offence. This is so particularly in relation to the identification of children who are involved in criminal proceedings or proceedings for their protection under the *Child Protection Act 1999*, and complainants in criminal sexual offences, but is not limited to those categories. You may wish to seek legal advice before giving others access to the details of any person named in these proceedings.

HIS HONOUR: This is an application by Elnate Pty Ltd for a
stay of the judgment of Judge Robin pronounced on 12
December 2002. Mr Lynion Noel Charles Freeman has appeared
on behalf of the company. Mr Perkins of counsel has
appeared for the respondent to this application.

The respondent to the application is the National Australia
Bank Limited. There were other parties to this litigation.
The heading to relevant documents indicates who those
parties were. Effectively the parties in the proceedings
before Judge Robin were the company and the bank. That is
accepted by Mr Freeman and Mr Perkins and that is the
position today as well. It is agreed that I need not
concern myself with any of the other parties whose names
appear on Court documents. As I understand, the litigation
has not concerned them. The issues have been litigated
between the company and the bank and those issues were
resolved initially in the Magistrates Court, then there was
an appeal to the District Court which was dealt with by
Judge Robin and now there is an application to the Supreme
Court for leave to appeal to the Court of Appeal.

The primary relief that the company seeks before this Court
today is that the judgment of Judge Robin be stayed pending
the appeal. In some of the cases it is suggested that
special circumstances need to be shown to succeed on an

application of this nature.

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As I understand the cases, there has been a movement away from that description, rather the Courts now refer to an "appropriate" situation giving rise to a successful application for a stay of proceedings.

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In relation to my approach concerning this matter, I have been influenced by matters which I shall describe as matters of convenience rather than factual matters. I have been influenced, for instance, by the approach of Justice Chesterman in *Asia Pacific International Pty Ltd v. Peel Valley Mushrooms Limited* (1999) 2 Qd.R. 458 at page 463 line 40-page 464 line 5. That was a case involving an interlocutory judgment but nevertheless, as I say, I am influenced by the approach set out in that case and that approach seems to be consistent with the submissions on the law that Mr Perkins has made (see paragraph 6 of his submissions which I have placed with the papers). I have also placed Mr Freeman's submissions with the papers.

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The parties at the commencement of the proceedings read certain material. That material has been noted and I am generally aware of the issues which have been litigated. I go back to mentioning again the fact that there was litigation in this case in the Magistrates Court.

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There were 101 beasts in issue. There was an issue, of course, as to the ownership of those beasts. The bank held a certain security or securities. The police exercised certain powers and that gave rise to a determination about ownership by the Magistrate. All this is made clear in the material that the parties have relied upon before me, although some of it has been supplemented, I think, in a minor way by statements from the Bar table, but there are no disputes, as I understand it, about the factual matters that I am now briefly dealing with.

There were 101 beasts in issue, as I say, and the Magistrate determined that the bank owned 90 of those and that the company owned 11. The company was successful to some extent on appeal to Judge Robin and a determination was made that the bank owned 80 of the beasts and the company 21.

Mr Perkins points out in his submissions that it is extremely difficult to overturn factual determinations and I point out that my understanding of the law is that that is correct. I want to stress to Mr Freeman today that my understanding is that there has already been two hearings in this matter in relation to the facts. I say that because there was the initial hearing before the Magistrate and then it came on on appeal to Judge Robin and that appeal was, as I understand, an appeal by way of rehearing and I think his

Honour makes that point. So there has already been those
two steps taken in this litigation and, in general terms,
the company has been unsuccessful at both of those hearings.
That is not to say that that will remain the case on appeal.
The company will have its day in Court, as it were, on appeal
if leave is granted, but in circumstances such as these I
think it is impossible for me to ignore the *prima facie*
strength of the bank's position insofar as factual matters are
concerned and I believe also that it would be wrong for me to
probe those matters, some of which depend on credibility, and
I refer to Ms Green's evidence in that regard.

That is why, as I said earlier on, I have been influenced by
the cases to which I have referred, Justice Chesterman in
the case that I earlier referred to and J C Scott
Constructions (1983) 2 Qd.R. 255, another well known case in
this area. So that is the approach I have concerning factual
matters and I fear that I have not made that plain to Mr
Freeman who appears today, but I attempt to do so again in
these reasons that I am now giving.

It seemed to me that he again dwelt on those factual matters
in the address that he made to me a little while ago, which
has, of course, been recorded, along with all the other
submissions. I did not suggest that he confine himself to
those matters.

He also dealt with other matters concerning what he termed
the convenience of the overall situation. He has drawn
attention to the fact that there is a sale pending with
respect to the cattle, that is, on this Friday, 10 January
2003, and he has submitted that it is more appropriate in
this case that the cattle be sold individually rather than,
as is proposed, in blocks of six.

Mr Freeman has stated, for the record, his reasons for that
opinion. He is concerned about what will happen if there is
success on appeal and if there are no proper records made
with respect to the sales and if, as I say is proposed, the
cattle are sold in blocks of six rather than individually. He
has submitted that if the company is ultimately successful in
the litigation, it will be, as I noted him "an impossible task
of arriving at value" of the cattle.

I want to point out to Mr Freeman, that, with due respect, I
am unable to accept that submission and I point out that
courts are often faced with difficulties in arriving at the
value of something, whether it be the value of an animal or
the value of a house or anything else for that matter.

Sometimes the task is a difficult one but that does not mean
that it is necessarily an impossible one and when there is a
duty to arrive at value, a Court will normally do that,
notwithstanding, as I say, the difficulties which are

confronted. There may be some differences given the records
which will result from a sale in blocks of six as compared
with individual sales, but that will, in my belief, not mean
that the company will be denied relief if it is ultimately
held to be entitled to that relief. That deals with that
aspect.

The second aspect to that submission is - and I have made
the point in the course of argument - that it seems to me
wrong legally for the Court to become involved in the making
of any orders in relation to the sales as proposed by Mr
Freeman because I feel that the Court could not adequately
supervise the type of procedures that he has in mind.

I have found myself in general agreement with the
submissions made by Mr Perkins. In fact, I find myself in
agreement with all of those submissions that have been made
and I did propose in the course of my reasons to use that
document as a guide and to go through and summarise those
matters and make them part of my own reasons for my decision.
But I think that that would be unnecessarily lengthy.

I have given reasons now for some time and I hope to have
conveyed them, especially to Mr Freeman, who, if I may say
so, will be the loser in today's application. I trust that
I have explained to him the approach which I feel the Court

must take in the matter. I repeat, however, that I agree
with the submissions that have been made by Mr Perkins and
those submissions will be placed on the Court file. It is
unnecessary, I think, for me to go through them.

It follows for these reasons that the application that the
company makes must fail.

I have also had regard to what I shall term consequential
relief referred to in the company's application. There is
the application for the stay and then, further and other
orders are sought in that application. I think it is not
appropriate that an order for a stay be made and I also am
of the view that it is not appropriate that any other orders
be made for the reasons that I have given.

For these reasons then, I order that the relevant
application, which is document number 23 on the Court file,
be dismissed.

I have heard the parties as to costs. I order that the
applicant, Zinace Pty Ltd, pay the respondent's (National
Australia Bank Limited) costs of and incidental to the
application to be assessed.

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Mr Freeman is there anything else that you wanted to say today? No, all right. Nothing else?

APPLICANT: No.

HIS HONOUR: Thank you. Mr Perkins, anything further you wanted to raise?

MR PERKINS: No, thank you, your Honour.

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Account Ref: 30078330/10/10
Reference: 4220/300550/FREL
Issued: 19/10/2003

For enquiries please phone : 0743276122

PTY LTD
1970
E GLE 4680

Sold: AUCTION
Sale: BRADSHIRE STORE SALE 10/1
Sale Date: 10/10/2003
Account: LIVESTOCK VENDOR

A C C O U N T S A L E

QTY DESCRIPTION	AMOUNT	GST	TOTAL
1 COW 338kg @ 1000/kg	338.00		338.00
1 Cattle	385.00		385.00
	385.00		385.00

T A X I N V O I C E

	AMOUNT	GST	TOTAL
INTERIOR TRANSPORT PTY LTD	13.40	1.24	13.64
ation	13.40	1.35	14.63
Transaction Lev.	3.80		3.80
Post	1.00	.10	1.08
1111	.70	.07	.77
111	3.80	.36	4.29
	35.70	3.38	39.01

USE RETAIN FOR YOUR TAXATION RECORDS * NET PROCEEDS 3945.97

LEMENT : Settlement will be made on a separate advice.

0214



A.B.N. 51 194 636 183

Level 30, Central Plaza One
345 Queen Street
Brisbane Qld 4000
Australia

GPO Box 223
Brisbane Qld 4001
Australia

Telephone: +61 (7) 3233 3111
Facsimile: +61 (7) 3220 0074
DX 201 Brisbane
www.kpmg.com.au

To
Organisation The Manager
Primac Elders Limited,
Rockhampton
Fax (07) 4922 2218

From P A Hennessy
Department Corporate Recovery

Telephone (07) 3233 9332
Fax (07) 3220 0082

Copy to Emma Costello, Mallesons
Fax: (07) 3244 8999

Date 8 January 2003

Ref 205 Fax PE APL-BT-2PAH51

Page 1 of 4

Subject P A Hennessy and G E Grady appointed as Receivers and Managers of the property of Lynton Charles Freeman pursuant to Registered Bill of Mortgage 602799207 and Registered Stock Mortgage 60026/98

I confirm the discussion between Peter Lloyd and Brian Dawson on 6 January 2003 advising that approximately 90 head of grown cattle plus 22 calves will be available for loading at Dukas Plains, Taroom at 8:00am on Thursday for transport to the Gracemere Saleyards for sale on Friday, 10 January 2003. We understand that you are arranging transport by way of four decks.

All cattle have been numbered by the Queensland Police as they have been subject to an ownership dispute. Attached is our ownership assessment as best we can determine from the copy of the Livestock Valuation dated 2 August 2001 as prepared by Richard Thomson and Virgil Kenny for the Queensland Police Force.

Would you please record the individual beast numbers in each pen, as these cattle are still subject to a claim by Mr Freeman.

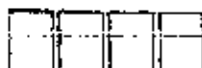
Please forward the cheque, together with account/sales which clearly describe each head (by brand number) sold in each pen.

Yours faithfully

P A Hennessy
Receiver and Manager

Enclosures

0209



KPMG, the KPMG network and member firms are not a partnership, but a network of independent member firms affiliated with the KPMG network, a Swiss entity known as KPMG Network, a Swiss entity known as KPMG Network.

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Waybill

A 5601656

WARNING

Penalties apply for knowingly entering false or misleading information on a waybill or when stock are removed from the Cattle Tick Infected Area.

Any journey involves moving stock from the Cattle Tick Infected Area you will require a permit from a Stock Inspector as a waybill. The stock may also require inspection and/or treatment for cattle tick. Contact the nearest Stock Inspector.

Name and address of person taking delivery of the stock	4. Name of person or company taking delivery of the stock	PRIMEC TELECOM LTD
	5. Full address of destination of the stock	GROCEMERE SALISBURY
Address of place of origin of stock	Put "and return" if applicable	
	6. Name of person in charge of the stock being travelled	POSTER'S TRANSPORT
Approved Property of the stock	Telephone	(07) 49 331661
	7. Date movement commenced	9/11/03

Details of Stock (Full and accurate details of the Stock must be supplied below)

Breed	Description/Sex	Horse & Cattle Brand or Sheep & Goat Brand	Approved Tail Tag/Ear Tag Number (if different from number shown in 3 above)	Cattle Earmark or Sheep & Goat Earmark
BRAH X	COW & CALVES	PP		
BRAH X	M	PP		
BRAH X	~~HEIFER~~ F	PP		

Name (please print) PETER RYAN	I am the ☐ Actual owner of the Stock ☒ Occupier of the holding of origin of the stock ☒ Authorised agent of the owner
07) 49971288	Signature and Date: P. Ryan 9/11/03

Issue	Name and address of Inspector who issued the travel permit	Travel Permit Number	Date of Issue
is to be completed if travel permit has for the movement.			1/1/03
			0210



Elders Limited
ABN 79 034 046 121

1 Limited
230404511
Melbourne Rd
WILTON QLD 4730

ACCOUNT REP/INT 00000000
Account No: 4001224441-001
Account IDN: 477331810000/00
Reference: 4000/00000000000000
Issued: 10/01/2003

For enquiries, please phone : 0749073188

RECEIVER & MANAGER:
N D FREEMAN
3001 STREET
BANE QLD 4000

Sale: AUCTION
Sale: FREEMAN'S STOCK SALE 1911
Sale Date: 10/01/2003
Full Name: LIVERPOOL VENDOR

ACCOUNT SALE

QTY	DESCRIPTION	AMOUNT	GST	TOTAL
12	Steers 700kg @ 147.50/kg 50, 10, 31, 34, 31, 40, 70, 74, 80, 84, 81, 82, 81, 1, BRAND UNIDENTIFIED	11011.50	1108.15	12119.65
12	Steers 660kg @ 152.90/kg 80, 07, 07, 10, 80, 0, 12, 17, 21, 21, 10, 81, 72, 10, 80, 31, 37, 2, 85,	10381.50	1052.15	11433.65
2	11 1000kg @ 112.81/kg 21, 12,	1139.51	115.59	1255.10
1	Steers 1000kg @ 140.80/kg 6, 72, 17, 10,	2431.04	243.60	2674.64
1	Steer 450kg @ 100.00/kg BALLY STACY (BRAND NOT VISIBLE)	555.20	55.52	610.72
1	Steer 315kg @ 129.20/kg 80,	375.74	37.57	413.31
10	Cows 375kg @ 134.20/kg 7, 02, 21, 77, 87, 21, 70, 17, 87, 08,	3870.00	387.21	4257.21
11	Cows @ 2417 @ 4400 91, 82, 30, 14, 100, 81, 01, 81, 07, 70, 10, 107 UNIDENTIFIED 100, 070, 817, 301, 310, 301, 330, 333, 10 NOT BRANDED	4800.00	480.00	5280.00
2	Cows 1000kg @ 110.11/kg 48, 85,	1101.24	110.12	1211.36
1	Cow 350kg @ 71.80/kg GUESSBET COW 100 BRAND	277.68	27.77	305.45
12	Calves 570kg @ 140.21/kg 17, 11, 18, 12, 101, 80, 70, 0, 80, 81, 80, 86, 31,	3362.32	340.21	3702.53
2	Calves 1372kg @ 143.21/kg 135, 304, 270, 280, 281,	1860.70	188.37	2049.07
12	Steers 3000kg @ 132.00/kg 350, 320, 210, 240, 220, 210, 271, 207, 227, 310, 330, 340, 350,	4000.00	400.00	4400.00
1	07 Cattle	33385.00	3338.50	36723.50
-		33385.00	3338.50	36723.50

continued next page

0211



00000000
 00000000
 00000000
 00000000

1444 1444 REPORT 1444-0000
 Account No: 4001321441-001
 Account Ref: 4770010120013A
 Reference: 400310000000147ND
 Issued: 02/01/2002

For enquiries, please dial : 0740378100

RECEIVED 2 MANAGERS
100 FREEWAY
LIN STREET
LOS ANGELES 4008

Date: 01/01/2000
 Sale: GRADEWATER STORE SALE 12/1
 Call Date: 12/01/2000
 Rep: LIVERSTOCK WENDOS

ADDITIONAL PAGE

DATE RECEIVED FROM	AMOUNT	DATE	TOTAL
10/1/78	100.00	10/1/78	100.00
10/2/78	50.00	10/2/78	150.00
10/3/78	25.00	10/3/78	175.00
10/4/78	75.00	10/4/78	250.00
10/5/78	125.00	10/5/78	375.00
10/6/78	175.00	10/6/78	550.00
10/7/78	225.00	10/7/78	775.00
10/8/78	275.00	10/8/78	1050.00
10/9/78	325.00	10/9/78	1375.00
10/10/78	375.00	10/10/78	1750.00
10/11/78	425.00	10/11/78	2175.00
10/12/78	475.00	10/12/78	2650.00
10/13/78	525.00	10/13/78	3175.00
10/14/78	575.00	10/14/78	3750.00
10/15/78	625.00	10/15/78	4375.00
10/16/78	675.00	10/16/78	5050.00
10/17/78	725.00	10/17/78	5775.00
10/18/78	775.00	10/18/78	6550.00
10/19/78	825.00	10/19/78	7375.00
10/20/78	875.00	10/20/78	8250.00
10/21/78	925.00	10/21/78	9175.00
10/22/78	975.00	10/22/78	10150.00
10/23/78	1025.00	10/23/78	11175.00
10/24/78	1075.00	10/24/78	12250.00
10/25/78	1125.00	10/25/78	13375.00
10/26/78	1175.00	10/26/78	14550.00
10/27/78	1225.00	10/27/78	15775.00
10/28/78	1275.00	10/28/78	17050.00
10/29/78	1325.00	10/29/78	18375.00
10/30/78	1375.00	10/30/78	19750.00
10/31/78	1425.00	10/31/78	21175.00
11/1/78	1475.00	11/1/78	22650.00
11/2/78	1525.00	11/2/78	24175.00
11/3/78	1575.00	11/3/78	25750.00
11/4/78	1625.00	11/4/78	27375.00
11/5/78	1675.00	11/5/78	29050.00
11/6/78	1725.00	11/6/78	30775.00
11/7/78	1775.00	11/7/78	32550.00
11/8/78	1825.00	11/8/78	34375.00
11/9/78	1875.00	11/9/78	36250.00
11/10/78	1925.00	11/10/78	38175.00
11/11/78	1975.00	11/11/78	40150.00
11/12/78	2025.00	11/12/78	42175.00
11/13/78	2075.00	11/13/78	44250.00
11/14/78	2125.00	11/14/78	46375.00
11/15/78	2175.00	11/15/78	48550.00
11/16/78	2225.00	11/16/78	50775.00
11/17/78	2275.00	11/17/78	53050.00
11/18/78	2325.00	11/18/78	55375.00
11/19/78	2375.00	11/19/78	57750.00
11/20/78	2425.00	11/20/78	60175.00
11/21/78	2475.00	11/21/78	62650.00
11/22/78	2525.00	11/22/78	65175.00
11/23/78	2575.00	11/23/78	67750.00
11/24/78	2625.00	11/24/78	70375.00
11/25/78	2675.00	11/25/78	73050.00
11/26/78	2725.00	11/26/78	75775.00
11/27/78	2775.00	11/27/78	78550.00
11/28/78	2825.00	11/28/78	81375.00
11/29/78	2875.00	11/29/78	84250.00
11/30/78	2925.00	11/30/78	87175.00
12/1/78	2975.00	12/1/78	90150.00
12/2/78	3025.00	12/2/78	93175.00
12/3/78	3075.00	12/3/78	96250.00
12/4/78	3125.00	12/4/78	99375.00
12/5/78	3175.00	12/5/78	102550.00
12/6/78	3225.00	12/6/78	105

SECRET

501117 801 10131

INTERE TRANSPORT LTD	1192.82	117.51	1310.33
Subtotal	1363.51	104.15	2355.58
Net contract price	227.32		539.38
Log Fees	178.19	17.46	192.80
Oil Costs	27.50	5.79	74.59
Taxes	308.58	60.95	418.55
	1683.61	388.37	4310.26

0212

3685 RETURN ON TOTAL INVESTMENT DEBITORS *	NET PROCEEDS	AD7, 221, 50

[illegible]

HIS HONOUR: You're free to go. We'll have a short adjournment before the next witness.

MR CASH: Thank you, your Honour.

THE COURT ADJOURNED AT 10.56 A.M.

10

THE COURT RESUMED AT 11.21 A.M.

HIS HONOUR: Mr Cash?

MR CASH: Your Honour, I call Norma Desmai Purser.

20

NORMA DESMAI PURSER, ON AFFIRMATION, EXAMINED VIA TELEPHONE LINK:

MR CASH: Mrs Purser, it's the Prosecutor. Can you hear me okay?-- Yes.

30

All right. Now, can I just ask you to state your full name again, please?-- Norma Desmai Purser.

All right. And you're living in the Bundaberg area now?-- Yes.

All right. Now, do you know a person called Lynton Freeman?-- Yes.

40

Can you tell us when you came to first meet in?-- 1990.

And whereabouts was that?-- At Kalpowar.

All right. Now, during the time that - well, how long did you know Mr Freeman for? Do you still see him nowadays?-- Very rarely.

All right. Now, what was your relationship with Mr Freeman after you met him in 1990? Were you just friends or something more?-- We were in a de facto relationship from 1990 till 1996.

50

Okay. Now, during that time do you know whereabouts it was that he lived?-- Glassfordvale.

And what was Glassfordvale?-- Glassfordvale Station.

All right. Now, would you visit there or did you live there

at any stage?-- I lived there from 1993 until 1996.

All right. Now, where there cattle that were run on the property?-- Yes.

Were you involved yourself in working any of the cattle?-- Yes.

All right. Now, did you yourself own any of cattle that were on - that were on the property?-- [indistinct] of cattle when - during the 1991, '92 drought when the poddies were starving. I literally saved their lives and they were considered mine. 10

So, you took over and reared some poddy calves-----?-- I reared the poddies-----

-----did you?-- -----when they were starving.

Right. Are you able to say how many that were - there were?-- I reared 12 heifers and six steers during - I just reared----- 1

And what came of the heifers?-- Pardon?

What - what ended up happening to the heifers?-- As far as I know the heifers should still be at Glassfordvale. They'll be cows now. There's also a further four that I was - got from Bob Robertson.

Okay. Now, can you tell us whether those cattle were brand and, if so, what brand?-- They were branded OLQ on the neck or high on the right shoulder and----- 30

Right?-- -----that was to recognise my poddies.

Okay. Now, were you aware of any other brand that might have been used on the property whilst you were there?-- No.

How-----?-- OLQ.

All right. How about after you left the property in 1996, was there any other brand that you know that might have been associated with Glassfordvale?-- After I left Glassfordvale there - there was some sort of agreement between Lyn and Pete Bjorkelund but I don't know what it was all about. 40

All right. Do you know if it involved a brand though?-- I believe that Lyn Freeman bought Peter's brand off him after some time. Right. Do you have any idea what the brand was or any of - any part of the brand?-- No, only that it had a "P" and a "B" in it. I'm not sure of the brand. 50

Okay. Now, you've mentioned Peter Bjorkelund. Did he at any stage have any business dealings with Mr Freeman?-- I really don't know what went on between them, only that when Peter left he needed somewhere to put his cattle and they were brought down to Lyn's property.

Are you able to say when that was?-- Not exactly sure. It

could have been '95 or '96.

And do you know how many cattle in total would have been involved in - of Peter Bjorkelund's on Glassfordvale?-- I'm not exactly sure of those numbers either. I have said seven or eight. It could have been more or less.

Could it have been a lot more or - or a lot less or are we talking only a few either way?-- Well, I'm only going on what I used to see roaming round at Many Peaks and I was - I - I'm not sure. 10

Okay?-- I'd say probably - maybe eight to 10 at the most. I'm not sure.

Okay. Now, were they all cows or were there bulls and steers as well?-- There were cows, some poddies and a bull.

All right. Are you able to say how many were cows?-- No, not exactly. 20

Right. Well, you said before there might have been as many as eight or 10, is it possible half were cows or - more or less?-- Again, I'm not sure. I only saw them when they were roaming around at Many Peaks.

Okay. Now, did they have a - a brand on them when they came onto Glassfordvale?-- I think they had Peter's brand on them. 30

All right. Okay. Now, the - the - the poddy calves you mentioned that you raised, I think you said that some of those heifers stayed on the property to your knowledge?-- Yes.

All right. Thank you, your Honour, I have nothing further.

HIS HONOUR: Yes, Mr Farrell?

CROSS-EXAMINATION: 40

MR FARRELL: Is it Mrs Purser?-- Yes.

My name is Jack Farrell. I'm defence counsel, Mrs Purser. I'll just ask you a couple of questions and I promise I won't keep you very long?-- Thank you. 50

Mrs Purser, during the time that you were on the property there were also children of Mr Freeman on the property?-- Yes.

And those children had cattle also?-- Yes, they did.

Okay. So there were some cattle put there from Mr Bjorkelund that - the local policeman-----?-- Yes.

-----and there was - the children - who was the oldest of the children? Mr Freeman-----?-- That had the cattle? Adam.

Adam was the oldest?-- Well he was - he was the eldest - well I'm not sure. When I went there, Adam and Kristen had cattle, I think Janine may have come in to some when she lived with us.

All right. So who's the oldest of the children? Is it Janine?-- Well Pamela's the eldest, but we didn't have anything to do with Pamela. Janine's the second, Adam is the son, and then Kristen is the youngest.

All right. Perhaps we could do them in order of seniority. What about Janine, did she have any cattle at all?-- I'm not sure what - what happened there. Janine used to do work in yards and mustering, and by way of payment, Lyn often branded pottys for the cattle - for the children, sorry.

For the children. Well how many cattle did Adam have while you were on the property?-- When I arrived, Adam was about 10 years old. He did have a - a number of cattle which were - which were to breed up for - to pay for uni years. So he really could have had quite a few, but I am not sure of the number.

Mrs Purser, quite a few is a rather subjective - and I realise that you're doing the best you can, but can you do any better than just quite a few? Can you give us any idea of numbers?-- I think when I arrived there Adam would have had about 15 to 20 branded in a certain spot for him.

And, of course, they'd breed up as time goes on, wouldn't they?-- Well that's right. They were supposed to.

Would you - do you know much about cattle at all?-- Yes, but - well, yes.

Would you accept that the numbers in cattle would double about every three years?-- Well if you've got 12 breeders, you should, at least, get 10 pottys each year-----

Yes?-- -----off 12 breeders. Nine or 10.

Right. And that doesn't take long and you've got quite a number?-- That's right.

Right. Okay, that's Adam, what about Kirsten-----?-- Kristen.

Kristen, sorry. I keep getting that wrong. I'm sorry. Kristen - how many did Kristen have? Can you tell us?-- Well Kirsten didn't have many, but Lyn was starting to brand two or three for her at times when the muster was on.

And this was during the period of '90 to '96 that you were there?-- Around - yes.

So by '99/2000, quite possibly, there's a lot more cattle than - than you ever saw owned by the children?-- Well I don't know what happened after I left, but if the numbers were building up, there should have been quite a few.

All right. And how many did you have?-- I started off with 12 heifers, and three heifers that I got from Bob Robertson, so it would have been 15 cows essentially.

And how many of them remained when you left the property?-- Twelve.

And you left in 1996?-- Yes.

And the 12 that you had when - when you left, they were female cattle?-- That's right.

Breeding cattle, or eventually be breeding cattle?-- That's right.

Yes. And with regard to the numbers of cattle that - that came to be branded with some other brand other than the CLQ, you can't assist us at all?-- No, I'm sorry.

No?-- No, I wasn't living there.

And the - the children's cattle and your cattle were branded how?-- I think Adam's cattle were branded on the right rump. Kirsten's, I'm not sure. Mine were branded on the neck or high on the shoulder.

*Paul
well
confirming*

But they were all branded with the CLQ?-- That's right.

Just in different positions so you'd know which family member owned them?-- That's right.

What about Mr Freeman's own cattle, where were they - I take it they were branded with the CLQ?-- On the ribs.

And they were on the ribs?-- Plus an earmark.

Oh, yes. And what about your cattle and the Children's cattle in regard to an earmark?-- I'm not sure.

Not-----?-- A few of mine were accidentally earmarked, but we weren't going to earmark some, but some of them were accidentally earmarked.

Accidentally. All right. Thank you, Mrs Purser.

HIS HONOUR: Any questions?

MR CASH: I have nothing further, your Honour. Might the witness be excused?

WITNESS EXCUSED

MR CASH: Yes.

HIS HONOUR: We've got two categories that are on this. One is where they've branded - one with - there's a couple with a cross-brand, and there's this other 11 possibly. Is there any other evidence apart from - from that - from Ms Green which - I must say I found her evidence helpful in part but just unhelpful in other parts from my understanding how this document relates to her evidence but-----

MR CASH: Well once-----

HIS HONOUR: Am I doing an injustice to the Crown case to say that at this - this stage it's going to be difficult to - to get more than you know, 10 to 20 head?

MR CASH: Well there is a lack of clarity, I'd accept your Honour, at this point.

HIS HONOUR: I've added up those eight head that are clear on this - that have got the GLQ brand contrary to the stock mortgage, they shouldn't have been shifted, et cetera. Now, they've already been branded or they have the original brand there or they've been cross-branded, but there's a figure of \$5,881. Is there any justice in this case if - if Mr - if Mr Farrell considers the position given those remarks, or whether the Crown can look to see what other evidence is going to be called, tell me what evidence may be called to bolster the numbers-----

MR CASH: Your Honour-----

HIS HONOUR: -----and if not both of you consider it?

MR CASH: If I might just make this point, your Honour, before your Honour adjourns. It's also part of the Crown case that the numbers of VPB cattle at Skeleton Creek were such that it's not reasonable that they could all have come from what the Crown alleges is the limited number of VPB cattle at Glassfordvale.

HIS HONOUR: Well, there was - there were others at Deception as well.

MR CASH: Yes.

HIS HONOUR: It appears on lease, they might have come from there.

MR CASH: There's going to be - that's certainly going to be one of the - the main areas of dispute as to how many VPB cattle were available at Glassfordvale to produce cattle.

HIS HONOUR: Well just - just to date and I only read these things as - understand them as we go. These - to date on this document there's eight head that can be specifically identified?



IN THE HIGH COURT OF AUSTRALIA

Office of the Registry
Brisbane

No B96 of 2001

Between -

LYNTON NOEL CHARLES FREEMAN

Applicant

and

NATIONAL AUSTRALIA BANK
LIMITED

Respondent

Application for special leave to appeal

KIRBY J
HEYDON J

TRANSCRIPT OF PROCEEDINGS

FROM BRISBANE BY VIDEO LINK TO CANBERRA

ON FRIDAY, 14 MARCH 2003, AT 12.46 PM

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340

Freeman

1

14 3 03

262

330

MR P.E. GORMAN: May it please the Court, I appear on behalf of the applicant. (instructed by Lynton Noel Charles Freeman, applicant)

5 **MR I.R. PERKINS:** May it please the Court, I appear for the respondent. (instructed by Mallesons Stephen Jaques)

KIRBY J: Yes, Mr Gorman.

10 **MR GORMAN:** Your Honours, in relation to this matter I would like first of all to ask you to omit from our application of the applicant's reply to the respondent's supplementary summary of argument a paragraph at page 88 of the record, paragraph 3, where it is said that the respondent has made certain admissions. That is not the case.

15 **KIRBY J:** Yes.

MR GORMAN: It will be from the start of paragraph a to the fifth line, which should be crossed out. Then it would start at: "Breaches of the
20 *Trade Practices Act*".

KIRBY J: Yes, very well.

MR GORMAN: It should be left then, but the other be omitted.
25

KIRBY J: We will delete those.

MR GORMAN: Thank you. Your Honours, this case really revolves around a matter of discovery of documents specifically in relation to a mediation which took place in an endeavour to resolve the dispute between
30 my client and his Bank. My client, although represented at the mediation agreement, you will notice that in the Court of Appeal he represented himself and attempted to overthrow the mediation agreement because of the fact that on the day the mediation agreement was signed, he had been, as it
35 were, psychologically overcome by the effects of what went on.

The Court of Appeal here in Queensland did not give any credence to that matter, nor did the single judge before whom the trial started, but in point of fact, your Honours, if one looks very carefully at the mediation agreement, dated 4 December 1997, there is a clause which does not permit
40 my client to bring any action and is the usual type of clause in mediation agreements where one is estopped from bringing any further actions. However, in relation to this mediation agreement and that which went before it, it is my submission to your Honours that it was obtained on a basic false premise. There had been no proper discovery at the time of
45 mediation to show how much my client in fact did owe the Bank. The

341

mediation agreement itself does not show any amount of money owed to the Bank.

50 At the trial of this matter before his Honour Judge Ambrose in our
Supreme Court, Judge Ambrose relied very heavily upon a certificate
produced by the Bank, a certificate of debt, which was exhibit 3 in that
proceeding, which was for the amount of \$1,418,695.61. Between the
mediation and the time of the trial, my instructions are there were no Bank
55 statements sent to my client and he was unable until the trial to determine
what indeed was actually required to pay off the Bank.

KIRBY J: I realise all this, Mr Gorman, but you seem to be going over
the facts again as if this were a third level of trial court. That is not our
60 function. You have to show error on the part of the Court of Appeal, and
moreover, you have to show that something else lifts the case up into one
which the High Court of Australia will take on. You have to do all that in
the face of what appear to have been credibility findings which have been
made against your client, which makes your task an extremely difficult one,
65 as I am sure you know.

MR GORMAN: Yes, I do, your Honour.

KIRBY J: So what is the special leave point in the case?
70

MR GORMAN: What I was moving up to and trying to build a
background on is the fact that, although my client may well have owed the
Bank some money, he did not know exactly how much. That is, the
quantum of the judgment is in doubt. The quantum of the judgment and the
75 Bank's attitude to various matters in relation to this are similar to the rare
occasions when this Court will permit a retrial where there is a failure to
comply fully with an order for discovery of documents.

I draw your Honours' attention to the case of *Commonwealth Bank
80 of Australia v Quade & Ors* (1991) 178 CLR 134. In the *Quade Case*, there
were documents discovered to the respondent in the High Court after the
single judge had delivered his verdict. Because of it, eventually there was a
determination by the Court as to where and upon what occasions will fresh
evidence, as it were, be allowed to appear and to cause this Court to move
85 the approval of special leave. Your Honours of course, I recognise, will be
aware of this case. However, I will read part of the headnote, which is
taken from the Court's judgment. It reads:

In determining whether to order a new trial, the court may take
90 account of a variety of factors including, in addition to general
considerations relating to the administration of justice, the degree of
culpability of the successful party, any lack of diligence by the

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95

unsuccessful party, and the extent of any likelihood that the result would have been different if the order had been complied with and the undisclosed material had been made available. While the appellate court does not have to be persuaded in such a case that it is "almost certain" or "reasonably clear" that an opposite result would have been produced, the question of whether the verdict should be set aside will almost inevitably be answered in the negative if it does not appear that there is at least a real possibility that it would have been.

100

105

Therefore, my submission to your Honours through the various outlines and the arguments submitted is the fact that the non-disclosure by the Bank's solicitors had an effect upon the first trial and on the Court of Appeal, and therefore - - -

110

KIRBY J: Where did Justice White deal with this question, this precise question, *Quade*?

MR GORMAN: It was not raised in the Court of Appeal.

115

120

KIRBY J: Quite. Now, why would we grant special leave to allow this matter to be raised for the first time in the High Court of Australia? In particular, where, in order to examine the applicability of *Quade*, you would have to go into all the detailed factual questions in the case and ultimately, it would seem to me, would run up in any event against the barrier of the line of authority illustrated by *Devries* and *Abalos* and so on, and in any case would reach the end of that journey with a conclusion that perhaps the matters that were not discovered might have been relevant to the quantification but not to the ultimate liability of your client to the Bank.

125

MR GORMAN: Yes, your Honour has it exactly. However, by way of explanation, my client appeared on his own in the Court of Appeal - - -

130

KIRBY J: I realise that, and we would endeavour to prevent a miscarriage of justice if we can, but you have to show error. If a point is not raised in the court below, where can there be the error that the court has made in order to get your leg in our particular door? It is a door that is always almost shut in cases of this kind where there are just factual considerations depending on credibility questions. If you add to that the ingredient that you did not raise the point in the Court of Appeal, it is pretty hard to get into this Court, I have to tell you.

135

MR GORMAN: Yes, I understand so, your Honour. My client instructs me that at the Court of Appeal he attempted to get in certain extra evidence which would have in some part made a difference with regard to the quantum of the original judgment. There was another part of evidence

140 which he tried to get in with regard to part of a parliamentary inquiry into
banks through an affidavit, and I can understand why that was not let in.
Your Honours, the arguments set out with regard to the outlines for this
Court cover the matter completely, and I am unaware that I can assist
your Honours any further. Those are my submissions.

145 **KIRBY J:** Thank you. Mr Perkins, the Court does not need your
assistance in this matter.

MR PERKINS: Thank you, your Honour.

150 **KIRBY J:** I will ask Justice Heydon to give the reasons for the Court.

HEYDON J: On 11 October 2000 in the Supreme Court of Queensland
Mr Justice Ambrose made an order for possession of certain real property
and an order that the applicant pay money owed to the Bank. The Bank's
155 claim initially rested on the terms of the bill facility and mortgage. After
proceedings began, the parties agreed in a deed of mediation that the Bank
should have vacant possession of the property if certain conditions were not
satisfied. They were not satisfied.

160 The applicant resisted recovery under the deed of mediation and the
bill facility because of alleged oppressive and unconscionable conduct on
the part of Bank officers. The applicant relied on a contention that his
medical condition caused mental incapacity. After a four-day trial, at which
the applicant was represented, Mr Justice Ambrose made detailed factual
165 findings rejecting the applicant's contentions.

The applicant appealed to the Queensland Court of Appeal. He
represented himself. His primary arguments were that Mr Justice Ambrose
had erred in his factual findings. Justice White analysed the facts in detail
170 and rejected the applicant's contentions. Justices Davies and Thomas
agreed with her. The court also rejected complaints about the trial judge's
refusal of an adjournment, about the rejection of a documentary tender and
about the costs order he made.

175 Some of the matters now raised by the applicant were not raised
below and some relate to procedural issues not meriting the grant of special
leave.

180 One matter on which particular emphasis was placed in oral
argument concerned an alleged failure of the Bank to have given proper
discovery of documents. The matter was not raised in the Court of Appeal
and there is, in consequence, no finding and no affidavit evidence
establishing the facts necessary to underpin the contention. In any event, as
the matter was argued, it appears to affect only questions of quantification.

185 The case is, accordingly, not a suitable one for the ventilation of that
particular issue in relation to which the applicant relied on the principles
stated in *Commonwealth Bank of Australia v Quade* (1991) 178 CLR 134.

190 While not all the points now raised are factual in character, there is
no point in granting special leave unless there are arguable prospects of
overturning the concurrent factual findings of the courts below. There are
no prospects since no arguable error has been demonstrated in any of the
reasoning of the courts below. Special leave to appeal is refused with costs.

195

AT 1.02 PM THE MATTER WAS CONCLUDED

345



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The Director
Zinace Pty Ltd
PO Box 1476
Gladstone Qld 4680

Our ref: 0188 Mr Zinace 27AH53

Contact: Shane O'Reilly

17 October 2000

Dear Sir

P A Hennessy and G E Grady appointed as Receivers and Managers of the property of Lynton Charles Freeman pursuant to Registered Bill of Mortgage 602799207 and Registered Stock Mortgage 00026/98

My partner, Geoffrey Earl Grady, and I were appointed Receivers and Managers of the property of "Glassford Vale" on 11 October 2000. The appointment covers the property and all livestock depastured on same including horses and cattle branded OLQ.

It is claimed by Mr Freeman that Zinace Pty Ltd is the beneficial owner of some of the cattle presently pastured on "Glassford Vale" with the brand VFB.

To assist me to determine if ownership exists I request that you make written claim to this office with regard to any livestock that you may wish to make claim to.

In your correspondence please supply me with the following information to support your ownership claim:

- the earmark of the livestock in question;
- the brand and its position on the livestock on question; and
- proof of ownership of the livestock in question, ie. full documentation on how and when they were acquired including from whom, details and dates of payment, when they were depastured on "Glassford Vale", and what agistment agreements were entered into with Mr Freeman.

Please forward your ownership claim to this office at your earliest convenience, so that I may settle all ownership claims prior to 30 October 2000.

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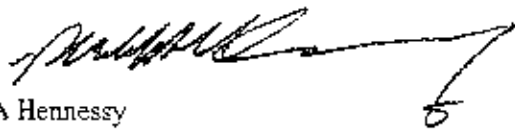


Zinace Pty Ltd
P A Hennessy and G E Grady appointed as Receivers and Managers of the property
of Lynton Charles Freeman pursuant to Registered Bill of Mortgage 602799207 and
Registered Stock Mortgage 90626798
17 October 2000

It is my intention to commence mustering at "Glassford Vale" no later than on Monday,
30 October 2000 and pending acceptance of proof of ownership by me, I will arrange to have
your cattle yarded in the Station yards for collection by you or a nominated representative.

If you have any further queries in regard to the above matters, please contact Shane O'Reilly on
telephone number (07) 3233 9731.

Yours faithfully



P A Hennessy
Receiver and Manager

0187



ABN 51 154 680 133

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Level 30, 345 Queen Street
Brisbane Qld 4000
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Brisbane Qld 4001
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DX 201 Brisbane
www.kpmg.com.au

Norma
c/- Lynton Freeman
PO Box 1476
Gladstone Qld 4680

Our ref: 009 LirNF 2PAH55.doc

Contact: Shane O'Reilly

18 October 2000

Dear Norma

P A Hennessy and G E Grady appointed as Receivers and Managers of the property of Lynton Charles Freeman pursuant to Registered Bill of Mortgage 602799207 and Registered Stock Mortgage 00026/98

My partner, Geoffrey Earl Grady, and I were appointed Receivers and Managers of the property of "Glassford Vale" on 11 October 2000. The appointment covers the property and all livestock depastured on same including horses and cattle branded OLQ.

It is claimed by Mr Freeman that you are the beneficial owner of some of the cattle, even though some may be branded with the station brand OLQ.

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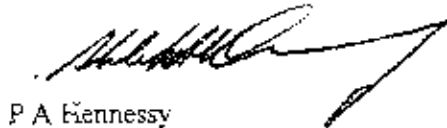
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Norma
P A Hennessy and G F Grady appointed as Receivers and Managers of the property
of Linton Charles Freeman pursuant to Registered Bill of Mortgage 602799207 and
Registered Stock Mortgage 00026/9
18 October 2000

If you have any further queries in regard to the above matters, please contact Shane O'Reilly on telephone number (07) 3233 9731.

Yours faithfully



P A Hennessy
Receiver and Manager



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Adam
c/- Lynton Freeman
PO Box 1476
Gladstone Qld 4680

Our ref: 011 Ltr AF7PAH53.doc

Contact: Shane O'Reilly

18 October 2000

Dear Adam

P A Hennessy and G E Grady appointed as Receivers and Managers of the property of Lynton Charles Freeman pursuant to Registered Bill of Mortgage 602799207 and Registered Stock Mortgage 00026/98

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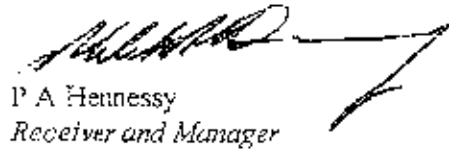


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Kristin
P A Hennessy and G E Grady appointed as Receivers and Managers of the property
of Lynton Charles Freeman pursuant to Registered Bill of Mortgage 602799207 and
Registered Stock Mortgage 00026/9
18 October 2000

If you have any further queries in regard to the above matters, please contact Shane O'Reilly on telephone number (07) 3233 9731.

Yours faithfully


P A Hennessy
Receiver and Manager

0191

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Kristin
c/- Lynton Freeman
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Gladstone Qld 4680

Our ref 012 Ltr KF 2PAH53 doc

Contact Shane O'Reilly

18 October 2000

Dear Kristin

P A Hennessy and G E Grady appointed as Receivers and Managers of the property of Lynton Charles Freeman pursuant to Registered Bill of Mortgage 602799207 and Registered Stock Mortgage 00026/98

My partner, Geoffrey Earl Grady, and I were appointed Receivers and Managers of the property of "Glassford Vale" on 11 October 2000. The appointment covers the property and all livestock depastured on same including horses and cattle branded OLQ.

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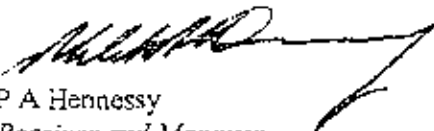
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18 October 2000

If you have any further queries in regard to the above matters, please contact Shane O'Reilly on
telephone number (07) 3233 9731.

Yours faithfully


P A Hennessy
Receiver and Manager

0193

SUPREME COURT OF QUEENSLAND

CITATION: *Freeman v National Australia Bank* [2006] QCA 329

PARTIES: **LYNTON NOEL, CHARLES FREEMAN**
(plaintiff/appellant)
v
NATIONAL AUSTRALIA BANK LIMITED
ACN 004 044 937
(defendant/respondent)

FILE NO'S: Appeal No 219 of 2006
SC No 5438 of 2005

DIVISION: Court of Appeal

PROCEEDING: General Civil Appeal

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 1 September 2006

DELIVERED AT: Brisbane

HEARING DATE: 21 July 2006

JUDGES: McMurdo P, Jerrard and Holmes JJA
Separate reasons for judgment of each member of the Court,
each concurring as to the orders made

ORDER: 1. Appeal dismissed
2. Appellant must pay the respondent's costs of the appeal
3. Leave granted to parties to make written submissions
within 14 days of the publication of this judgment as to
whether costs should be assessed on the standard or the
indemnity basis

CATCHWORDS: PROCEDURE SUPREME COURT PROCEDURE --
QUEENSLAND -- JURISDICTION AND GENERALLY --
GENERALLY -- eight year history of litigation between
appellant and respondent -- trial judge ordered under r 293
Uniform Civil Procedure Rules 1999 (Qld) that the remaining
parts of the appellant's pleadings be struck out because there
was no real prospect of success and there was no need for a
further trial -- trial judge ordered costs against appellant --
whether appellant's pleadings sought to re-litigate issues
decided in prior court proceedings and therefore constituted
an abuse of process

PROCEDURE -- SUPREME COURT PROCEDURE --
QUEENSLAND -- JURISDICTION AND GENERALLY
GENERALLY -- appellant was acquitted of charges of
stealing cattle that belonged to the respondent --appellant

alleged that an employee of the respondent pressured the police to bring criminal proceedings against the appellant – trial judge held evidence did not establish any complicity by the respondent in the unsuccessful prosecution – trial judge held police had exercised independent discretion in deciding to prosecute the appellant – trial judge held appellant’s claim about malicious prosecution had no prospects of success and struck out the claim – whether the trial judge erred in striking out this claim about malicious prosecution

Bankruptcy Act 1966 (Cth), s 58

Uniform Civil Procedure Rules 1999 (Qld), r 668

Balson v State of Queensland & Anor (2002) QSC 419; SC No 6325 of 2001, 12 December 2002, cited

Davis v Gell (1924) 35 CLR 275, considered

D’Orta-Ekenaike v Victoria Legal Aid (2005) 79 ALJR 755; [2005] HCA 12, followed

NAB v Freeman [2001] QCA 473; Appeal No 9718 of 2000, 2 November 2001, cited

Freeman v NAB [2006] QCA 260; Appeal No 219 of 2006, 18 July 2006, cited

Freeman v National Australia Bank Ltd (unreported, HCA, Kirby and Heydon JJ, B96 of 2001, 14 March 2003), cited

Ivory v Telstra Corporation Ltd & Anor [2002] QCA 457; Appeal No 4059 of 2001 and Appeal No 4423 of 2001, 1 November 2002, followed

Mahon v Rahm (No 2) [2000] 1 WLR 2150, cited

National Australia Bank Ltd v Freeman [2000] QSC 295; SC No 4013 of 1998, 11 October 2000, cited

Rogers v R (1994) 181 CLR 251, cited

Seabrook v Asher [2006] QCA 238; Appeal No 10732 of 2005, 23 June 2006, followed

Stone v Ace-I.R.M. Insurance Broking Pty Ltd [2004] 1 Qd R 173; [2003] QCA 218, cited

COUNSEL: Appellant appeared on his own behalf
I R Perkins for the respondent

SOLICITORS: Appellant appeared on his own behalf
Mallesons Stephen Jaques for the respondent

- [1] **McMURDO P:** I agree with Jerrard JA’s reasons for refusing the appeal and with the orders he proposes.
- [2] **JERRARD JA:** This appeal is against orders made in the Trial Division of this Court on 12 December 2005, giving summary judgment for the respondent defendant National Australia Bank (“NAB”) against the appellant plaintiff Mr Freeman pursuant to r 293 of the Uniform Civil Procedure Rules 1999 (Qld) (“UCPR”) in respect of the claims in paragraph 15 of a Statement of Claim filed by Mr Freeman in a claim against the NAB, (BS 5438 of 2005), filed in Brisbane on 6 July 2005. Paragraph 15 claimed against the NAB for abuse of process of the

Magistrates Court and District Court of Queensland for collateral purposes, and in the alternative for malicious prosecution. Rule 293 in the UCPR empowers a court to give judgment for a defendant against a plaintiff if the court is satisfied on application that the plaintiff has no real prospects of succeeding on all or a part of the plaintiff's claim, and that there is no need for a trial of the claim or a part of the plaintiff's claim. That learned judge also ordered on 12 December 2005 that the whole of the rest of the claim be struck out, and made orders for costs against Mr Freeman. Mr Freeman has appealed those orders on a variety of grounds, including that the learned judge struck out his claim without giving Mr Freeman the opportunity to amend his Statement of Claim and his particulars. The principal orders he seeks are reinstatement of his claims, and that he be given leave to amend.

Background dealings

- [3] The claims that were struck out, and which Mr Freeman wants reinstated, plead impropriety by the NAB in transactions between it and him, and in subsequent legal proceedings. A description of those transactions and proceedings is necessary to understand his claims, and why they were struck out. A history of the litigation between these parties is given in the judgment of this Court in *Freeman v NAB* [2006] QCA 260¹, and will not be repeated here, although a consideration of the merits of this appeal requires some more detailed description of some of those matters. The following description is drawn from that judgment, and the judgments in *National Australia Bank Ltd v Freeman* [2000] QSC 295² and *NAB v Freeman* [2001] QCA 473.³
- [4] Mr Freeman was the registered lessee of grazing land known as "Glassford Vale", just under 10,000 hectares in area, located 100 kilometres southwest of Gladstone, and used by him for cattle rearing, crops, timber getting, the extraction of gravel, and mining for metal. In mid-1992 he refinanced with the NAB obligations he had incurred with other lenders; his indebtedness was in the vicinity of \$480,000 at the beginning of his relationship with the NAB. By mid-1993 when his property was declared drought stricken, he had borrowed approximately \$800,000 from the NAB, and he had received drought assistance subsidies from the Queensland Rural Assistance Authority ("QRAA") from 1993 to 1996. To qualify for an interest subsidy the farmer's financier had to indicate to the QRAA that the financier would continue to support the farmer for the next 12 months. Applications were made by the end of September of each calendar year for the subsidy from April to April.
- [5] The bank officer with whom Mr Freeman had dealt, a Mr Carlson, was replaced in mid-1996 by a Mr Alder, and the latter required Mr Freeman to reduce his bank overdraft from \$120,000 to \$90,000 by the end of November 1996. Mr Freeman's complaints in evidence in the subsequent litigation included that to meet that demand, he had to sell 300 breeders, thereby depleting his breeding herd and adversely affecting his capacity to adhere to his productivity plan. He contended that money could have come from the interest subsidy he would have received the following April, had the bank given him the necessary support in getting it, which it did not. That was because Mr Alder considered that Mr Freeman had been unable to operate without incurring further debt, even with subsidies, in the past; there was

¹ Appeal No 219 of 2006, 18 July 2006.

² SC No 4013 of 1998, 11 October 2000.

³ Appeal No 9718 of 2000, 2 November 2001.

no prospect for an improvement in the future, and the debt to the bank should be reduced.

- [6] During 1997 the NAB sought to have Mr Freeman reduce it, and threatened to begin proceedings against him by the end of 1997 unless it received an acceptable proposal. The Legal Aid Office (Queensland) wrote to the NAB on Mr Freeman's behalf, and the NAB invited Mr Freeman to enter into a mediation. That mediation was held on 4 December 1997, and ultimately resulted in the NAB agreeing to refinance all Mr Freeman's facilities, and his agreeing to use his best endeavours to refinance the debt, or else to sell the property with the NAB's written approval before 4 March 1998, with settlement no later than 6 April 1998. In default of either refinancing or sale he agreed to deliver vacant possession to the NAB by 6 April 1998. The mediation agreement included a clause by which Mr Freeman absolutely and unconditionally released the NAB from all claims that he had against it.
- [7] Mr Freeman was unsuccessful in refinancing that loan and on 7 April 1998 the NAB sent a notice of termination of the loan facility, the time for repayment having expired on 6 April 1998. Proceedings were commenced in which the NAB claimed possession for sale to enforce the mortgage security it was given under the mediation agreement. Mr Freeman contended in those proceedings that the Deed of Mediation was voidable on the basis of economic duress and avoided by him, and he counter-claimed against the NAB for misleading and deceptive conduct, estoppel, and negligence in and about the making of the loans to him and the NAB's conduct in attempting to enforce its securities. His case at the trial was that he had suffered from stress and anxiety during the mediation and been unable to cope with the pressure or to understand the documents shown to him, and the NAB either did know, or ought to have known, of those matters.

The first trial

- [8] The learned trial judge heard evidence from Mr Freeman, the mediator, the NAB's solicitor and a NAB officer, who attended the mediation; Mr Freeman did not call either his counsel or his solicitor who were also at the mediation. The judgment at first instance recorded that none of those other people, who attended the mediation and who gave evidence, supported in any way the symptomatology of helplessness, mental instability, anxiety etc., which Mr Freeman described. The judge was accordingly not persuaded that Mr Freeman exhibited any of the indicia of mental incompetence or anxiety that day which would indicate a psychiatric disorder, and referred to the contents of the transcript of Mr Freeman's discussions with his counsel the day before the mediation occurred. The judge concluded that that transcript demonstrated that Mr Freeman was fully seized of the strengths and weaknesses of his position at the forthcoming mediation, and that the points he sought to raise in the course of the mediation included those which he later sought to litigate in his defence and counter-claim; in particular the claim of the forced sale of 300 breeders, resulting in an estimated loss in sales over a three year period of approximately \$360,000. The evidence at the trial was that in the course of that mediation, Mr Freeman had sought to set off that claimed loss of \$360,000 against the debt he owed the bank, but the NAB refused to entertain that claim.

- [9] He accordingly failed on that ground at trial and on appeal, which was in essence a claim of economic duress.⁴ He failed on the facts on his counter-claim. The learned trial judge had accepted the evidence of the witnesses from the NAB, finding them persuasive witnesses and finding that their evidence was supported by contemporaneous correspondence and documents, including a letter written by Mr Freeman. Challenges to those findings of fact failed on the appeal. An application for special leave to appeal was refused on 14 March 2003.⁵ Mr Freeman's counsel on that special leave application unsuccessfully attempted to rely on an asserted failure by the NAB to make proper discovery of documents, a point not raised in the Court of Appeal. The undisclosed documents apparently related to the size of the debt owed to the NAB; counsel informed the High Court on the special leave application that although Mr Freeman "may well have owed the Bank some money, he did not know exactly how much."⁶
- [10] Mr Freeman's case on his counter-claim was that Mr Carlson had represented that the NAB would "carry" Mr Freeman until his cattle, timber, and mineral sales reached \$240,000 per year, or alternatively until the 1993 drought ended. Mr Freeman's evidence was that he had increased his borrowing relying on those representations, and spent money buying cattle, improving the property, and installing irrigation equipment. Mr Carlson denied any such representation but agreed in the course of discussions that he had worked out with Mr Freeman that the latter would need to bring in gross proceeds of \$240,000 per annum to break even, that is to meet the NAB interest payments and pay his operational overheads in running the property. The learned trial judge preferred Mr Carlson's evidence, and Mr Alder's, to Mr Freeman's, and considered Mr Freeman's evidence was inconsistent with the terms of contemporaneous correspondence including a letter Mr Freeman had written to the NAB on 23 September 1997, a couple of months before the December mediation. Mr Freeman said nothing in that letter of the matters on which he based his claim for misleading and deceptive conduct and estoppel.
- [11] Likewise, the trial judge found, regarding the complaint that Mr Alder's demand that the overdraft be reduced had forced Mr Freeman to sell 300 breeders, that the complaint was not supported by the evidence Mr Freeman led. The trial judge found that Mr Freeman had not produced any contemporaneous sales dockets or other documentary evidence to support his oral evidence of the sale (for \$30,000) of the 300 head of breeders, and that some of the documents Mr Freeman relied on indicated that no breeders whatever were sold in the 12 month period after September 1996. Further, in the course of the pre-mediation conference with his counsel on 3 December 1997, Mr Freeman had said that he had sold \$60,000 worth of breeding heifers because he was carrying too many; and the evidence at the trial was that whatever cattle he sold – if any – he had not reduced the loan facility by \$30,000 as required by Mr Alder, or at all.

⁴ As described by McHugh JA in *Crescendo Management v Westpac* (1983) 19 NSWLR 40 at 46, referring to *Barton v Armstrong* [1976] AC 104.

⁵ *Freeman v National Australia Bank Ltd* (unreported, HCA, Kirby and Heydon JJ, B96 of 2001, 14 March 2003).

⁶ Quoted at *Freeman v National Australia Bank Ltd* (unreported, HCA, Kirby and Heydon JJ, B96 of 2001, 14 March 2003).

The first appeal

- [12] On appeal in 2001 this Court held that it was open to the trial judge to prefer the evidence of Mr Carlson and Mr Alder, and that the conclusions the judge drew regarding the failure to prove the claimed representations and the sale of the 300 breeders were open to the learned judge, and further a perusal of the whole of the evidence did not suggest that any other conclusion was open.
- [13] In the 2001 appeal Mr Freeman argued that he had paid an amount of \$2,205 into his account with the NAB on 6 April 1996, as an interest payment to extend the facility, and complained that that payment had not been recorded or credited to his account on that day, resulted in his being in default. This Court held that argument was an error, that the Deed of Mediation required Mr Freeman to refinance the debt or exchange approved contracts of sale no later than 4 March 1998, and that if neither happened Mr Freeman was to deliver vacant possession by 6 April 1998. Accordingly it was not the case that had that \$2,205 been credited to his account on the day it was paid in, he would not have been in default.

Other proceedings

- [14] This Court's judgment in *Freeman v NAB* [2006] QCA 260 records that the NAB then petitioned in the Federal Court of Australia for Mr Freeman's bankruptcy. He resisted that on grounds that included fraud. A sequestration order was made on 12 March 2002, but stayed pending an appeal to the Full Court of the Federal Court, which was dismissed with costs. The day after that dismissal Mr Freeman applied in the Trial Division of this Court under UCPR r 668 to set aside the orders against him on 11 October 2000 (the first trial orders), and the orders of this Court made on 2 November 2001 dismissing that appeal. He wanted his case re-tried on the basis of fresh or further evidence. Mr Freeman's trustee in bankruptcy declined to prosecute that application, and on 15 October 2003 the Chief Justice dismissed it, because Mr Freeman, as a bankrupt, had no standing to pursue it.⁷ Mr Freeman appealed to the Federal Court from the trustee's decision not to continue with the UCPR r 668 application in the Trial Division of this Court, and, on the dismissal of that application, he unsuccessfully appealed to the Full Federal Court. He also unsuccessfully applied to the Federal Court to annul the sequestration order against the State. Finally, on 6 July 2005 he commenced a claim in the Trial Division of this Court, that being the claim or claims struck out on 12 December 2005 in the judgment under appeal, when summary judgment was also given in the NAB's favour on the claim for collateral abuse of process and malicious prosecution. The appeal heard in *Freeman v NAB* [2006] QCA 260 was Mr Freeman's appeal attempting to set aside the order made 15 October 2003, on the basis of fresh or further evidence. This Court held that he had no standing to bring the application he made under UCPR r 668 to set aside the orders made on 15 October 2003, those being in the proceeding under UCPR r 668 in which he sought to set aside the original trial decision. This Court also held that the merits appeared most unpromising, apart from his lack of standing.

⁷ *Cummings v Claremont Petroleum NL* (1995) 125 CLR 124 at 136-138, 146.

The appeal – the matters struck out

- [15] The judgment now under appeal described the struck out portions of the Statement of Claim filed 6 July 2005. It pleads that Mr Freeman was forced to the mediation by a ruse on the NAB's behalf, which was continued at mediation. The pleading contains relatively extensive factual material but does not clearly identify the ruse. He also pleaded misleading and deceptive conduct in respect of the Mediation Deed; that the NAB had a corporate culture of withholding deposits, so that accounts went into default; and that the learned trial judge at the original trial had been mistaken in his reasons and evidence, in not including a reference to cattle sale dockets that were exhibit 36 at the trial. Mr Freeman also pleaded that he has discovered fresh medical evidence, identifying the presence of a Delta horse toxin in his body at April 2000, caused by the presence of *Regulus Coagulus Staphylococcus*, and that the symptoms he had pleaded he displayed at the mediation were the direct or derivative result of that toxin and *Staphylococcus* in his system. He likewise pleaded that the judges in this Court on his 2001 appeal had made a similar mistake in failing to refer to the exhibit 36; he pleaded that the NAB's solicitors had resisted that appeal for the collateral purpose of bankrupting him.
- [16] His pleading complains of errors by the Federal Court Judge, who made the sequestration order, of "intermeddling" by the NAB in the receivership, wrongly denied by the NAB's witnesses in proceedings in that court. He also pleaded that the NAB pursued its petition and resisted the Federal Court appeal proceedings, relying on facts it knew to be incorrect, and intentionally withholding other facts showing that the NAB had an excess (presumably of assets over liabilities owed by Mr Freeman) as a result of the receivership, and he pleaded an improper resistance to his annulment application in the Federal Court. He also pleaded that he had established the existence of a corporate culture in the NAB's operations of false accounting, and claimed for \$14,315,958 in damages for "the loss of his land, livestock, timber, income, property, mining royalties, gravel royalties, health and in suffering thereby loss of business custom[ers] and goodwill and having his trade and business interrupted and disrupted and reputation, and for the costs of court on an indemnified basis".⁸
- [17] Those pleadings reveal that Mr Freeman is in part repeating the claims of misleading and deceptive conduct on which he failed at trial six years ago, in part expanding the assertions of deposits being withheld, a matter regarded as irrelevant in his first appeal to this Court, and in part challenging the conclusion that he had not established the claimed sale of 300 or any fewer number of breeders, forced on him by Mr Alder's demands, as he claimed. It is simply far too late to attempt to do any of that, and the learned judge in the decision now under appeal was correct in holding that Mr Freeman's pleading sought to re-agitate issues decided in prior court proceedings between the same parties. The judge also held the pleadings sought to go behind the Deed of Mediation, which had been upheld as valid in those very proceedings; and that his pleadings really urged that different results should have been reached in those earlier proceedings. That meant those pleadings constituted an abuse of process, as described in *D'Orta-Ekenaike v Victoria Legal Aid* (2005) 79 ALJR 755⁹ and *Rogers v Queen* (1994) 181 CLR 251.

⁸ At AR 27.

⁹ [2005] HCA 12; M61 of 2003, 10 March 2005.

- [18] In *D'Orta-Ekenaike v Victoria Legal Aid* the joint judgment of Gleeson CJ, Gummow, Hayne and Heydon JJ described, as a fundamental observation about the way in which this society is governed, that judicial power is exercised as an element of the government of society; that the immediate parties to a controversy are very interested in the way in which it is resolved; and the community at large has a vital interest in the final quelling of that controversy. The judgment describes as a central and pervading tenet of the judicial system that controversies, once resolved, are not to be re-opened except in a few, narrowly defined, circumstances.¹⁰ That joint judgment described as the unique and essential function of the judicial branch the quelling of controversies by the ascertainment of the facts and the application of the law, and that once the controversy had been quelled, it was not to be re-litigated. The judgment described a public need for decisions of the courts, unless set aside or quashed, to be accepted as incontrovertibly correct.¹¹ That joint judgment then described as an abuse of process a proceeding which required challenging the result arrived at in earlier proceedings, other than by appropriate appeal.
- [19] The trial judge applied that law in this matter and added that there was the further problem caused by s 58 of the *Bankruptcy Act 1966* (Cth), which vested Mr Freeman's property in the trustee, and that his pleaded cause of action, having vested in the trustee, remained so vested despite Mr Freeman's discharge from his earlier bankruptcy. The judge cited *Stone v Ace-L.R.M. Insurance Broking Pty Ltd* [2004] 1 Qd R 173.¹² The judge also, correctly, held that the claimed damage had its foundation in losses which had resulted as a result of the decisions on the first trial and the first appeal, and as a result of conduct and matters held lawful in those judgments. Accordingly, there could be no cause of action known to law in either Mr Freeman, or his trustee in bankruptcy, in respect of that damage; what Mr Freeman wanted to do was to recover for losses sustained from conduct vindicated by decisions of the court. For those compelling and separate reasons the claims based on the Deed of Mediation, the original trial, and the first appeal, were struck out. The same reasoning of course applies to the complaints about the result of, and the conduct by the NAB in relation to, the proceedings in the Federal Court. The clear and applicable principle that there must be an end to litigation (by earlier judgment in it) applies here to prevent Mr Freeman litigating in this Court complaints about the conduct of unsuccessful litigation in the Federal Court.

The appeal against dismissal of the malicious prosecution claim

- [20] Regarding the claim on which judgment was given to the NAB, that of malicious prosecution and abuse of process, it arises out of criminal proceedings brought against Mr Freeman for stealing cattle, allegedly the property of the NAB. Mr Freeman was acquitted, in a trial held in March 2002. The learned judge in the judgment under appeal held that there was no evidence which suggested that any pressure to bring the charges was applied by any employee of the NAB to the police officers, who did bring charges against Mr Freeman. The judge accepted that the fact the prosecution was instituted and conducted by the police did not entirely answer the critical question of who was in truth the prosecutor (citing *Davis v Gell* (1924) 35 CLR 275). The judge noted that a person other than the prosecuting authority might be regarded as the prosecutor if that person counselled or procured

¹⁰ These statements are [33] and [34] in the judgment.

¹¹ Those observations are in [43] and [77] of the joint judgment.

¹² [2003] QCA 213; Appeal No 8623 of 2002, 30 May 2003.

the prosecuting authority to institute proceedings, by dishonestly prejudicing the prosecutor's judgment, or by making a complaint which was false to the knowledge of that person, or by influencing the prosecutor to assist in bringing about the trial of an innocent person (citing *Balson v State of Queensland & Anor* [2002] QSC 419¹³ and *Mahon v Rahm (No 2)* [2000] 1 WLR 2150).

[21]

The judge held that the prosecuting police conducted an investigation and collected their own evidence, and were in a position to exercise an independent discretion. The judge also referred to information from former employees of Mr Freeman, who had provided evidence, which if accepted, formed a strong basis for concluding that he had stolen the NAB's cattle. The judge was satisfied that a careful analysis of sale documents and the like, which Mr Freeman had made, analysing stock numbers, did not establish any complicity by the NAB in the unsuccessful prosecution. While the NAB supplied the police with some information, neither it nor the receiver had any obvious knowledge of their own as to the details of the stock on the property, and the judge was satisfied that most of the information and contact with the investigating and prosecuting police had been by the receiver, not the NAB. The learned judge was satisfied that Mr Freeman simply had no prospects of success at all on the claim for malicious prosecution, and so upheld the NAB's claim for judgment.

Mr Freeman's oral argument on appeal

[22]

In presenting his oral argument, Mr Freeman no longer relied at all on a written argument filed on 31 January 2006, relied in part on written submissions filed on 17 March 2006, and otherwise relied on submissions filed on 19 July 2006. He was given leave to file and read an affidavit annexing various NAB statements for his account 45-802-2447. His purpose was to demonstrate that money from the sale of 80 head of cattle in January 2003 was not recorded as a credit in that account, and the NAB had thereby fraudulently failed to reduce the debt owing by him. Those 80 head were some of the cattle he was accused of stealing, and it became clear during the argument that the 80 cattle were the majority of a larger number seized by police on 27 November 2001, in the course of the police investigation into the complaint that Mr Freeman had stolen cattle.

The cattle stealing prosecution

[23]

The general background to that prosecution was that after litigation between Mr Freeman and the NAB had begun an order was made on 10 August 1998 which provided for Mr Freeman to continue to manage "Glassford Vale", to sell cattle in the normal course of business, and to draw funds from the proceeds (up to a certain amount each month) to cover running expenses. The order also provided for the NAB to call for a full stock muster from time to time. A muster conducted in the latter part of 1998 recorded a total of 867 head, which compared adversely with records the NAB held of 1,580 in a stock mortgage in September 1996. A further head count in May and June 2000 reported 542 head. The NAB got judgment on 11 October 2000 following the trial, and on the same day it appointed two members of KPMG as receivers and managers of the mortgaged property, which included the livestock. A muster returned only some 450 odd head, and the receivers advised the NAB that approximately 100 head had been mustered from "Glassford Vale"

¹³

SC No 6325 of 2001, 12 December 2002.

and transported to another property, "Skeleton Creek", owned by a Mrs Williams, who let Mr Freeman agist cattle on "Skeleton Creek" from about mid-2000.

- [24] The receivers advised that those cattle taken to "Skeleton Creek" carried the brand VPB, the property of a company Zinace Pty Ltd, associated with Mr Freeman, and that they were mostly young cattle. The "Glassford Vale" brand was OLQ. A Mr Lloyd from KPMG had inspected cattle on "Skeleton Creek" on 8 November 2000, 93 head in all, all branded VPB; of which eight were cows, 41 steers, 39 heifers, and two were bulls. Mr Lloyd thought most of the steers were aged eight to 12 months, with the oldest 18 months, and the heifers ranged in age from six months to two years. He considered that all the steers and heifers had only recently been branded with the VPB brand, within the last three to four months. All cattle inspected appeared to be of a similar breed to "Glassford Vale" cattle, which Mr Freeman had inspected earlier that day. The essence of the stealing charge against Mr Freeman was that he had dishonestly branded, with the VPB brand, "Glassford Vale" calves or weaners from "Glassford Vale" cows, which had carried the OLQ brand.
- [25] Mr Freeman told Mr Lloyd on 8 November 2000 that the cattle at "Skeleton Creek" belonged to Zinace Pty Ltd, or to Mr Freeman's children. On this appeal, Mr Freeman said that there had been only a few VPB cows that day for Mr Lloyd to see, and many more young VPB cattle, for the simple reason that the older VPB cows had been sold. However, back in late 2000, Mr Lloyd had been told before 8 November 2000, by two people, that cattle had been removed from "Glassford Vale" by Mr Freeman, and one of those people had told Mr Lloyd the cattle were moved to "Skeleton Creek". Mr Lloyd had also spoken to two former employees of Mr Freeman and been told by both, and believed, that Mr Freeman had removed unbranded cattle from "Glassford Vale"; and that on instructions from him, when working on "Glassford Vale", those employees had branded young cattle with a VPB brand when the cattle were from "Glassford Vale" cows bearing the OLQ brand. Mr Lloyd had in turn told the police of all that information, and it was the reason he went to "Skeleton Creek" on 8 November 2000, to inspect cattle transported there by Mr Freeman.
- [26] Finally, Mr Lloyd had been told that there were only about 20 VPB cattle on "Glassford Vale" in May and June 2000. Mr Lloyd swore an affidavit, which the NAB read in the application for summary judgment in the claim for malicious prosecution, in which he swore that the above described information was the reason he contacted the Stock Squad, being concerned that cattle, the subject of the NAB's mortgage, may have been moved off "Glassford Vale". Mr Lloyd's affidavit evidence on the summary judgment application was that he was not instructed by the NAB to contact the Stock Squad, but did contact it because of his own concerns, and that he kept Mr Fuhrman-Luck of the NAB, the person conducting Mr Freeman's file on behalf of the bank, informed of what was going on; and that he told Mr Fuhrman-Luck that some of the NAB's cattle may have been moved to "Skeleton Creek" or elsewhere. Mr Fuhrman-Luck also swore an affidavit read by the NAB, deposing to the same sequence of events, and swearing that the NAB did not make a complaint to the police, but that Mr Lloyd gave information to the police at about that time; and that Mr Fuhrman-Luck had encouraged the receivers to do that, because it seemed reasonable to conclude the cattle at "Skeleton Creek" may have belonged to the NAB under its stock mortgage.

- [27] The police investigated the matter and ultimately charged Mr Freeman. Subsequently the charge was withdrawn, then reinstated. There was a committal hearing, and then the trial in which Mr Freeman was acquitted. The critical witnesses were the two former employees of Mr Freeman's, who had reportedly told Mr Lloyd about Mr Freeman removing unbranded cattle, and Mr Freeman instructing them to brand OLQ weaners with the VPB brand. The NAB put the entire police brief, the affidavits of Mr Fuhrman-Luck and Mr Lloyd, and the transcript of the criminal trial, as well as a considerable body of other material, before the learned trial judge when successfully applying for the order summarily dismissing the claim against the NAB for malicious prosecution and collateral abuse of process.
- [28] That collection of statements and transcript of the trial shows that the male employee signed a statement on 8 November 2000 stating that in the "last three months" he had seen young calves and weaners born from OLQ brand cattle branded with the VPB brand and transported to "Skeleton Creek", and had also seen unbranded calves and weaners born to OLQ brand cattle taken as clean skins to "Skeleton Creek". To his knowledge some were branded there with the VPB brand. That witness, although supporting the prosecution case, was not called at the criminal trial. The other employee described a specific occasion when 20 calves from OLQ cows were branded VPB, on Mr Freeman's instructions. She was called at the trial, and although counsel for the NAB submitted on this appeal that she had not come up to proof, the problem for the prosecution seemed to me much more that she swore in cross-examination that, to her knowledge, both Mr Freeman's son and daughter had each owned some OLQ branded cows on "Glassford Vale"; she did not know how many. She also swore that so too did Mr Freeman's female partner. Mr Freeman gave similar evidence.
- [29] The prosecution case had somewhat collapsed when the male employee was not called to support the description in his statement of some 200 cattle having been moved from "Glassford Vale" to "Skeleton Creek" in the three months prior to 8 November 2000. Absent that evidence, and having only that of the second employee, the prosecution failed. But despite that, in hearings conducted subsequently pursuant to s 425 of the *Police Powers and Responsibilities Act 2000* (Qld), the end result was that 80 cattle and their progeny seized by the investigating police were found by judicial decision to be owned by the NAB, under a stock mortgage Mr Freeman gave to the NAB.
- [30] A statement by Mrs Williams prepared for the committal proceeding, and the evidence of Detective Tomlin of the Rockhampton Stock Squad at the trial, established that the police had mustered 103 head on "Skeleton Creek" in early November 2000. That number was exclusive of some 20 head Mrs William owned. The cattle were trucked from the property on 27 November 2000. The criminal trial was conducted on the assumption, apparently common to all parties, that those 103 head mustered on 27 November included all of the cattle seen on the property on 8 November 2000 by Mr Lloyd. Ultimately, in hearings after Mr Freeman's acquittal, it was concluded by a District Court Judge, who heard an appeal from a Magistrate, that 80 of those cattle did in fact belong to the NAB. Those were the cattle sold in January 2003, and about which Mr Freeman said that the proceeds of sale should have appeared as a credit in his bank account, reducing his indebtedness.

- [31] Regarding the claim for collateral abuse of process and malicious prosecution, Mr Freeman agreed on this appeal that he had put in affidavit material in response to that filed by the NAB, in its application for summary judgment. Mr Freeman's strong emotions about all matters are understandable; he was lent a very great deal of money which resulted in interest and capital repayment levels he could not meet, and he had understood the NAB would give him much more latitude in repayments. He lost the property, his cattle were sold, and then he was charged with stealing and tried on a case that ultimately went nowhere. But that does not establish grounds for a claim for malicious prosecution or abuse of process by the NAB.
- [32] The NAB relied on the affidavit of Mr Lloyd and Mr Fuhrman-Luck, and the contents of the police brief, to establish that the NAB did not instigate the prosecution of Mr Freeman, and that in any event it was not a malicious one. There certainly were grounds for concluding the cattle numbers had dropped considerably on "Glassford Vale", and for the investigating police to form the view that Mr Freeman had caused calves from OLQ cows to be branded VPB, without producing documents to support a right to do that. On the application for summary judgment the NAB also relied on the evidence of Detective Tomlin at the trial, that he had obtained a number of statements from quite a number of witnesses, and that he was responsible for charging Mr Freeman with stealing cattle. The statements Mr Tomlin had obtained included evidence from a person responsible for carrying quite a few cattle by truck from "Glassford Vale" to "Skeleton Creek".
- [33] To establish the complaint of malicious prosecution Mr Freeman had to prove, apart from damage, that he had been prosecuted, the proceedings brought against him had terminated in his favour, that the prosecution was instituted without reasonable and probable cause, and that it was instituted or continued maliciously.¹⁴ To establish the absence of reasonable and probable cause he had to prove the absence of any honest belief in the (real) complainant – be that the NAB, the receiver, or Detective Tomlin – that there was a proper case against Mr Freeman on which to bring him before the court, or else to establish the absence of sufficient grounds for that belief to be reasonable on the facts available to the complainant after sufficient inquiry. To prove the existence of malice Mr Freeman had to establish that the complaint against him came from a motive or desire other than to do what the complainant bona fide believed to be right in the interest of justice, or that it was an indirect or improper motive and not one in furtherance of justice.¹⁵
- [34] Where, as here, Mr Freeman's case was that a third party, the NAB, was the real instigator of the prosecution conducted at its behest by the police, Mr Freeman had to establish that absence of reasonable and probable cause, and the presence of malice, in the NAB, and that the NAB, because of information it supplied to the police, had such a real role in inducing Detective Tomlin to begin the prosecution that the NAB must virtually have driven it. Expressing the conclusion that way accords with the judgment of this Court, relevantly given by Holmes JA, in *Seabrook v Asher* [2006] QCA 238.¹⁶ Holmes JA reviewed a number of authorities on malicious prosecution instituted by a third party, before expressing the matter as

¹⁴ *Butler v Simmonds Crowley & Galvin* [1999] QCA 475; Appeal No 10337 of 1998, 12 November 1999 at [17] - [18].

¹⁵ See *Ivory v Telstra Corporation Ltd & Anor* [2002] QCA 457 at [23]-[31], Appeal No 4059 of 2001 and Appeal No 4423 of 2001, 1 November 2002.

¹⁶ Appeal No 10732 of 2005, 23 June 2006.

I have described.¹⁷ Her Honour examined the law applicable where the claim made is that a third party, by false information, has influenced a prosecuting authority with an independent discretion to bring and pursue criminal proceedings. She held that what those authorities establish is that the false information must have had some real role in inducing a police officer to commence a prosecution, so much so that the informant must "virtually" have driven the prosecution.¹⁸

- [35] The NAB's material placed before the learned trial judge in this matter, and Mr Freeman's material, established that Mr Freeman could not show that the receiver, Mr Lloyd, had put any false information before the police, nor that Mr Lloyd put false information to the police because he was instigated by the NAB to do so, nor that any of the information on which the police acted in charging Mr Freeman was false. The fact that Mr Freeman had support from his previous employee for his own evidence that an unspecified number of cows branded OLQ were owned by his children or partner did not make false any information on which he was prosecuted. The NAB thus established that Mr Freeman had no prospects at all of proving on the balance of probabilities that it initiated the prosecution, or that it was done without reasonable or probable cause, and with malice. The learned judge was correct in summarily dismissing the claim.

After acquired property

- [36] Part of Mr Freeman's argument included that his claim for malicious prosecution was property acquired after he had become bankrupt, as perhaps were his claims in respect of the failure to credit the proceeds of the sale of the 80 cattle, and that after his discharge from bankruptcy in 2005 those causes of action were revested in him, as his property. The argument rested on his construction of certain provisions of the *Bankruptcy Act*, and was dealt with in the reasons for judgment of the President in *Freeman v NAB* [2006] QCA 260 at [13]. The President held there that s 126 of the *Bankruptcy Act*, on which Mr Freeman relied, did not have the effect that after acquired-property of a bankrupt belonged to the bankrupt until the bankrupt's trustee claimed it, and held that the position was not changed because Mr Freeman was discharged from his bankruptcy.¹⁹ I agree with the reasoning supporting those conclusions, which are binding in any event.

The proceeds of sale of the 80 head

- [37] By the end of oral argument the position regarding the complaint of un-receipted proceeds of sale of the 80 head was that the NAB contended that not all the relevant bank records were before this Court, and that the proceeds had been credited in reduction of the debt, as had been foreshadowed in an affidavit by Mr Fuhrman-Luck sworn 28 February 2002, and read in the Federal Court and on this appeal. While Mr Freeman made many references to the NAB's dishonesty in failing to credit the proceeds of those sales, there was simply insufficient information before this Court to conclude that had not happened. But if it did not, that was a matter for

¹⁷ Those cases include *Davis v Gell* (1924) 35 CLR 275, *Commonwealth Life Assurance Society Ltd v Brain* (1935) 53 CLR 343 per Dixon J at 379, *Mahon v Rahm (No 2)* [2000] 1 WLR 2150 and *Commercial Union Assurance Company of NZ Ltd v Lamont* [1989] 3 NZLR 137.

¹⁸ *Seabrook v Asher* [2006] QCA 238 at [17].

¹⁹ Relying on *Stone v Ace-L.R.M. Insurance Broking Pty Ltd* [2004] 1 Qd R 173 and *Daemar v Industrial Commission of New South Wales (No 2)* (1990) 22 NSWLR 178 per Kirby P at 182-183.

Mr Freeman's trustee in bankruptcy, since those events were during the period of the bankruptcy.

Charging interest

[38] Mr Freeman's oral argument made a purported connection between the asserted failure to credit the sale of those cattle into any bank account in his name, and the existence of what he described as "dummy" bank statements. He ultimately clarified that term as meaning a second set of bank statements for his account, which the bank had produced and sent to him in or about 2001, and in which his debt to the NAB had been increased by the addition of interest. He pointed to what he described as genuine bank statements for the same account, which did not record interest being charged after 7 April 1998. He contended that the "dummy" statements – the ones adding interest – had been created by the NAB to support its overall debt claimed in the Certificate of Debt relied on against him.

[39] Those general propositions were put in various ways in his oral and written argument. But his own material shows that it is common for banks which are not expecting actually to receive payments of interest, to not record its receipt, for taxation purposes; but to maintain at the same time a record of what the bank might get, should the debtor win the caskot one day, or the security the bank held increase sharply in value. I was not persuaded Mr Freeman's arguments demonstrated the pleaded deceit, and once again, if the debt claimed by the bank was dishonestly increased by the addition of interest, that was the matter for the trustee to challenge, not Mr Freeman.

Agreement to take \$500,000

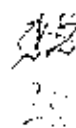
[40] Allied to those matters was a proposition Mr Freeman advanced only in his oral argument, namely that in or about March of 1998 he had agreed with the NAB that it would accept payment of \$500,000 in (complete) settlement of his debt to it. Mr Freeman in fact paid no money at all in settlement of the debt, and appeared to concede in his oral submission that the payment he made on 7 April 1998 was calculated on the debt appearing in the bank statements for the time, namely \$1,020,000 owing by him to the NAB; but he said both that it was agreed the NAB would take \$500,000 and agreed that it would not charge further interest.

[41] That agreement was not pleaded at the original trial or in the struck out pleadings, and Mr Freeman acknowledged that he had said nothing about it in his evidence at the original trial. Even now he does not describe any matter that could possibly have raised an estoppel against the NAB because of his reliance on that promise, on the assumption it was made, a matter about which there is actually no evidence at all. It is simply far too late to raise that now.

Other matters

[42] Mr Freeman complained that the original trial judge, and the Court of Appeal, had simply failed to advert to evidence supporting his description of the forced sale of 300 breeders in late 1996 and early 1997. But the only documents to which he referred this Court were his affidavit assertions and pleadings, not actual records of sale. That point went nowhere.

- [43] Mr Freeman also referred to documents in the appeal record disclosing that the bank expected to recover perhaps \$770,000 from the sale of "Glassford Vale", and internal NAB documents describing his debt as a "non accrual" loan. He relied on those to support his argument that the bank had agreed not to charge him interest, and to take \$500,000 only (and then increased the amount to \$770,000). But all that those documents show is that the NAB only expected to recover \$770,000, and no further interest. So far events have justified both assumptions. The property was sold for \$770,000, and Mr Freeman did not pay any more in interest. Those documents do not support the struck out pleadings, even if those did disclose a cause of action Mr Freeman could enforce.
- [44] It follows that this appeal must fail entirely, and I would dismiss it, and order that the appellant Mr Freeman pay the respondent's costs of the appeal; with leave to the parties to make written submissions within 14 days of publication of this judgment as to whether costs should be assessed on the standard or the indemnity basis.
- [45] **HOLMES JA:** I agree with the reasons of Jerrard JA and with the orders proposed.



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HC 287/04 THE HIGH COURT

RECORD NO. 1998/89 COS AND 1998/132 COS

IN THE MATTER OF THE COMPANIES ACTS 1963 TO 1990 AND IN THE MATTER OF
 NATIONAL IRISH BANK LIMITED AND IN THE MATTER OF NATIONAL IRISH BANK
 FINANCIAL SERVICES LIMITED

JUDGMENT of Mr. Justice Kelly delivered the 23rd day of July, 2004

INTRODUCTION

In 1998, the Honourable John Blayney and Mr. Tom Grace were appointed by this Court, pursuant to s. 8 (1) of the Companies Act, 1990, as inspectors to investigate the affairs of **National Irish Bank** (the **bank**), and **National Irish Bank Financial Services Limited** (the **company**). During the last 6 years those inspectors have conducted an investigation into the affairs of the **bank** and the **company** as directed in the court orders appointing them.

On the 12th July, 2004, their final report, dated the 9th July, 2004 was delivered to me in open court. On that occasion I made an order in accordance with the provisions of s. 11 (3) of the Companies Act, 1990 (as amended), that a copy of the report be furnished to the Director of Corporate Enforcement (the **Director**). The report was given to an officer of the Director upon an undertaking being given that no disclosure or publication of its contents would be made pending further order of the court.

On the same day, I made an order that a hearing should take place on Wednesday 21st July, 2004, with a view to the court giving directions and making orders as envisaged under ss. 11, 12 and 13 of the Companies Act, 1990. Advance notice of that hearing was advertised in the public press and any party with an interest in participating was advised to give notice in writing of his intention to do so to the solicitors for the inspectors.

THE HEARING

Nine parties gave notice of intention to appear and did in fact appear. They were as follows:-

1. The **bank**.
2. The **company**.
3. Irish Financial Services Regulatory Authority.
4. Office of the Director of Corporate Enforcement.
5. The Revenue Commissioners.
6. Ms. Beverley Flynn.
7. Mr. Barry Seymour.

8. Mr. Patrick Byrne.
9. Mr. Pat O'Donovan.

Messrs. Flynn, Seymour and Byrne appeared as parties who apprehended that the inspectors may have made adverse findings concerning them. Mr. O'Donovan appeared as a creditor of the bank.

A word of explanation is called for in the case of Ms. Flynn and Messrs. Seymour and Byrne. They were aware of the fact that adverse findings might be contained in the inspectors' final report as a result of the court approved procedures followed by the inspectors. Under those procedures the inspectors were obliged to furnish a draft of any adverse finding to any person affected by them. An opportunity was then given to such a person to be heard by the inspectors before the report was put into final form. Each of these three persons were served with the inspectors draft findings and so were aware of the possibility of similar or lesser findings being contained in the inspectors' final report.

I turn now to a consideration of the statutory powers invested in the court following the delivery of a final report.

SECTION 11 (3) AND (4)

These sub-sections in their amended form read as follows:-

"(3) Where inspectors were appointed under ss. 7 or 8, the court shall furnish a copy of every report of theirs to the Office of the Directorate of Corporate Enforcement and the court may, if it thinks fit -

- (a) Forward a copy of any report made by the inspectors to the companies registered office,
- (b) Furnish a copy on request and payment of the prescribed fee to -

- (i) any member of the company or other body corporate which is the subject of the report;
- (ii) any person whose conduct is referred to in the report;
- (iii) the auditors of that company or body corporate;
- (iv) the applicants for the investigation;
- (v) any other person (including an employee) whose financial interests appear to the court to be affected by the matters dealt with in the report, whether as a creditor of the company or body corporate or otherwise;
- (vi) the Central Bank, in any case in which the reports of the inspectors relates, wholly or partly, to the affairs of the holder of a licence under s. 9 of the Central Bank Act, 1971;

(ba) furnish a copy to-

- (i) an appropriate authority in relation to any of the matters referred to in s. 21 (1a to 1b);
- (ii) a competent authority as defined in s. 21 (3) (a) to (i); and

(c) cause any such report to be printed and published.

(4) Where the court so thinks proper it may direct that a particular part of a report made by virtue of this section be omitted from a copy forwarded or furnished under sub-s. 3 (a) or (b) or (ba), or from the report as printed and published under sub-s. 3 (c)."

All of the parties who appeared before the court sought copies of the report. Some asked the court to direct

that copies be furnished to other entities.

Some parties requested that the court make an order directing that the report be printed and published. Others were neutral on that topic. Nobody opposed the printing and publication of the report.

No party sought to have the report either as circulated or as printed and published redacted as contemplated in sub-s. 4.

All of the powers in sub-ss. (a), (b), (ba) and (c) of s. 11 (3) and s. 11 (4) are discretionary. It is necessary that I deal with each application in turn.

1. I am quite satisfied that both the bank and the company should be furnished with a copy of the inspectors' final report. Both have a very material interest in its outcome.

Should the court direct the printing and publication of the report however, the bank and the company seek to be furnished with the report in advance of such publication. If I decide that the report should be published, I am not satisfied that either the bank or the company should be furnished with a report in advance of that event.

The only evidence put before the court in support of an advance copy being delivered to the bank is, curiously enough, not sworn by any official of the bank but rather by a solicitor in the firm acting on its behalf. I do not find any of the reasons advanced in that affidavit, or in the submissions of counsel, persuasive. That is particularly so having regard to the fact that as far back as the 1st August last year, the bank was furnished with a draft of the inspectors' report, setting out the findings against it. The bank ultimately responded to that draft in what is called a reaction paper dated 24th March, 2004, almost nine months later. The bank did not take issue with anything in the draft report, a fact reported upon by the inspectors in their final report. Such being the case, the bank must be aware of the content of the final report, insofar as it is adverse to the bank.

Five reasons are given in the affidavit of the solicitor as to why the bank should be entitled to an advance copy of the final report. They are sworn to as follows:-

(a) The banks "need to be aware of the content of the final report in order to take such steps as appropriate, to have regard to the interests of the bank, (including its employees), its customers and the protection of the banks market position."

(b) "The fact that the bank's staff will undoubtedly be concerned as to the findings, since the existence of the final report will undoubtedly result in customers raising queries with the bank."

(c) The "need for the bank to prepare appropriate responses to undoubted public (media) queries in respect of the final report."

(d) The management of the ongoing banking business, it is said, makes it necessary for the bank to be aware of the findings in the report.

(e) Because banking is a prudential business, speculation as to what the final report says, would it is said, be damaging to the bank. The bank, it is contended, needs to be equipped with the final report to "proactively manage its response in the market place".

Given the actual state of knowledge of the bank and the fact that it did not contest the findings of the inspectors in their draft report, I cannot see validity in any of these reasons. The bank is now, and has for some considerable time, been fully aware of the likely findings against it. Certainly the findings in the inspectors' final report cannot be more adverse than what was furnished to the bank in the draft report.

Whilst I am therefore satisfied that the bank and the company are, pursuant to s. 11 (3) (a), entitled to the report in final form, I refuse the application for a copy to be furnished to them in advance of any other entity or general publication should I so order it.

2. Any person whose conduct is referred to in the report is entitled, on request, to a copy of the report, [s. 11 (3) (b) (ii)]. A small number of the persons whose conduct is referred to in the report, namely Ms. Flynn, Mr. Seymour and Mr. Byrne, did appear and are clearly entitled to a copy of the report. Any of the other numerous persons whose conduct is referred to in the report should be furnished with a copy of it on request, even though they did not appear in court.

3. The auditors of the bank and the company should be furnished with a copy of the report, should they request it, [s. 11 (3) (b) (iii)]. The auditors are KPMG. They would also be entitled to a copy of the report under s. 11 (3) (b) (ii) since their conduct is referred to in the report.

4. I am also satisfied that under s. 11 (3) (b) (iv) the applicant for the investigation, the Minister for Enterprise, Trade and Employment, should be entitled to a copy of the report if requested.

5. Mr. Pat O'Donovan, as a creditor, is entitled to a copy of the report pursuant to s. 11 (3) (b) (v).

6. There can be no doubt but that the Central Bank and the Irish Financial Services Regulatory Authority are entitled to a copy of the report, having regard to the provisions of s. 11 (3) (b) (vi). The bank is a licensed bank under the Central Bank Acts and the company, its subsidiary, carried on business in the financial area. I am of opinion that it would be appropriate that given the regulatory function of these entities and their lack of any knowledge as to the contents of the report in draft or final form, they ought to have it forthwith. The affidavit of the Deputy Head of the Regulatory Enforcement department of the regulator makes it clear that that body must obtain the report at the earliest moment so that it may consider what if any regulatory implications it may have. I will therefore direct that a copy of the report be furnished to the Central Bank and IFSRA forthwith.

7. I am of opinion that the following authorities are entitled to copies of the report also. i.e.

1. The Revenue Commissioners.
2. The Director of Public Prosecutions.
3. The Minister for Finance.
4. The Institute of Chartered Accountants in Ireland.

Pursuant to s. 11 (3) (ba) I direct copies be furnished to them.

At the request of the bank itself and the Director, I order that the report be furnished to the Financial Services Authority in the United Kingdom, the Australian Prudential Regulatory Authority, the Reserve Bank of New Zealand, the Office of the Comptroller of the Currency in the United States of America, the Federal Reserve of the United States of America and the Financial Supervision Commission of the Isle of Man.

PUBLICATION

The next question which I must consider is whether under s. 11 (3) (c) I should direct that the report be printed and published. Should I so direct, printing and publication will be undertaken by the Director who will in addition to making printed copies available also publish the report on CD-Rom and on his office website.

None of the parties appearing before me sought to oppose publication and a number actively supported it. Nobody sought any redaction, save that in the case of Messrs. Seymour and Byrne, I was asked to adjourn over the question of publication and redaction, until after an advance copy of the final report was furnished to them. For reasons which I gave during the course of the hearing, I rejected that application.

In considering this aspect of the matter I bear the following in mind. First, the bank and the company have themselves sought that the final report be published in full. Secondly, the inspectors recommend that the report be published in unredacted form. Thirdly, no party opposes publication. These are matters to be taken into account, but ultimately the decision has to be one for the court.

I have come to the conclusion that the public interest requires that this report be published in full. The

matters that the inspectors were asked to enquire into were very serious, particularly in the context of the conduct of a banking business. The outcome of the enquiry is not merely of interest but of importance for the bank and company and also their customers, staff and shareholders as well as the various regulatory authorities to which the bank and the company are subject.

Prospective customers, staff and employees, as well as the general public are entitled to know the outcome of the investigation particularly where as counsel for the bank pointed out it forms part of the banking structure in the State.

My one hesitation on the question of publication arose from the fact that the D.P.P. is to be given a copy of the report. I am however satisfied that if he should decide to mount a prosecution it will not arise for some considerable time and, as the Director submits, appropriate directions from a trial judge will be sufficient to negative any possible prejudice arising from the reports publication.

As far as possible I do not wish to reveal the conclusions reached by the inspectors prior to publication of the report. It will, however, be necessary for me to do so to a limited extent in considering the powers conferred upon the court under s. 12. I also bear the matters to which I will allude in that part of the judgment in mind in deciding that there should be publication of the report in full.

CONCLUSIONS IN RESPECT OF SECTION 11

1. All of the parties whom I have identified in this part of the judgment as being entitled to a copy of the report, should be furnished with it upon request.

2. With the exception of the Central Bank and the Irish Financial Services Regulatory Authority, all parties should be furnished with the report at the same time. The Central Bank and the Financial Services Regulatory Authority should be furnished with a copy of the report forthwith.

3. The report should be printed and published. It should be made available through the Director at 10.00 am on Friday 30th July, 2004. The copies to all of the parties who are entitled to the report should be made available to them at that time.

4. I give no direction pursuant to s. 11 (4) concerning the report.

SECTION 12

Section 12 reads as follows:-

"1. Having considered a report made under s. 11, the court may make such order as it deems fit in relation to matters arising from that report including:-

- (a) an order of its own motion for the winding up of a body corporate, or
- (b) an order for the purpose of remedying any disability suffered by any person whose interests were adversely affected by the conduct of the affairs of the company provided that, in making any such order, the court should have regard to the interests of any other person who may be adversely affected by the order.

2. If, in the case of any body corporate liable to be wound up under the Companies Acts, it appears to the Director of Corporate Enforcement from

- (a) any report made under s. 11 as a result of an application under s. 8, or
- (b) any report made by inspectors appointed by the director under this Act, or
- (c) any information or document obtained by the director under this part, that a petition should be presented for the winding up of the body corporate, the director may, unless the body is already being wound up by the court, present a petition for it to be so wound up if the court thinks it just and equitable for it to be so wound up."

SECTION 12 (1)(a)

Three things are of note about this sub-section.

First, it confers an extraordinarily wide jurisdiction on the court. The court may make such order as it deems fit in relation to matters arising out of its consideration of a report made by inspectors pursuant to s. 11. The court appears to be at large as to what order it can make under this provision.

Secondly, the court is given an express power, unique to the company law of this jurisdiction, to order of its own motion the winding up of a body corporate having considered a report under s. 11. That power is given to the court, notwithstanding the express entitlement conferred upon the Director, to himself petition the court for a winding up order as a result of matter disclosed in a report under s. 11. It was clearly the intention of the legislature that even in circumstances where the Director does not wish to present a petition for the winding up of a company that has been investigated nonetheless the court may order it to be liquidated.

In the present case the Director has, through counsel, indicated that it is not his intention to bring an application to wind up either the bank or the company.

The inspectors have indicated that they do not consider it necessary or appropriate that a winding up order be made, largely because of the adverse consequences which could follow and would be visited on both the banks customers and employees.

The bank and the company likewise oppose the making of a winding up order, on the same basis and also because it would disrupt banking business within the State.

Whilst the attitude of both the inspectors and the regulator must be borne in mind and given all due weight, nonetheless the decision of whether or not to make a winding up order under sub-s. (a) is one exclusively for the court.

As the power is unique and finds no echo in companies' legislation in other jurisdictions and as it has never been considered before, to my knowledge, I ought to express some views on its exercise. In this regard I gain some assistance from English authorities dealing with what are called 'public interest petitions' presented by the regulator for the winding up of companies on the grounds that it is in the public interest so to do. I find these decisions helpful because I am of opinion that if the court is to consider making an order under s. 12 (1) (a), the basis for such an order must be that it is in the public interest that such an order be made. Creditors and contributories have their own entitlements to petition for the winding up of a company. Section 12 (2) provides the regulator with an entitlement to petition for a winding up order if the court considers it just and equitable to do so. The only basis therefore upon which the court should, of its own motion, in my view, make such an order is in circumstances where it is satisfied that the public interest requires it.

In *re Walter L. Jacob & Co. Ltd.* [1989] BCLC 345 Nicholls L.J., (as he then was), gave the leading judgment in a case where a petition had been presented by the Secretary of State for the winding up of a company. He made it clear that the approach adopted to such a petition does not involve the court abdicating to the petitioner, the courts role in considering whether or not it would be just and equitable to wind up the company. He said:-

"In respect of all such petitions, whoever may be the petitioner, the court has to weigh the factors which point to the conclusion that it would be just and equitable to wind up the company against those which point to the opposite conclusion. It is to the court that Parliament had entrusted this task, in all cases. Thus, where the reasons put forward by the petitioner are founded on considerations of public interest, the court, if it is to discharge its obligations to carry out the balancing exercise, must itself evaluate those reasons to the extent necessary for it to form a view on whether they do afford sufficient reason for making a winding up order in the particular case.

In the case of 'public interest' petitions, the court will, of course, carry out that evaluation with the assistance of evidence and submissions from the Secretary of State and from other parties. When doing so the court will take note that the source of the submissions that the company should be wound up is a government department charged by Parliament

with wide ranging responsibilities in relation to the affairs of companies. The department has considerable expertise in these matters and can be expected to act with the proper sense of responsibility when seeking a winding up order. But the cogency of the submissions made on behalf of the Secretary of State will fall to be considered and tested in the same way as any other submissions. His submissions are not ipso facto endowed with such weight that those resisting a winding up petition presented by him will find the scales loaded against them. At the end of the day the court must be able to identify for itself the aspect or aspects of the public interest which, in the view of the court, would be promoted by making a winding up order in the particular case. In many, perhaps most, cases that would be a simple exercise in which the answer would be self-evident. In other cases the answer may not be so obvious."

Here of course I am not presented with a petition by anybody but I am conferred with a statutory power which I can exercise of my own motion. I, of course, attach considerable weight to the views expressed by both the regulator and the inspectors.

The real question is whether or not it is in the public interest that these companies be wound up. It is not possible for me to give cogent reasons in support of my decision, whether in favour or against the making of a winding up order without at least touching upon the findings made by the inspectors. I do so to the minimal extent possible and with the caveat given by the inspectors themselves, that in order to form a balanced view of their findings, the report, together with the appendices should be read in its entirety.

In attempting to carrying out the balancing exercise alluded to in the judgment of Nicholls L.J. I have to bear in mind that the inspectors have reached the following conclusions in respect of improper practices carried on by the **bank** and the company. They have concluded:-

- (a) that bogus non-resident accounts were opened and maintained in the **bank**'s branches, enabling customers to evade tax through concealment of funds from the Revenue Commissioners,
- (b) fictitiously named accounts were opened and maintained in the **bank**'s branches, enabling customers to evade tax through concealment of funds from the Revenue Commissioners,
- (c) CMI policies were produced as a secure investment for funds undisclosed to the Revenue Commissioners,
- (d) special savings accounts had DIRT deducted at the reduced rate, notwithstanding that the applicable statutory conditions were not observed;
- (e) there was improper charging of interest to customers;
- (f) there was improper charging of fees to customers,
- (g) at no time prior to the appointment of the inspectors did the **bank** address the issue of a potential retrospective liability to the Revenue Commissioners for tax arising from the irregularities in the operation of DIRT.

I have also to bear in mind that these activities were widespread throughout the **bank** and were carried on for a long period of time. The inspectors have also made findings against a substantial number of senior **bank** personnel who carry or share responsibility for some or all of these activities. Such findings have been made against well in excess of a dozen persons, over and above three who were represented at the hearing before me on Wednesday last.

The inspectors' findings are of the utmost gravity. That is not my description, but rather the banks. It so described the findings in the draft report furnished to it last year.

Therefore, on one side of the balance, I have findings of utmost gravity made against a licensed **bank** and financial institution. On the other side of the scales, I think I ought to bear in mind the attitude and approach of the **bank** as well as the consequences of a winding up order, not merely for it, but also for its customers and staff.

The attitude of the bank is best encapsulated in an extract from a letter written by the chief operating officer and project director of the 24th March, 2004. He said as follows:-

"It is a matter of the deepest regret to the bank that during the period under investigation, events took place which fell short of the standards customers and third parties dealing with the bank were entitled to expect. The bank is profoundly sorry that these events could have occurred and apologises to all those who have been affected by these events. The bank believes that the programmes put in place for those affected by reason of the practices described by the inspectors have remedied or will remedy any disability that they may have unfairly suffered as a result of the events described. The changes made in the operational structures of the bank, which have been explained to the inspectors, are designed to ensure that the bank operates at all times to high standards of governance. The bank considers that it is also appropriate to mark the debt it owes to its employees who have had to work under the shadow of the investigation. Their dedication has been an essential building block in creating a new bank and maintaining customer confidence".

I bear in mind also that the bank told the inspectors that it was determined to review the retail banking operations and financial services and advice operations that were affected by the allegations to ensure that its business was equipped to operate as a fully functioning member of the Irish financial community and that it had systems in place which were in line with the appropriate standards.

The bank estimates that its commitment to addressing the issues identified in the investigation will run to some €64 million. The largest part of that, which has already been paid, is a sum of €28.7 million being what are described as legal and bank costs relating to the investigations and programmes which have been put in place to deal with the matters, the subject of the inspectors report. There has also been paid a sum of €6.7 million in respect of the Revenue audit, DIRT and special savings account settlement. A fees and interest refund programme to customers has cost €1.9 million to date. It is estimated that it will cost a further €10.6 million. These refunds are to be made in three tranches. The first of these will be completed by the 30th September this year and a further year will be required to complete tranches two and three. There has also been set up an offshore investors settlement programme, which to date had offers totalling €8.9 million accepted, and a further €1.9 million has been offered.

I regard these as concrete manifestations of a purpose of amendment in support of the contrition expressed in the letter from which I have just quoted. I am also conscious of the fact that a winding up order would jeopardise, or at least delay, implementation of the repayment programmes which I have just outlined. Whilst I am satisfied that the cessation of improper conduct is not necessarily a ground for not winding up a company, it is a factor which must be taken into account.

Given the attitude of the bank as manifested, not merely by word but also by deed, the adverse consequences which a winding up would have on the repayment programmes outlined, to say nothing of the consequences for the bank's customers and the banking system and giving due weight to the views of the Director and the inspectors, I have concluded that it would not be in the public interest to order the winding up of either the bank or the company. I therefore do not propose to exercise the power given to me under s. 12 (1) (a).

SECTION 12 (1) (b)

I am not satisfied that it would be appropriate to make an order under sub-s. (b) either. The inspectors do not wish me to do so for the very good reason that such an order would be logistically extremely difficult to give effect to in the context of a bank. Moreover, I am satisfied that the bank has attempted to put in place structures which are aimed at remedying any disability or loss suffered by any person as a result of the activities, the subject of the investigation. I make no adjudication upon the efficacy of such structures. If, however, they should prove to be insufficient, a person who is allegedly wronged is not deprived of access to the courts in order to press for a remedy. Moreover, such a person will have available to him the report of the inspectors which, pursuant to s. 22 of the Act, are admissible in any civil proceedings as evidence of both the facts set out therein (without further proof unless the contrary is shown) and of the opinion of the inspector in relation to any matter contained in the report.

In these circumstances, I am of opinion that it is not necessary for the court to make an order as contemplated in sub-s (b). There will however be liberty to any party including the regulatory authorities to make an application for such an order should it appear necessary to do so in the future.

DOCUMENTS

The inspectors seek a direction from the court pursuant to s. 7 (4) concerning what is to become of the documents which have been generated by this inspection. The documents fall into one of three categories. They are:-

- (a) copy documents,
- (b) transcripts of interviews,
- (c) working papers of the inspectors.

As suggested by the inspectors, I propose making an order directing that these papers be retained by the firm of PricewaterhouseCooper for a period of three years from today's date. In the absence of any application being made prior to that date for further directions from the court, I direct that the documents be then destroyed.

Any applications in the meantime concerning access to these documents are to be made to the court. I have been told by counsel for the Director that he will be seeking access to these documents and I give liberty to him to make such an application to the court on notice to the bank and the company and the inspectors. Likewise, if any other interested parties wish to apply for access to these documents, e.g. the Revenue Commissioners or the Irish Financial Services Regulatory Authority, they must do so in like manner.

I note that the Director intends to bring an application against the bank and the company, seeking to restrain them from disposing of, or destroying, any material documents touching upon matters dealt with in the investigation. I give liberty for such a motion to be brought and note that in the meantime an undertaking has been given to the court by the bank and the company through counsel that there will be neither destruction or disposal of the these documents pending the hearing of the Director's application.

COSTS

The bank, both through its counsel in court and indeed, in its letter of 24th March, 2004, from which I have already quoted, expressed the view that the taxpayer should not be liable for the inspectors' costs. I entirely agree.

It seems to me that these costs fall under two categories. First, there is the actual cost of the investigation itself and I will make an order directing the bank and the company to discharge the costs of the inspectors in that regard. Obviously it would be preferable that the quantum of those costs be the subject of agreement. If, however, they cannot be agreed upon, then it would be appropriate that the matter be brought before the court so that it can make an adjudication on that issue.

Insofar as legal costs of the inspectors are concerned, I am going to make an order that the bank and the company pay those costs to include all reserved costs. In the light of the bank's attitude that the taxpayer should not be liable for such costs, I will not make a normal order for costs. That would only cover party and party costs. That never amounts to a full indemnity. Rather I will order costs to be paid on the highest possible scale, namely, solicitor and own client costs. I do this to accommodate the banks view that the taxpayer should not be liable for any of the inspectors' costs.

Farm drought aid soars to \$1 billion

THE state's primary producers have received more than \$1 billion in drought aid.

Figures from the Queensland Rural and Regional Assistance provider QRRA reveal for the first time the extent of financial assistance to farmers and small businesses since 1994.

Already this financial year, \$100 million has been paid in grants, with possibilities the amount could top \$400 million.

"We can't say for sure how much it will end up, but this will be a record year," QRRA's spokeswoman said.

The level of assistance had risen sharply over two years as the bush struggled to cope with the worst drought on record.

In 2002-03, QRRA paid \$51 million in federal and state grants, increasing to

By EDmund BURKE

\$82.6 million the following year, \$114.1 million in 2004-05 and \$197.7 million last financial year.

Queensland's agricultural senator, Sarahy Joyce said, the figures were proof of the struggle for people on the farm.

"One farmer is killing himself every four days in this country," he said. "It that isn't a good indication things are pretty dark, what is?"

He said everyone needed to pitch in to help the bush get through the drought.

"It is really important that we keep this up for social, economic reasons - we should help people in need, but also for economic reasons. Mining and agriculture are the two main industries we have," he said.

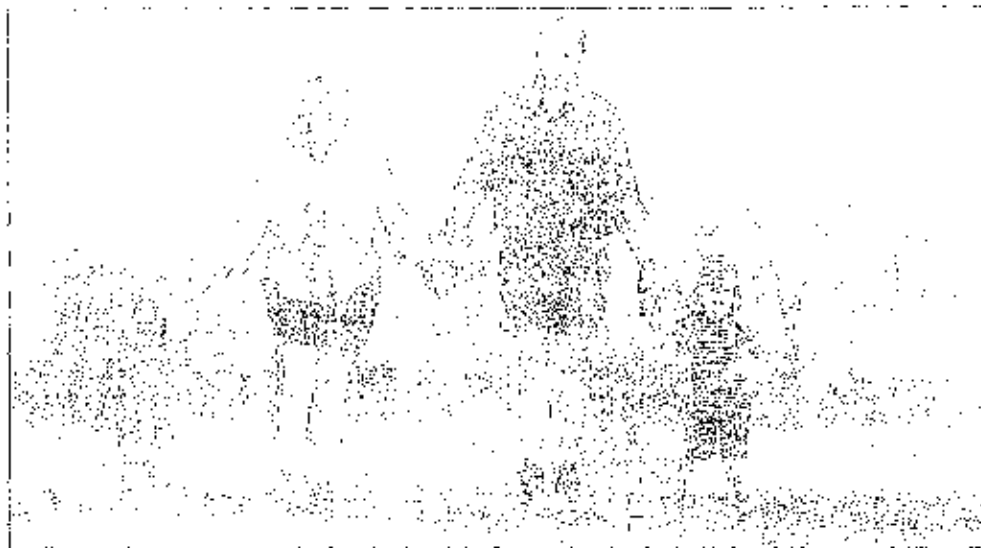
AgForce drought coordinator Bob Seel said the big dry was forcing Queensland farmers into unprecedented levels of poverty.

"This is breaking up marriages and ending family relationships," he said.

"Even if there has been \$1 billion in aid, that translates to only about \$2000 a farmer. People in the bush are a tremendously resilient and I am constantly amazed by how they are coping."

Fifth-generation grain, cotton and beef farmer Chris Bond, 57, runs an 8000ha property, Chichester, 50km west of Townsville. He said he had been forced to accept income support for 12 months.

"You don't want to take it, but what choice do we have? We have to support our families." The father of two young boys said.



SAVED: Chris Bond with wife Shelly and sons Andrew, 20 months, and Timothy, 3