

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES,

COMMON LAW DIVISION, COMMERCIAL LIST,

MATTER NO. 16158 OF 1980

BETWEEN:

PHILLIP WILLIAM CARNEY

Appellant (Defendant)

AND:

KARLO JEHNIC

Respondent (Plaintiff)

RECORD OF PROCEEDINGS

SOLICITORS FOR THE APPELLANT

Kennedy & Kennedy,
111 Elizabeth Street,
SYDNEY.

Telephone: 232 3033
DX 231 SYDNEY

By their Agents:

MacFarlanes,
10 Norwich Street,
LONDON. EC4A 1BD U.K.

Telephone: (01) 831 9222

SOLICITORS FOR THE RESPONDENT

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

Telephone: 542-3644
DX 11048 MIRANDA

By their City Agents:

Law & Milne,
68 Pitt Street,
SYDNEY.

Telephone: 232 2522
DX 223 SYDNEY

By their Agents:

Charles Russell & Co.,
Hale Court,
Lincoln's Inn,
LONDON, WC2A 3UL U.K.

Telephone: (01) 242 1031

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SUTHERLAND.

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AND:

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RECORD OF PROCEEDINGS

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6.	Affidavit of K. Jehnic	1 May, 1981	"
7.	Affidavit of D.B. Arnett	1 May, 1981	"
8.	Affidavit of the Defendant	3 September, 1981	"
9.	Affidavit of W.S. Morton	3 September, 1981	"
10.	Affidavit of L.J. Kelk	11 September, 1981	"

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12.	Reasons for Judgment of Master Allen in favour of the Plaintiff on Motion for Summary Judgment	23 October, 1981	"
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"A2"	Agreement for Sale of Shares between John Edward Herbert of the first part and Ilerain Pty. Limited of the second part	21 March,	Reproduced in Record of 1980 16157 of 1980
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"A27"	Butt for Airfoil Registers Pty. Limited cheque No. 536166	24 March,	1980 "
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"A31"	Butt for Airfoil Registers Pty. Limited cheque No. 536170	15 August,	1980 "
"A32"	Butt for Airfoil Registers Pty. Limited cheque No. 536171	31 July,	1980 "
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"A43"	Reconstituted ledger account No.18 of Airfoil Registers Pty. Limited Defendant's loan account	Undated	"
"A44"	Annual Return of Airfoil Registers Pty. Limited to 31 December, 1979	31 December,	1979 "
"A45"	Copy Balance Sheet for Airfoil Registers Pty. Limited as at 31 December, 1979, annotated in pencil	Undated	"
"A47"	Balance Sheet and Profit and loss accounts for Airfoil Registers Pty. Ltd. as at 27 June, 1980	Undated	"
"B"	Photocopy of calculations in Defendant's handwriting	Undated	"
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1(12)	Airfoil Registers Pty. Limited cheque No. 536165	24 March,	1980 Reproduced in Record of 16157 of 1980
1(13)	Airfoil Registers Pty. Limited cheque No. 536166	24 March,	1980 "
1(14)	Airfoil Registers Pty. Limited cheque No. 536167 (Date unclear)		"
1(15)	Airfoil Registers Pty. Limited cheque No. 536168	15 August,	1980 "
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IN THE SUPREME COURT OF NEW SOUTH WALES

SYDNEY REGISTRY

COMMON LAW
DIVISION

No. 16158 of 1980

KARLO JEHNIC

Plaintiff

PHILLIP WILLIAM
CARNEY

Defendant

STATEMENT OF
CLAIM

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

2. Pursuant to the said agreement Ilerain Pty. Limited was to pay the sum of \$176,700.00 as follows:-

(a) As to the sum of \$68,000.00 such sum to be paid on 24th March, 1980.

(b) As to the sum of \$37,000.00 such sum to be paid on 31st July, 1980.

(c) As to the sum of \$71,700.00 such sum to be paid on 15th August, 1980.

3. Ilerain Pty. Limited has not paid the sums of \$37,000.00 and \$71,700.00 as hereinbefore set out.

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

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

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Statement of Claim

payment of the said sums of \$37,000.00 and \$71,700.00 and the defendant has failed to pay the said sums.

6. The plaintiff claims from the defendant

(i) The sum of \$108,700.00

(ii) Interest in the sum of \$108,700.00 from the (L.S.) date of issue hereof until the date of judgment at the rate of \$10.00 per centum per annum pursuant to Section 94 of the Supreme Court Act.

To the defendant Phillip William Carney of 3 Turon Court, 10 Turon Avenue, Kingsgrove, Company Director.

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

2. You are required to verify your defence.

3. You may, within fourteen (14) days after service of this Statement of Claim upon you, pay to the plaintiff or his solicitor the amount claimed together with interest thereon at the rate claimed upon the date of filing of this Statement of Claim until payment and 182--- (L.S.) also \$~~162.00~~ for costs. Further proceedings against you will be stayed when you also file a prescribed form of notice of payment. 20

Nominated place for trial: Sydney

Plaintiff: Karlo Jehnic

Statement of Claim

Plaintiff's Address
for Service:

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

Address of Registry:

Law Courts Building Level
Queens Square, Sydney.

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

Danny Kenneth Simpson

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Filed:

(L.S.)

IN THE SUPREME COURT OF NEW SOUTH WALES

SYDNEY REGISTRY

COMMON LAW
DIVISION

No. 16158 of 1980

KARLO JEHNIC

Plaintiff

PHILLIP WILLIAM
CARNEY

Defendant

DEFENCE

1. In answer to paragraphs 1 and 2

of the Statement of Claim, the Defendant admits that Ilerain Pty.

Limited agreed with the Plaintiff to purchase from the Plaintiff

certain shares owned by the

Plaintiff in a company known as

Airfoil Registers Pty. Limited on

the terms as to payment set forth

in paragraph 2 of the Statement of

Claim, but says that the terms of

the said agreement are not fully

or accurately set forth in the

Statement of Claim. Save as afore-

said, the Defendant does not admit

the allegations made in paragraphs

1 or 2 of the Statement of Claim

or any of them.

2. The Defendant admits the allega-

tions made in paragraph 3 of the

Statement of Claim.

3. In answer to paragraph 4 of the

Statement of Claim, the Defendant

admits that he agreed to guarantee

the obligations of Ilerain Pty.

Limited in respect of the purchase

by Ilerain Pty. Limited of shares

of the Plaintiff in the capital of

4. Defence

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Defence

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

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

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

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Defence

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

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

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

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

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

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Defence

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

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

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

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Defence

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

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

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Defence

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

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

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

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

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

Defence

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

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

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

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

Defence

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

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

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

Defence

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

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- (ii) In accordance with the said expectation Airfoil Registers Pty. Limited advanced on loan the first instalment of the price of the said shares;
- (iii) In the premises, the said agreement was, or alternatively, the said agreements were, illegal and unenforceable by reason of the provisions of Section 67 of the Companies Act 1961.

.....
Defendant's Solicitor

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Defence

AFFIDAVIT

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

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

SWORN by the deponent)

at PADSTOW)

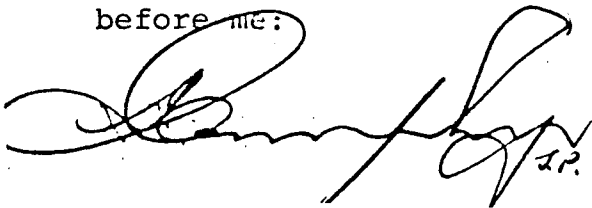
before me:)

)
)
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X PC

P.W. Carney

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A handwritten signature in cursive script, appearing to read 'Phillip W. Carney', with the date '20/2' written below it.

A Justice of the Peace

Filed: 1981

IN THE SUPREME COURT OF NEW SOUTH WALES

SYDNEY REGISTRY

COMMON LAW
DIVISION

No. 16158 of 1980

KARLO JEHNIC

Plaintiff

PHILLIP WILLIAM
CARNEY

Defendant

NOTICE OF MOTION

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

move the Court for orders:

1. Directing the entry of judgment
for the plaintiff.

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2. Alternatively, striking out the
defence and directing the entry of
judgment for the plaintiff.

3. For such further or other relief
as the nature of the case may require.

4. For costs.

FILED 7th May 1981.

D.K. Simpson

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.....

Plaintiffs Solicitor

TO: Phillip William Carney

IN THE SUPREME COURT OF NEW SOUTH WALES

SYDNEY REGISTRY

COMMON LAW
DIVISION

No. 16158 of 1980

KARLO JEHNIC

Plaintiff

PHILLIP WILLIAM
CARNEY

Defendant

JUDGMENT

Judgment -

1. that the defendant pay the plaintiff \$108,700.00 together with \$11,167.80 for interest thereon pursuant to s.94 of the Supreme Court Act 1970 at the rate of 10 per centum per annum from 16th October 1980 to 26th October 1981;

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The Court orders that -

2. the defendant pay the plaintiff's costs of the proceedings generally including the costs of this motion for summary judgment which costs are to include the brief fee on hearing for senior Counsel on the basis of a single brief on hearing covering the motion for summary judgment in this case and the motions for summary judgment in Herbert v. Carney (16157 of 1980) and in Arnett v. Carney (16159 of 1980).

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Ordered 26th October 1981 and entered
15 July 1983.

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By the Court

.....
Deputy Prothonotary.

IN THE SUPREME COURT OF NEW SOUTH WALES

SYDNEY REGISTRY

COMMON LAW
DIVISION

S17455 of 1981
16158 of 1980

PHILLIP WILLIAM
CARNEY

Appellant

KARLO JEHNIC

Respondent

IN THE COURT
BELOW

KARLO JEHNIC

Plaintiff

PHILLIP WILLIAM
CARNEY

Defendant

NOTICE OF APPEAL

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

GROUND:

1. That the Master erred in holding 10

that any term of the contract between the plaintiff and Ilerain Pty. Limited relating to the acquisition by Ilerain Pty. Limited of the Plaintiff's shares in Airfoil

Registers Pty. Limited requiring the provision of a mortgage by Newbridge Industries Pty. Limited as security 20

for payment of the purchase price was severable from the rest of the contract. (L.S.)

2. That the Master erred in holding that it would not be open to a tribunal of fact acting reasonably on a trial of these proceedings to infer that the contractual obligation of Ilerain Pty. Limited was to 30

make the first payment of the said purchase price by a cheque drawn on the account of Airfoil Registers Pty. Limited.

3. That the Master should have found

Notice of Appeal

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

4. That the Master erred in holding that any term of the said contract between the plaintiff and Ilerain Pty. Limited requiring that post-dated cheques drawn on the account of Airfoil Registers Pty. Limited should ^(L.S.) be handed over to secure the balance of the said purchase price was severable from the rest of that contract. 10

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

ORDERS SOUGHT:

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

- (a) That the summons be dismissed. 20
- (b) That the plaintiff pay the defendant's costs including the fees for Senior Counsel.

2. Costs.

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

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

FILED: 23 NOVEMBER 1981



IN THE SUPREME COURT OF NEW SOUTH WALES

SYDNEY REGISTRY

COMMON LAW
DIVISION

No. 16158 of 1980

KARLO JEHNIC

Plaintiff

PHILLIP WILLIAM
CARNEY

Defendant

AMENDED
DEFENCE

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

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Amended Defence

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

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

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

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

Amended Defence

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

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

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

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

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

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Amended Defence

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

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

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Amended Defence

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

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

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

Amended Defence

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

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

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

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

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

Amended Defence

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

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

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

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

(ii) Pursuant to the last-mentioned agreement,

Amended Defence

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

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

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

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

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

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

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

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

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

Amended Defence

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

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

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

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

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

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

Amended Defence

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

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- (ii) Pursuant to the last mentioned agreement, Airfoil Registers Pty. Limited sold to the Plaintiff the said motor vehicle at a price less than the true value.
- (iii) The sale of the said motor vehicle as aforesaid constituted the giving by Airfoil Registers Pty. Limited of financial assistance in connection with the purchase by Ilerain Pty. Limited of shares in Airfoil Registers Pty. Limited.

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

Amended Defence

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

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

- (i) The agreement pursuant to which Ilerain Pty. Limited agreed as admitted in paragraph 1 hereof and the Defendant agreed as admitted in paragraph 3 hereof was, or alternatively, the agreement pursuant to which Ilerain Pty. Limited agreed as admitted in paragraph 1 hereof and the agreement pursuant to which the Defendant agreed as admitted in paragraph 3 hereof, were, entered into by the parties thereto in the expectation of the parties that Airfoil Registers Pty. Limited would sell to the Plaintiff at a price less than its true value a certain motor vehicle owned by Airfoil Registers Pty. Limited. 10
- (ii) In accordance with the said expectation, Airfoil Registers Pty. Limited sold to the Plaintiff the said motor vehicle at a price less than its true value. 20
- (iii) The sale of the said motor vehicle as aforesaid constituted the giving by Airfoil Registers Pty. Limited of financial assistance in connection with the purchase by

Amended Defence

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

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

Defendant's Solicitor.

AFFIDAVIT

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

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

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

(sgd)

A Justice of the Peace

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Filed: September, 1982

IN THE SUPREME COURT OF NEW SOUTH WALES

SYDNEY REGISTRY JUDGMENT -

COMMON LAW that -
DIVISION

16158 of 1980 1. That the defendant pay to
16157 of 1980 the plaintiff the sum of \$148,942.83.

16159 of 1980 2. This judgment takes effect
(L.S.) on 6 April 1983. 10

KARLO JEHNIC THE COURT ORDERS that -

Plaintiff 1. The Defendant pay the Plain-

PHILLIP WILLIAM tiff's costs other than the costs of
CARNEY the application for summary judgment

Defendant heard by Master Allen on 15 and 16
September, 1981 and of the appeal

JUDGMENT from the decision of Master Allen
heard before Begg J. on 24 May 1982. 20

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

Ordered 6 April 1983 and entered.
8.2.1984

By the Court

(Sgd:) W. FARLOW (L.S.)
Chief Clerk 30

IN THE SUPREME COURT OF NEW SOUTH WALES

SYDNEY REGISTRY

COMMON LAW
DIVISION

No. 16158 of 1980

KARLO JEHNIC

Plaintiff/
Respondent

PHILLIP WILLIAM
CARNEY

Defendant/
Appellant

ORDER

The Court Orders:

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

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

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

Order granting Conditional
32. Leave to Appeal

Order granting Conditional
Leave to Appeal

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

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

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

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Order granting Conditional
Leave to Appeal

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

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

Ordered 6th May 1983 and entered 8.6.1983

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

IN THE SUPREME COURT OF NEW SOUTH WALES

SYDNEY REGISTRY

COMMON LAW
DIVISION

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

KARLO JEHNIC

Plaintiff/Respondent

PHILLIP WILLIAM
CARNEY

Defendant/Appellant

ORDER

THE COURT ORDERS that -

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

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Ordered 19 August 1983, and
entered 8.2.1984.

{Judge}

By the Court

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

Chief Clerk

IN THE SUPREME COURT OF NEW SOUTH WALES

SYDNEY REGISTRY

COMMON LAW DIVISION

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

JOHN HERBERT
Plaintiff/
Respondent

PHILLIP WILLIAM
CARNEY
Defendant/Appellant

KARLO JEHNIC
Plaintiff/
Respondent

PHILLIP WILLIAM
CARNEY
Defendant/Appellant

DARRELL BRUCE
ARNETT
Plaintiff/
Respondent

PHILLIP WILLIAM
CARNEY
Defendant/Appellant

AFFIDAVIT

Deponent: Leonie
Estelle Farrant

Sworn:

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

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

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

Sworn at Sydney

Before me: Leonie E. Farrant


.....

Solicitor, Sydney.

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

VERIFYING THE TRANSCRIPT RECORD OF PROCEEDINGS

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

DO HEREBY CERTIFY as follows:-

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

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

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

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

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

THIS DEED made the 21st day of March One thousand nine hundred and eighty between KARLO JEHNIC of 50 Victor Avenue, Picnic Point in the State of New South Wales, Manager (hereinafter called "the Vendor") of the first part and ILERAIN PTY. LIMITED a company duly incorporated in the State of New South Wales and having its registered office C/- Charles M. Harvey & Co., 3rd Floor, 163 Clarence Street, Sydney in the said State (hereinafter called "the Purchaser") of the second part

WHEREAS

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(a) The Vendor is the owner of Share Certificate No. 3 in respect of 5 shares and Share Certificate No. 5 in respect of 3 shares in company known as AIRFOIL REGISTERS PTY. LIMITED being a Company duly incorporated in the State of New South Wales and having its registered office at 131-133 Newbridge Road, Moorebank in the said State (hereinafter called "the Company") (Such shares being numbered 96 -100 and 104 - 106 inclusive)

(b) The Vendor has agreed to sell the said shares to the Purchaser for the sum of One hundred and seventy six thousand seven hundred dollars (\$176,700.00).

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

1. The Purchaser shall pay to the Vendor the sum of One hundred and seventy six thousand seven hundred dollars (\$176,700.00) such amount to be made by cash or bank cheque as follows:-

38. Exhibit "A3" - Agreement
for Sale of Shares, Karlo
Jehnic and Ilerain

Exhibit "A3" - Agreement
for Sale of Shares, Karlo
Jehnic and Ilerain

- a) As to the sum of \$68,000.00 such sum to be
paid on 24th March, 1980
- b) As to the sum of \$37,000.00 such sum to be
paid on 31st July, 1980
- c) As to the sum of \$71,700.00 such sum to be
paid on 15th August, 1980.

-2-

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2. Upon receipt of the payment of the said \$68,000.00
the Vendor shall execute a Transfer of the said shares
in favour of the Purchaser in appropriate form and
shall hand such Transfer to the Purchaser.

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

IN WITNESS WHEREOF the parties hereto have hereunto 20
set their hands and seals on the day and in the year
first hereinbefore mentioned.

SIGNED SEALED AND DELIVERED)
)
by the said KARLO JEHNIC)
)
in the presence of:)

Exhibit "A3" - Agreement
for Sale of Shares, Karlo
Jehnic and Ilerain

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

.....
Secretary

RP 25
1978

STAMP DUTY



MORTGAGE

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

(See Instructions for Completion issued separately)

OFFICE USE ONLY	
M	of
\$	

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

(the abovenamed MORTGAGOR) hereby acknowledges receipt of the principal sum of \$ 176,700.00

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

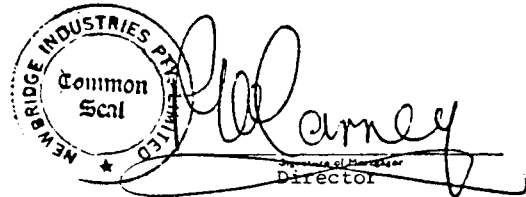
MORTGAGEE Note (b)	KARLO JEHNIC of 50 Victor Avenue, Picnic Point, Manager	OFFICE USE ONLY
TENANCY Note (c)	as joint tenants/tenants in common	

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

DATE OF MORTGAGE 21st March, 1980

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

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



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

 Signature of Witness

 Name of Witness (BLOCK LETTERS)

 Address and occupation of Witness

 Signature of Mortgagee

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

RP.25
1978

SCHEDULE HEREINBEFORE REFERRED TO

FOR THE CONSIDERATION AFORESAID the Mortgagor hereby

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

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(b) covenants with the mortgagee as follows:

Firstly - The mortgagor will pay to the mortgagee the principal sum, or so much thereof as shall remain unpaid, on the as to the sum of day of \$68,000.00 on 24th March, 1980 as to the sum of \$37,000.00 on 31st July, 1980 and as to the sum of \$71,700.00 on 15th August, 1980

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

~~() per centum per annum as follows, namely - By equal payments on the days of the months of in each and every year until the principal sum shall be fully paid and satisfied, the first of such payments computed from the day of 19 , to be made on the day of~~

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~~next: Provided always, and it is hereby agreed and declared, that if the mortgagor shall on every day on which interest is hereinbefore made payable under this security, or within fourteen days after each of such days respectively, pay to the mortgagee interest on the principal sum or on so much thereof as shall for the time being remain unpaid at the rate of~~

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

~~() per centum per annum in lieu of () per centum per annum for every for which such interest shall be paid to the mortgagee within such fourteen days as aforesaid,-----~~

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

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

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

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

X *Paul Carney*
X *H. S. Norton*

OFFICE USE ONLY					
DIRECTION. PROP		FIRST SCHEDULE DIRECTIONS			
No. OF NAMES:					
(A) FOLIO IDENTIFIER	(B) No.	(C) SHARE	(D) 1	(E) 1	NAME AND DESCRIPTION
SECOND SCHEDULE & OTHER DIRECTIONS					
(F) FOLIO IDENTIFIER <small>FOR REGD. DEALINGS & FOLIO IDENTIFIERS</small>	(G) DIRECTION	(H) NOTFN TYPE	(I)	(J) DEALING NUMBER	(K) DETAILS

3433 L 11 28 D. WEST, GOVERNMENT PRINTER

REGISTRAR GENERAL
NEW SOUTH WALES

80 MAR 26 P1 43

R758528

CAVEAT FORBIDDING RECORDING
OF DEALING

SECTION 72, REAL PROPERTY ACT, 1900

(See instructions for Completion on back of form)

X

A	1 of 1
\$21	

LAND which is to be affected by the caveat

Torrens Title Reference	If Part Only, Delete Whole and Give Details	Location
Certificate of Title Volume 4838 Folio 22	WHOLE	Moorebank

LEASE, MORTGAGE, OR CHARGE

which is to be affected by the caveat

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

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

KARLO JEHNIC of 50 Victor Avenue, Picnic Point, Manager	OFFICE USE ONLY
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claiming estate or interest pursuant to Memorandum of Mortgage dated 21st March, 1980

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

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

DATE OF CAVEAT 25th March, 1980

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

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

Signature of Witness

Exhibit 1(8) - Caveat -
R758528

Name of Witness (BLOCK LETTERS)

Address and occupation of Witness

D.K. Simpson
Solicitor for
Signature of Caveator

LODGED BY	PEET, SIMPSON & CO. Solicitors 123-125 Forest Road HURSTVILLE 2220 579 4466 D.X. 11111 KOGARAH	DOCUMENTS LODGED
Delivery Box Number 852T		
Extra Fee	Checked by <i>R R/S flw</i>	REGISTERED 15-4-1980 <i>[Signature]</i> (L.S.) Registrar General

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RULE UP ALL BLANKS

R758528

RP 11
1978

INSTRUCTIONS FOR COMPLETION

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

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

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

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Rule up all banks.

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

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

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

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

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

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

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

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

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

GENERALLY

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

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

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

ATTORNEY

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

AUTHORITY

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

CORPORATION

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

IN THE SUPREME COURT OF NEW SOUTH WALES

SYDNEY REGISTRY Pursuant to directions given by Mr.

COMMON LAW DIVISION Justice Rogers on 26 May, 1982,

COMMERCIAL LIST the plaintiff is required to

16158 of 1980

answer the following interroga-
tories and to verify his answers.

KARLO JEHNIC

INTERROGATORIES

Plaintiff

2. At all times between 31

PHILLIP WILLIAM
CARNEY

January, 1979 and 24 March, 1980,

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Defendant

was not -

(a) The plaintiff;

(b) John Edward Herbert;

(c) Darrell Bruce Arnett;

(d) The defendant;

NOTICE TO ANSWER
INTERROGATORIES

a Director of Newbridge Industries

Pty. Limited?

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3. At all times between 31

January, 1979 and 24 March, 1980,

was not -

2.

(a) The plaintiff;

(b) John Edward Herbert;

(c) Darrell Bruce Arnett;

(d) The defendant;

a Director of Airfoil Registers

Pty. Limited?

Exhibit 4 - Defendant's
Interrogatories Nos. 2

49. and 3