

4. If the answer to 3 above is yes, then when did these discussions take place?"

In the fifth and sixth Interrogatories details are sought in respect of a transaction between the first plaintiff and two individuals who are not parties to these proceedings. In Interrogatories 7 to 16 (inclusive) similar details are sought in respect of 4 other transactions between the first defendant and other persons not party to these proceedings. I reproduce here only Interrogatories 5 and 6 as being representative of the others in this category. They are as follows:

- "5. When did the first Defendant agree to purchase the said shares as nominee for J.B. & M.R. Morrison?
6. With reference to question 5 hereof:-
- a) What were the terms of the same agreement as to payment for the shares?
 - b) If payment for the said shares was to be made by the first defendant, then when was such payment made?
 - c) If payment was to be made by someone other than the first defendant, then who was that person or persons and when was payment made?"

There is little contest in respect of the Interrogatories sought to be delivered for the examination of the second defendant and it would serve no purpose to reproduce them.

As to the first defendant, Interrogatories 1 and 2 appear to be directly relevant to the primary issue arising on the causes of action based upon the alleged breach of fiduciary relationship and may properly be put to the first defendant.

Mr Barton objects to Interrogatories 3 and 4 upon the grounds that they are not relevant to the causes of action pleaded and amount to a "fishing expedition" undertaken with a view to disclosing a new and different cause of action. In my view these questions are relevant to the cause of action of conspiracy. If the answers to questions 1 and 2 show that the first defendant first became aware of the second defendant's intention to purchase shares through some person other than an agent or employee of the second defendant the answers might give little support to the conspiracy case although they would be relevant to the issue of breach of fiduciary duty.

Assuming that the first defendant became aware of the second defendant's intentions through a third party it would be a relevant consideration in the case alleging conspiracy to know whether that knowledge was discussed with the second defendant and, if so, when any such discussion took place. Viewed in that light I do not think that the questions can be said to be merely fishing

Counsel for the first plaintiff agrees that if Interrogatories 1 to 4 are permitted to be delivered the inquiry should be limited to a period expiring on 28 August 1980, the date on which the second defendant's take over offer was made.

The third category of questions contained in Interrogatories 5 to 16 (inclusive) are subject to the same objection by Mr Barton who sees them as designed to discover a new cause of action, such as impropriety by the first plaintiff in his dealings with third parties, and as irrelevant to the plaintiffs' claims against his client.

The first three causes of action allege a breach by the first defendant of a fiduciary duty owed by him to the three plaintiffs respectively ... shortly put the allegation is that the first defendant being the Managing Director of the Manawatu Standard Limited was aware that a take over bid was about to be made for the shares in that Company by the second defendant/^{and}purchased the shares of the plaintiffs without informing them of that fact. The fourth cause of action alleges the same matters against the second defendant, it allegedly being vicariously liable for the acts of the first defendant. The fifth cause of action alleges a conspiracy between the defendants. The measure of damages claimed on all causes of action is the

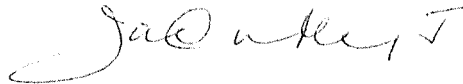
difference between the price of \$1.00 per share paid to the plaintiffs and the price of \$3.80 per share paid subsequently by the second defendant on taking over the company.

Paragraph 16 of the first defendant's statement of defence introduces the agency relationship of the first plaintiff with a number of named persons as the beneficial purchasers of the plaintiffs' shares. There can be no quarrel with Mr Barton's submission that it is a properly informative pleading made with a commendable desire to give full disclosure of material facts. It shows, if accepted at its face value, that the first defendant had little to gain personally from the allegedly improper actions engaged in by him in relation to the plaintiffs' shareholding. I stress that I am not suggesting that that is not a proper inference but merely that it is a factual issue which, having been raised by the first defendant, is open to question by the plaintiffs. I see that as being so particularly because it may be suggested by the plaintiffs that the first defendant, being in a fiduciary relationship to them, acted in a similar capacity on behalf of others in a transaction in which there may have been a conflict of interest. In such a situation I think they are entitled to have reasonably full particulars of the transactions in which he engaged. The Interrogatories do not seek anything more than that.

In the result, I order that leave be granted to deliver for the examination of the first defendant the Interrogatories as filed subject only to the limitation that the inquiry contemplated by Interrogatories 1 and 4 be restricted to dates up to and including 28 August 1980.

As to the Interrogatories sought to be delivered to the second defendant, I order that leave be granted for that to be done in the form filed subject to the same time limitation as in the case of the first defendant. I regret that I do not appear to have a record of the officer of the Company who is to answer the Interrogatories. I shall nominate the Secretary reserving leave to apply if that is not satisfactory.

In both cases the answers are to be filed within 21 days of service of the order. Costs will be reserved.



Solicitors:

Buddle Weir & Co., Auckland, for Plaintiffs

Scott Morrison Dunphy & Co., Wellington, for First Defendant

Izard Weston & Co., Wellington, for Second Defendant