IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

CP 305/96

LOW PRIORITY

BETWEEN **HITCHCOCK NOMURA LTD**

Plaintiff

AND **EUMUNDI ENTERPRISES LTD**

Defendant

Hearing: 12 November 1996

Judgment: 18 DEC 1996

Counsel: Ms Peters and Ms Keane for Plaintiff
R J Katz for Defendant

RESERVED JUDGMENT OF MASTER VENNING

The Plaintiff seeks summary judgment against the Defendant for $326,900. The Plaintiff is a real estate agent. The Defendant is a property developer. The Defendant has developed 18 apartment units (the units) on land owned by it on the North Shore in Auckland. In the latter part of 1995 the Defendant and the Plaintiff discussed a marketing agreement for the units. It was intended the Plaintiff would market the units both within New Zealand and overseas. The Defendant had certain prices it wished to achieve for each unit. It was proposed that if the Plaintiff sold any of the units at a price exceeding that figure then the Plaintiff would receive the difference. The Plaintiff presented draft forms of marketing agreement to the Defendant in late November 1995. One

form of agreement was executed by both parties on or about 5 December 1995 in circumstances which the plaintiff says gave rise to a binding agreement. The Defendant denies a concluded agreement was ever made.

That agreement of 5 December 1995 (the agreement) included the following terms inter alia:

(a) The Defendant appointed the Plaintiff as sole marketing agent of the units both inside and outside New Zealand for the term of the agreement.

(b) The term of the agreement was from 27 November 1995 to 30 July 1996.

(c) The Defendant reserved the right to terminate the agreement if fewer than seven units had been conditionally sold by 30 April 1996.

(d) The Defendant would pay the Plaintiff the sum of $50,000 plus GST in the event the Defendant could not complete performance of the contracts.

(e) The Plaintiff would commence marketing the units immediately and would fund and project manage the development of a tennis court on the land.

(f) A separate sale and purchase agreement (ASP) would be entered into between the Defendant and the third party purchaser of each unit.

(g) The ASP would include provision of the following terms:

- deposit 25% ($5,000) on signing;
- balance 30 days;
- 5% held by Premier in their trust account;
- 20% held by the vendor's solicitor on trust;
- settlement 20 working days after practical completion or title whichever was the later.

(h) The Defendant would execute each ASP within five working days of being presented to the Defendant.

(i) The Defendant would transfer another block of land owned by it (Lot 4) to the Plaintiff for no or nominal consideration.

The Plaintiff began marketing the units in New Zealand, Hong Kong and Singapore by itself and by its agents, Premiere Capital Ltd (Premier) in December 1995.

It is common ground that although the agreement referred to a form of ASP as attached no such ASP form was attached to the agreement. The Plaintiff's solicitors delivered draft forms of ASP to the Defendant on 29 December 1995. Later, on 14 February 1996 the plaintiff delivered an offer, known as the "Poon" offer to purchase unit 1F for $326,000. On the basis of the agreement, the Plaintiff would have been entitled to $72,625 as the excess over the Defendant's price. The Defendant refused to accept the Poon offer and in the statement of claim the Plaintiff seeks damages in that sum. In the application for summary judgment before me, however, that claim was not pursued. In refusing the Poon offer the Defendant, through its solicitors, denied that any binding agreement had been concluded on 5 December 1995 and also rejected the form of ASP submitted by the plaintiff with the Poon offer.

The Plaintiff took issue with the defendant's denial of an agreement and further correspondence followed between the parties solicitors. Later, on 19 March 1996 the Plaintiff's solicitors forwarded a further form of ASP which the Plaintiff intended to use in marketing the units. An urgent reply was requested. On 22 March 1996 they advised the Defendant's solicitors that the Plaintiff was proceeding to market the units using the ASP form submitted on 19 March 1996 subject to deletion of the definition of stakeholder. By letter dated 16 April 1996 the Defendant's solicitors acknowledged the Plaintiff was marketing the units using that form of ASP.

On 26 April 1996 the Plaintiff delivered to the Defendant conditional offers by Orient Pacific Developments Ltd (Orient Pacific) to purchase eight units. The Orient Pacific offers exceeded the Defendant's prices of the relevant units by a total of $326,900 net of GST. By letter dated 1 May 1996 the Defendant advised that it did not accept the Orient Pacific offers and gave notice of

termination of the marketing agreement. The Plaintiff, by letter dated 8 May 1996, affirmed the marketing agreement but subsequently, by letter dated 5 June 1996, cancelled the agreement, and brought these proceedings.

There are a number of heads of damage in the statement of claim; the $72,625 from the Poon offer, wasted expenses of marketing the units of $22,960, damages of $450,000 (calculated as nine times the $50,000 for non-performance) and the $326,900. However, the only claim pursued before me in the summary judgment application was for the damages of $326,900 arising from the Orient Pacific offer. I also note Ms Peters quite realistically did not pursue the two alternative causes of action pleaded in the statement of claim, based upon an oral agreement and/or an oral agreement with an implied term.

The Defendant raised a number of grounds in opposition to the application. An amended notice of opposition was filed the day before the hearing. That included four fresh grounds set out at paragraphs 5, 6, 7 and 11. The amended notice of opposition was accepted de bene esse and the hearing proceeded on that basis. In so far as the amended notice of opposition raises statutory defences I would permit the amendment in any event. I also note that Ms Peters was prepared and argued all issues.

Fundamentally, the Defendant's position is that either no agreement was concluded on 5 December 1995, or alternatively the agreement must fail on the basis it was uncertain or incomplete in several material respects.

Was a complete, binding agreement concluded on 5 December?

A copy of the agreement has been annexed to the affidavit of Mark O'Connell, a director of the Plaintiff. The agreement has been signed on behalf of the Plaintiff and also by two directors of the Defendant company, Melville (Bunny) Collie and Mr Julian. It has not been executed under seal by either party although the execution clauses provide for that. It is of course unnecessary

for companies to execute such documents under seal: section 42 Companies Act 1955. The agreement is principally typewritten. On its face it is apparent there have been handwritten amendments made to it. The amendments have been made to clause 3.1 (relating to GST) and also to the schedule. The amendments have been initialled on behalf of the Plaintiff but not the Defendant.

The Plaintiff's evidence concerning execution of the agreement is found in the affidavits of Caroline Harrow, its project manager, and Kerry Hitchcock, a director of the Plaintiff.

Caroline Harrow confirms that together with Kerry Hitchcock she attended a meeting at the offices of Atlas Concrete on 5 December 1995. She says that she and Mr Hitchcock met Wayne Collie (a son of Bunny Collie) in the Atlas boardroom, that Wayne Collie read the marketing agreement and made the handwritten changes to it, that Kerry Hitchcock and she then signed the document and initialled the changes Wayne Collie had made. She says that once the agreement was signed it was photocopied and she believes the original was left at the Atlas office. She and Mr Hitchcock took away the photocopy. She says that Wayne Collie's father, Bunny Collie, came in at some stage of the meeting and chatted to them. There is, however, no suggestion in her affidavit that he approved the agreement or the amendments to it, or that he signed it at that time.

In her second affidavit she confirms the details of the discussions held with Wayne Collie during the meeting and also sets out in further detail the steps taken following the execution of the agreement.

Mr Hitchcock confirms that he and Wayne Collie had a discussion about the need for the Plaintiff's fee to be inclusive of GST and that that was agreed. He says that Wayne Collie then made changes to clause 3.1 and the property schedule of the agreement. Those changes were then initialled.

On that basis the Plaintiff says a binding agreement was concluded on 5 December 1995.

The Defendant's case is that the agreement came to be signed by Melville Charles Collie (Bunny Collie) and Mr Julian in the following way. A draft form of agreement was sent for approval with the letter of 29 November 1995. There was only one copy of the draft. It was not in an acceptable form, but nevertheless due to Mr Bunny Collie's convalescence and his mistaken understanding that the agreement would have to be executed under seal by the Defendant company the agreement was signed by both directors to facilitate the ultimate execution of the agreement. As Mr Katz put it, Bunny Collie considered that as the execution clause was on a separate page, amendments could be made to the agreement and the seal attached without the need for the directors to resign the agreement. In any event, the amendments made to the agreement on 5 December 1995 were made after it was signed by the Defendant and were never initialled on its behalf.

Wayne Collie is not a director of the Defendant company. He confirms that at the meeting on 5 December with Ms Harrow and Mr Hitchcock he added in the words "GST inclusive" to clause 3.1 and made the amendments on page 8 of the schedule to the agreement. He says that the initials on those pages are those of Ms Harrow and Mr Hitchcock. He confirms that no one from Eumundi signed the agreement at that meeting.

Ms Peters submitted that the issue of whether the agreement was entered into or not depended upon construction of the agreement. I accept her submission that clearly the agreement did not need to be executed under seal. I also accept that the onus is on the party alleging it to prove that there was no intention to create legal relations even though an agreement has been executed. The onus is a heavy one and the Court will be influenced by the importance of the agreement to the parties and by the fact that one of them acted in reliance on it: *'Chitty on Contracts'* (1994) para 2.105 and 2.106.

In my view the position regarding the execution of the agreement as disclosed by the affidavit evidence before me is as follows. A draft agreement

was submitted by the Plaintiff to the Defendant on 29 November 1995. Bunny Collie discussed that with his solicitor, Mr Witten-Hannah, and in the presence of Wayne Collie on 30 November. At a date between 30 November and 5 December 1995 the draft agreement was executed by Bunny Collie and the other director, Mr Julian for the reasons given by Bunny Collie. At the meeting on 5 December, Wayne Collie made certain amendments to the draft agreement. The amendments were initialled by Mr Hitchcock and Ms Harrow and the agreement was also signed by them on behalf of the Plaintiff at that time. The agreement was photocopied and a photocopy taken by the Plaintiff. A copy of that has been attached to Mr O'Connell's affidavit.

The question is whether Wayne Collie was authorised to make the amendments on behalf of the Defendant and to bind the Defendant to them. It is clear he was not a director of the Defendant. If he was not authorised to make the amendments to the agreement and bind the Defendant company to them, then for the document signed on 5 December to constitute a binding agreement the amendments would have to have been accepted and initialled on behalf of the Defendant. They were not. Whilst, on the face of the agreement, the amendments made were in favour of the Defendant they are nevertheless material amendments and require the Defendant's approval.

Mr Wayne Collie's evidence is that he made it clear to Mr O'Connell, a director of the Plaintiff, that he was not a director of the Defendant and all the Plaintiff's dealings would have to be with Bunny Collie. That much appears to be acknowledged in the affidavit sworn by Mr O'Connell. At para 12 of that affidavit Mr O'Connell confirms:

> "I knew Wayne Collie from a previous transaction. Bunny Collie was in hospital at the time. Wayne Collie told me that his father had left him in charge. He told me that he was not a director of the Defendant and that anything that he and I agreed would have to be approved by the directors. At some point in the discussions I had a meeting with him and Graeme Collie in which we discussed matters further. This meeting took place at the offices of Atlas'

> Cement, a company of which Bunny Collie is the governing director."

It is clear therefore that in November 1995 the Plaintiff, through Mr O'Connell, was aware that Wayne Collie was not a director of the Defendant and that Wayne Collie could not bind the Defendant without directors' approval. The Plaintiff is fixed with Mr O'Connell's knowledge. The Plaintiff had express knowledge that Wayne Collie could not bind the Defendant.

For the purposes of a summary judgment application, in my view there must be an arguable defence to the claim at this stage that Wayne Collie did not have authority to bind the Defendant to the amendments inserted in the agreement by him. The amendments were not initialled by the Defendant's directors. There is no evidence they were approved by them. There is an arguable defence that a final and binding agreement was not concluded on 5 December 1995.

Whilst Ms Peters submitted that regard should also be had to the subsequent conduct of the parties apparently in reliance upon the agreement, in my view that is a different matter to whether or not an agreement was formally concluded as at 5 December 1995.

There is a further fundamental difficulty for the Plaintiff in seeking to rely upon the agreement of 5 December 1995. Clause 5 of the agreement refers to the agreements to be entered between the Defendant and third party purchasers. It provides in clause 5.1(f):

> "Eumundi shall within five working days of each agreement being presented to Eumundi by Nomura execute each agreement <u>in the form attached</u> and prepared in accordance with the terms of this agreement ..." (underlining added)

However, no form of ASP was attached to the agreement signed on 5 December 1995. Ms Peters submitted that that did not preclude the agreement being effective according to its terms and that clause 5.1(e) of the agreement provided in detail for what the ASP should include. I accept that clause 5.1(e)

referred to a number of specific matters to be included in the ASP but those matters were certainly by no means exhaustive. It is apparent from the Poon and Orient Pacific offers that the agreements presented to the Defendant by the Plaintiff included a number of additional terms.

In the decision of *Fletcher Development & Construction Ltd v Marshall* (unreported, High Court Rotorua, A 63/84, 6 November 1986, Bisson J) the learned Judge considered whether an option which intended to attach the terms of an agreement for sale and purchase, but omitted them, was effective. The option document executed by the parties provided for the option to be exercisable at any time before a certain date of an agreement for sale and purchase "in the form attached hereto". No such form was attached.

In his judgment on this point Bisson J stated:

> "Furthermore in this case the Plaintiff intended to have incorporated into the terms of the option the terms of an agreement for sale and purchase in a particular form which had yet to be agreed upon. In those circumstances I must hold that the option as signed by the Defendants was uncertain and incomplete and could not even if unconditionally accepted by the Plaintiff result in a binding contract. For the reasons given the Court could not remove the uncertainty and make the option complete by implying further terms. The parties had yet to make their own contract."

Whilst in the present case a number of terms were set out in clause 5.1(e), equally it is clear that the list was not exhaustive. The agreement was to enable the Plaintiff to market and sell the Defendant's units. The form of ASP was an important part of the agreement. In my view the findings of Bisson J apply to this case. Leaving aside for one moment whether the form of ASP was subsequently agreed, for the purposes of a summary judgment application I consider that the Plaintiff has failed to establish the Defendant does not have an arguable defence on the grounds that as at 5 December 1995 the agreement was incomplete and therefore ineffective.

Was there an agreement concluded by the parties after 5 December 1995?

Ms Peters submitted that following the meeting on 5 December a number of steps were taken by the parties that were consistent with the agreement. Are those steps sufficient to evidence an agreement by conduct? Put another way, can the Defendant be taken to have assented to the terms of the agreement by its conduct as in the case of: *Brogden* v *Metropolitan Railway Co* (1877) App Cas 666.

Following the meeting on 5 December Wayne Collie and Mr Julian met on site with Mr Hitchcock and Ms Harrow to discuss the siting of the pool and tennis court. Wayne Collie sent a fax to Ms Harrow on 7 December 1995 with further details of the unit prices. It is apparent the Plaintiff commenced marketing the units in Hong Kong and Singapore and appointed agents in those countries to act on its behalf. Indeed an exhibition was held in Hong Kong attended by Mr Hitchcock. A draft sale and purchase agreement was forwarded on 29 December 1995 and the Poon offer was presented on 14 February 1996. It was not until the Poon offer was rejected on 14 February 1996 that the Defendant's solicitors expressly rejected that there was any agreement between the parties. It is apparent that almost all the steps taken in reliance upon the agreement between 5 December 1995 and 14 February 1996 were taken by the Plaintiff. Against the denial of an agreement in the rejection of the Poon offer it cannot be said that that the Defendant's actions, such as they were, amounted to an assent to be bound by the terms of the agreement, at least as between 5 December 1995 and 14 February 1996.

Aumoe agreement

Following the rejection of the Poon offer the parties met and discussed the difficulties that had arisen between them. One possible resolution considered was for the Plaintiff to purchase all of the units. That lead to an offer by Aumoe Investments Ltd, a company controlled by Mr O'Connell's interests, to

purchase all of the units together with Lot 4. However, the parties could not agree whether the prices in the property schedule were inclusive or exclusive of GST and whether an additional sum should be paid for Lot 4. No final agreement was concluded.

Mr Katz submitted that the Aumoe offer was at odds with the Plaintiff's position that it had a binding agreement with the Defendant company. However, in my view, it does not go that far. It was always open for parties associated with the Plaintiff to make an offer for all of the units as in the Aumoe offer. Of itself, the Aumoe offer is not determinative of the position between the Plaintiff and the Defendant. It was a practical option pursued by the parties in an effort to resolve the dispute that had arisen. In my view it is of little relevance to the determination of the current application.

The form of the agreements for sale and purchase

I turn now to consider other developments after 14 February. As noted, it is common ground that no form of ASP was attached to the document dated 5 December 1995. A form was proposed in late December but was not accepted. Again, the Plaintiff's own evidence by Mr O'Connell is that that a clerk in the Defendant's solicitors office told him " the form of agreement ....appeared to be in order but that she could not give final confirmation."

The form of the Poon offer was rejected by the Defendant. Was a form of ASP subsequently approved by the Defendant, and did the Defendant thereby assent to be bound by the terms of the agreement? On 19 March the Plaintiff's solicitors forwarded to the Defendant's solicitors a further proposed form of ASP. The Plaintiff's solicitors wrote again on 22 March noting they were yet to hear from them regarding their comments on the sale and purchase agreement and advising that they (the Plaintiff's solicitors) were to ask their client to proceed using the agreement forwarded on 17 March with the definition of "stakeholder" deleted.

There was no immediate response to that letter by the Defendant's solicitors, but on 16 April the Defendant's solicitor wrote noting that the Plaintiff was proceeding with marketing using the ASP form of 19 March with the definition of "stakeholder" deleted. The letter concluded:

"I note that as yet I have not received any agreements."

One interpretation of that letter is that it was an acknowledgement by the Defendant's solicitor that the ASP agreement as submitted on 19 March was acceptable to the Defendant (with the deletion of "stakeholder") and the Defendant accepted it was bound by the agreement of 5 December. On that basis the Defendant was going to rely on its right to terminate the agreement if at least seven unconditional sales had not been achieved by 30 April.

An alternative interpretation may be that the letter is simply a record of the position without any express approval on behalf of the Defendant of either the ASP or an acknowledgement of the existence of a binding contract evidenced by the December 1995 agreement. In other words, against the background of correspondence in which the Plaintiff insisted there was an agreement and the defendant denied it, the Defendant's solicitor was recording that the Plaintiff was running out of time to comply with its contractual obligations even if there were a contract.

It is necessary to consider the correspondence that predated the letter of 19 March 1996 from the Plaintiff's solicitors. Previously, on 12 March, the Plaintiff's solicitors accepted that there was an unresolved dispute between the parties relating to GST in the marketing agreement. The Plaintiff's solicitors suggested that the issue be referred to arbitration or the commercial list for interpretation. There then followed a letter of 13 March from the Defendant's solicitors which recorded that the form of ASP was not agreed, that the form previously tendered was not acceptable and that the Defendant would not accept the liabilities imposed by clause 3.1 of the agreement. It appears from the

documents attached to Mr O'Connell's affidavit that the form of agreement submitted on 19 March retained the same obligations on the vendor in clause 3.1. Specific reference was made to the Defendant's obligations in relation to the tennis court. Those obligations were owed by the Defendant to any purchaser. The Plaintiff, by its solicitors, offered to enter a side letter to relieve the Defendant. That could not, however, affect the Defendant's obligations to its purchasers. That being so, then it would seem unusual that the Defendant's position on this important aspect would have changed between 13 March and 16 April when the last letter was written on the subject.

Again, for summary judgment purposes, it must be arguable for the Defendant that no agreement was concluded after 14 February, either as to the form of ASP or that the Defendant would be bound by the agreement of 5 December.

That leaves a further difficulty for the Plaintiff. If the Plaintiff is unable to rely on the agreement of 5 December then it would be unable to recover the $326,900 claimed in this summary judgment application. That sum is claimed as commission, reward or other valuable consideration in respect of services or work performed as a real estate agent. A written appointment is required to entitle the Plaintiff to recover: s62 Real Estate Agents Act 1976. If the agreement of 5 December is not complete there is no such written appointment.

Other issues

As Ms Peters did not pursue the claim for commission under the Poon offer or the other heads of claim in the statement of claim it is strictly unnecessary for me to consider them in any detail. Briefly, however, it is apparent that the Poon offer was presented on a form of ASP that had not been agreed and it also purported to include an obligation on behalf of the Defendant to underwrite a rental agreement. It is obvious that the Plaintiff could not have pursued an application for summary judgment in relation to the Poon matter.

The head of the claim was for wasted expenses of marketing must follow the outcome of the claim relating to the Orient Pacific offers. If the claim for $326,900 ultimately succeeds, then the claim for wasted expenses would fall. On the other hand, if the substantive claim fails, the claim for wasted expenditure may have force.

Alternative Defences

Mr Katz raised a number of other defences to the claim. I propose to deal with them briefly, as, for the reasons stated above, I am satisfied the application for summary judgment must fail.

Did the Orient Pacific offers satisfy the Plaintiff's obligations under the agreement?

If the agreement was binding, the Defendant was still entitled to terminate it "if fewer than seven units have been conditionally sold by 30 April 1996".

What is the meaning to be given to "conditionally sold"?

The Orient Pacific offers were presented on 26 April 1996. The Defendant was obliged, in terms of the agreement to "within five working days of each agreement being presented to (it) ... execute such agreement ...". The wording of the agreement is not clear. It is ambiguous in the way it variously refers to conditional sales, agreements and contracts. On one view of it, the Orient Pacific offers could not be conditional sales until they were accepted by the Defendant. At that time, and upon acceptance, the units could be said to be conditionally sold. However, the Defendant had five working days to execute the agreement presented to it. The Defendant was therefore not obliged to execute the offers until 2 May 1996. If that is so, it is arguable that the Defendant was entitled to terminate in any event.

Ms Peters submitted the obligation to execute the agreements arose when they were presented. The difficulty with that submission is that even if the Defendant executed the agreements on 2 May in compliance with the agreement, it is still arguable on the wording of the agreement that the Plaintiff had not achieved seven conditional sales by 30 April 1996. The ambiguity arises from the Plaintiff's own document, the agreement.

Termination/Cancellation

Mr Katz also submitted the Plaintiff wrongfully cancelled the agreement. He submitted that having elected to affirm the contract (by letter of 8 May), it was not open for the Plaintiff to then cancel the agreement. He referred to the case of *Holmes v Booth* (1993) 2 NZ Conv C 191, 633 at 191, 642, where the Court accepted the general principles stated in *Motor Oil Hellas (Corinth) v Shipping Corporation of India (the "Kanchenjunga")* [1990] 1 Lloyds Rep 391.

However, whilst an election to affirm rather than to cancel is binding (s7(5) Contractual Remedies Act 1979), it is apparent from *Chatfield v Jones* [1990] 3 NZLR 285 that where a defendant continues to repudiate the contract a previous cancellation by the Plaintiff does not deprive the Plaintiff of the right to take advantage of the contractual repudiation and to cancel the contract. In my view, if the Plaintiff were otherwise entitled to relief, this ground of defence would fail.

Quantum/Proof of Loss

Mr Katz correctly submitted that to succeed in establishing its claim for lost profits on the Orient Pacific offers, the Plaintiff had to show that the purchaser would have completed and the agreements would have become unconditional.

The evidence in relation to that is contained in an affidavit by Mr Richards, a director of Orient Pacific. In a brief affidavit sworn a day before the hearing he says:

> "Had the Orient Pacific offer been accepted, I confirm that Orient Pacific would have had no difficulty in raising the necessary finance."

However, no sufficient detail is given in the affidavit or the annexed letter of the company's financial position. There is no evidence from its banker. The offers simply required "sufficient funds to complete purchase". No detail is given by Mr Richards as to the finance required. For summary judgment purposes the Plaintiff would have difficulty satisfying the Court that on the basis of that bare statement the contracts would have been made unconditional.

The last matter was the claim for non-performance of the agreements. Again, that claim must follow the outcome of the Orient Pacific offers.

Summary

Ms Peters submitted that the issues for determination were whether the Defendant breached the agreement of 5 December by refusing to sign the Orient Pacific offers, or alternatively did the Defendant bring about non-fulfilment of the condition on which it seeks to rely by responding as it did to the Orient Pacific offers?

For the reasons set out above I have come to the view that for the purposes of this application the issues are more fundamental than that; namely whether there was an agreement of 5 December 1995; whether, if there was an agreement, it was complete on its face; whether an agreement can be implied from the conduct of the parties subsequent to 5 December; and whether the form of ASP was ever settled and agreed. Even accepting that in appropriate cases the Court should adopt a robust approach to defences raised: *Bilbie Dymock*

Corp v Patel (1987) 1 PRNZ 84, this is not a case where the Plaintiff has been able to satisfy the Court on the information presented to date that it can say the Defendant has no arguable defence to the claim made against it. The application for summary judgment must fail and is dismissed.

The costs of the application are fixed at $3,000 inclusive of disbursements but are to be costs in the cause.

The Defendant is to file a statement of defence by 20 January 1996.

The parties are to file lists of documents by 31 January 1997. Inspection is to be completed by 14 February 1997. Any further interlocutory applications are to be filed by 28 February 1997.

The proceeding is then to be listed for a conference at a date to be fixed by the Registrar.

MASTER VENNING

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