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NZLR

NOT  
RECOMMENDED

IN THE HIGH COURT OF NEW ZEALAND  
AUCKLAND REGISTRY

M NO 1045/94

BETWEEN

A E DOVEY

Plaintiff

A N D

BANK OF NEW ZEALAND

Defendant

Hearing: 28 August 1997

Counsel: RJ Hooker and A McClymont for the plaintiff/ respondent  
KA Ford and L Berry for the defendant/ applicant

Judgment: 8th September 1997

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(RESERVED) JUDGMENT OF MASTER KENNEDY-GRANT

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Solicitors for the defendant  
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## Introduction

I have two applications before me, both made by the defendant:

- (a) an application for an order that the plaintiff answer certain interrogatories which he has declined to answer or, in the view of the defendant, has answered inadequately; and
- (b) an application for an order that the plaintiff provide further particulars of one of the paragraphs of his second amended statement of claim.

As is obvious from the file number, this proceeding was instituted in 1994, three years ago almost to the day. It has been keenly contested throughout.

In 1991 the plaintiff gave the defendant instructions to transfer the sum of \$748,000, when received by the defendant on his behalf, to his bank account with the Bank of Credit and Commerce, Luxembourg, BCCI S.A. Luxembourg, 25 Boulevard Royal, PO Box 46, Luxembourg ("BCCI S.A.") in pounds sterling.

At the time:

- (a) the plaintiff did not in fact have a bank account with BCCI S.A.; and
- (b) there was, in fact, no such bank.

The funds were transferred by the defendant to the Midland Bank in England and by the Midland Bank to the National Westminster Bank. It was, unfortunately for the parties to this proceeding, on the very same day that the funds were transferred to the National Westminster Bank that all funds in the United Kingdom belonging to the Bank of Credit and Commerce International Group were seized by order of the Court.

The plaintiff seeks to recover his funds from the defendant on the following grounds:

- (a) that the defendant did not transfer the plaintiff's funds to BCCI S.A. as instructed but to the National Westminster Bank where the Bank of Credit and Commerce International had an account;
- (b) negligence in relation to the transfer;
- (c) negligence in failing to advise the plaintiff of investigations into the financial transactions of the BCCI Group and/or the imminent foreclosure of the BCCI Group, of both of which matters the defendant had or ought to have had knowledge;
- (d) conversion;
- (e) failure to reverse the transfer on receipt of instructions to do so.

#### Application that plaintiff answer interrogatories

##### (a) Introduction

In January of this year the defendant administered extensive interrogatories to the plaintiff. The plaintiff replied in May. In his reply he declined to answer a number of the interrogatories administered by the defendant and, in the defendant's view, failed to answer satisfactorily a number of other interrogatories.

The plaintiff justifies his answers to the interrogatories on the grounds of lack of relevance and oppression in respect of all the interrogatories and other, specific, grounds in respect of individual interrogatories. The answers in issue are those to interrogatories 8, 9, 20(a)-(c), 20(e)(i),(iii),(iv) and (v), 24-34 and 38.

##### (b) Applicable principles

Ms Ford submits, and Mr Hooker accepts, that the following are the applicable principles:

- (i) interrogatories are to be seen as one of the means by which "*the rules assist the parties in coming to a recognition of the proper issues and, through that recognition, to a settlement of disputes*": ***Sunde v Meredith Connell & Co*** (unreported, Barker J, 19/9/86, Auckland Registry A 1479/85);
- (ii) "*the Court should err, if it is to err at all, on the side of allowing interrogatories; being too liberal rather than too conservative*": ***Re Securitibank*** (No 31) (1984) 1 PRNZ 514 at 517;
- (iii) answers to interrogatories must be specific and substantial, not perfunctory nor evasive, correct according to the knowledge, information and belief of the person giving them and, if it is not possible to answer the interrogatory with complete precision, a proper attempt must be made to answer it as accurately as possible: ***Henwood v Radio New Zealand Ltd*** (1993) 7 PRNZ 160;
- (iv) interrogatories are relevant not only where the answer will be conclusive on an issue but where it might tend to establish or disprove, or form a step in the establishing or disproving of, the allegations made: ***Shore v Thomas*** [1949] NZLR 690 at 695/6-10; ***Re Securitibank (No 31)***, ubi supra, and ***Bank of New Zealand v Gardner*** (1992) 2 PRNZ 278 at 283;
- (v) interrogatories must be necessary;
- (vi) interrogatories are oppressive if they are "*contrary to the rules of justice or fair play, and ... burdensome or wrongful*": ***Elston v SSC (No 2)*** [1979] 1 NZLR 210 at 215/40-42; ***Re Securitibank Ltd (No 31)***, ubi supra;
- (vii) interrogatories as to the contents of existing documents will not usually be permitted: ***Simpson et al: Discovery and Interrogatories***

(2nd edition, 1990) p167; *Chan v Minister for Immigration and Ethnic Affairs & Anor* (1983) 49 ALR 593 at 596;

- (viii) an interrogatory is improper if its sole object is to ascertain the name or names of a witness or witnesses : r284(1)(d); *Bank of New Zealand v Gardner*, ubi supra.

There are two issues of principle on which counsel do not agree:

- (ix) the test of necessity;  
(x) the extent of the obligation to make enquiry.

Mr Hooker submits in relation to the first issue that, to the extent that the information sought in the unanswered interrogatories is available in discovered documents, the answering of the interrogatories cannot be described as necessary. Ms Ford submits, in reliance on *Bank of New Zealand v Gardner*, ubi supra, at 281-282, that "*the fact that [an] interrogatory is designed to obtain an admission of fact which could be proved at trial is not grounds on its own to justify a refusal to answer*". I accept Ms Ford's submission.

Mr Hooker submits in relation to the second issue that an individual required to answer an interrogatory is not obliged to make enquiry of persons not under his control. Ms Ford submits, in reliance on *Henwood v Radio New Zealand Ltd*, ubi supra, at 162 that an individual in such a position is obliged not only to make enquiry of persons under his control but also of other persons such as his bankers, solicitors and co-trustees. Again I accept Ms Ford's submission.

- (c) My ruling in respect of interrogatories 8 and 9

These interrogatories relate to the question of whether an account opening form for the purpose of opening an account with BCCI S.A. completed on 27 June 1991 was submitted to that company for the purpose of opening an account with it.

The plaintiff's answer to the first of the two interrogatories was "*Not known*" and to the second "*Not applicable in the light of the answer to Interrogatory 8*".

Mr Hooker submits, first, that these interrogatories are irrelevant. I do not accept this argument for the simple reason that the plaintiff has himself accepted their relevance by answering Interrogatory 8. I also consider that they are relevant in the light of the allegations in paragraphs 12, 13(a), 14 and 15 of the plaintiff's second amended statement of claim; the answers to the interrogatories may go some way to providing the answer to the issues of whether the plaintiff had a bank account with BCCI S.A. at the material time and whether, in fact, there was such a bank.

Mr Hooker submits, secondly, that these interrogatories are oppressive. I do not agree; there is nothing in them which is contrary to the rules of justice or fair play or burdensome or wrongful.

Mr Hooker submits, thirdly, that the plaintiff's answer to Interrogatory 8 is a proper answer and that, that being so, his answer to Interrogatory 9 is also a proper answer. He basis this submission on two propositions:

- (i) that the answers to the interrogatories are "*not within the plaintiff's knowledge [and] he cannot [therefore] be required to speculate as to possibilities*";
- (ii) that he is not obliged to make enquiries of his bankers.

I do not accept either of these propositions. The first proposition totally ignores the undoubted obligation on a party to whom interrogatories are administered to make enquiry regarding the subject matter of the interrogatories of persons from whom he is entitled to make such enquiry, eg servants, agents or former servants or agents. The second proposition ignores the clear authority that a party's bankers are among the persons of whom a party is required to make enquiry if he is unable to answer himself an interrogatory administered to him. It is of significance that in paragraph 11 of the second amended statement of claim the plaintiff alleges that he held an account at all material times with the Bank of Credit and Commerce (Emirates) Main Branch, Corporate Business Unit, in Abu Dhabi.

I therefore rule that the plaintiff's present answers to Interrogatories 8 and 9 are insufficient and that he must answer those interrogatories again after making proper enquiry of all such persons as, in accordance with the principles set out earlier in this judgment, he is obliged to make enquiry in order to assist him in answering them.

(d) My ruling in respect of interrogatories 20(a)-(c)

These interrogatories relate to the question of what bank and branch the plaintiff intended the defendant to transfer his funds to, whether the plaintiff held an account with that bank and, if not, what steps the plaintiff had taken to open such an account. The interrogatories are prefaced by a quotation from the plaintiff's instructions to the defendant to transfer his funds to BCCI S.A.

The plaintiff objected to answering the first of the interrogatories, that relating to the bank and branch to which he intended the defendant to

transfer his funds, on the ground that "*it is directed to the contents of an existing document*". He answered the second interrogatory, that relating to whether or not he held an account with the bank in question, by stating "*Not applicable in light of the answer to Interrogatory 20(a)*". He answered the third interrogatory, which was in two parts, by stating in respect of the first part that the interrogatory was "*Not applicable in light of the answer to Interrogatory 20(a)*" and by stating in respect of the second part that he had completed the requisite form to open an account but was not aware of any other person or persons who had taken the appropriate steps thereafter.

Mr Hooker submits, first, that these interrogatories are irrelevant. I agree with him to the extent, but only to the extent, that the plaintiff's subjective intention as opposed to the intention expressed by him in his faxed instructions is irrelevant. I do not, however, agree that the second and third interrogatories are irrelevant. One of the defences pleaded is that the plaintiff's loss was the result of his action in giving instructions to the defendant to transfer his funds to an account which he did not have (although he may have believed, as a result of arrangements made with an official of BCCI (Emirates) that this could be safely done).

Mr Hooker submits, secondly, that these interrogatories are oppressive. I do not agree, for the same reasons as I have stated in respect of interrogatories 8 and 9.

Mr Hooker submits, thirdly, that these interrogatories are objectionable because they are directed to the content of an existing and discovered document. I do not accept this argument. Although the interrogatories are prefaced by a quotation from the plaintiff's faxed instructions to the defendant of 28 June 1991, that is by way of introduction only and:



- (i) as already noted, the first interrogatory is directed to the plaintiff's actual intention and not to the document;
- (ii) the second and third interrogatories relate to questions of fact which, while they may have been referred to in part in the faxed instructions, are matters in issue independently of the interpretation to be placed on those instructions.

Accordingly, I make the following orders in respect of interrogatories 20(a)-(c):

- (i) the plaintiff's objection to answering interrogatory 20(a) is upheld on the ground of irrelevance although not on the ground relied on in his answer to the interrogatory;
- (ii) interrogatory 20(b) is amended to read as follows:

*"Did the plaintiff hold an account with Bank of Credit and Commerce, Luxembourg, BCCI S.A. Luxembourg, 25 Boulevard Royal, PO Box 46 at the time that the plaintiff sent the said facsimile to the defendant?"*

and the plaintiff is ordered to answer the interrogatory;

- (iii) the plaintiff is ordered to answer interrogatory 20(c)(i)

- (e) My ruling in respect of interrogatory 20(e)(i)

This interrogatory seeks the terms of the arrangement made by the plaintiff with his bankers to enable his funds to be credited to him upon receipt by BCCI S.A. (The plaintiff has admitted that such an arrangement was made in his answer to interrogatory 20(d).)

The plaintiff has answered interrogatory 20(e)(i) as follows:

*"They are set out in the fax of 28 June 1991".*

I reject Mr Hooker's submissions that the interrogatory is irrelevant and oppressive. The interrogatory is, in my view, relevant to the issue of whether the plaintiff's loss was the result of his own act in instructing the defendant to transfer funds to a bank at which he did not have an account and which, indeed, did not even exist. He acted as he did in reliance on the arrangement he had made. He has admitted the relevance of the arrangement by answering interrogatory 20(d). There is nothing about the interrogatory which renders it oppressive : it is a simple enquiry regarding a matter within the personal knowledge of the plaintiff.

Mr Hooker submits, further, that the plaintiff has answered the interrogatory with sufficient particularity by referring to his faxed instructions of 28 June 1991. I do not agree. One can infer from the instructions that there was an arrangement and that the effect of the arrangement was that the plaintiff would receive interest from the date on which the funds were credited to BCCI S.A.; but it does not follow that the full terms of the arrangement have been set out in the fax of 28 June 1991.

For the same reasons as stated in the last paragraph, I also reject Mr Hooker's submission that the interrogatory is unnecessary.

Accordingly, I order the plaintiff to answer interrogatory 20(e)(i). I do this notwithstanding my disallowance of interrogatory 20(a) and on the basis that the bank to which the interrogatory relates is BCCI S.A.

(f) My ruling in respect of interrogatory 20(e)(iii)

This interrogatory, which is strictly numbered 20(e)(iii)(1), is related to the previous interrogatory and seeks details of the names and positions of the persons who agreed to the arrangement if it was oral. The plaintiff has

objected to the interrogatory on the ground that "*it is directed to names of witnesses*".

I do not agree. It is directed to establishing the identity and position of the person or persons with whom the alleged arrangement was made. That information is relevant to the question of the plaintiff's entitlement to rely on the arrangement. The fact that it may be possible to identify a witness or witnesses as a result of the answer is a coincidence.

I also reject Mr Hooker's submissions of irrelevance and oppression, for the reasons set out in respect of interrogatory 20(e)(i).

Accordingly, I order the plaintiff to answer interrogatory 20(e)(iii)(1).

(g) My ruling in respect of interrogatory 20(e)(iv)

This interrogatory comprises four sub-interrogatories (1)-(4). What appears to be sub-interrogatory (5) of this interrogatory is in fact a separate interrogatory which should be properly numbered 20(e)(v) (as it was in the notice to answer interrogatories).

This group of interrogatories also relates to the arrangement made between the plaintiff and his bankers for his funds to be credited to him on receipt by BCCI S.A. In his answer to Interrogatory 20(e)(ii) the plaintiff had said that the arrangement was made both orally and in writing. Interrogatories 20(iii)(1) and (2) request specified details of the arrangement if it was oral. The present group of interrogatories request specified details of the arrangement "*if in writing*". Interrogatory 20(e)(v) requests specified details if the arrangement was both oral and in writing.

Interrogatory 20(e)(iv)(1) seeks details of "*The nature of the document setting out the arrangement*". The plaintiff objected to answering this interrogatory "*as it is directed to the contents of a document*". He answered interrogatories 20(e)(iv)(2) -(4) by saying in each case "*Not applicable in light of the answer to Interrogatory 20(e)(iv)(1)*".

For the reasons which I have given in respect of interrogatory 20(e)(i), I reject Mr Hooker's submission that these interrogatories are irrelevant and oppressive.

So far as the plaintiff's objection to answering interrogatory 20(e)(iv)(1) is concerned, I overrule the objection, on the ground that the intention of the interrogatory was clearly to identify the form of the document setting out the arrangement, eg a letter or a contract. Having overruled that objection, I also, obviously, overrule any objection on the ground of lack of necessity.

So far as interrogatories 20(e)(iv)(2)-(4) are concerned, in the light of my ruling in respect of interrogatory 20(e)(iv)(1), these interrogatories must be answered.

Accordingly I rule as follows:

- (i) Interrogatory 20(e)(iv)(1) is amended by substituting the word "*form*" for the word "*nature*" in the interrogatory;
  - (ii) the plaintiff is ordered to answer interrogatory 20(e)(iv)(1) as amended;
  - (iii) the plaintiff is ordered to answer interrogatories 20(e)(iv)(2)-(4).
- (h) My ruling in respect of interrogatory 20(e)(v)

Consistently with my rulings in respect of interrogatories 20(e)(iii) and (iv) the plaintiff is ordered to answer this interrogatory.

(i) My ruling in respect of interrogatories 24 - 26, 27-29 and 30

Interrogatory 24 is directed to ascertaining whether the plaintiff has filed a proof of debt form with the Luxembourg liquidators of the BCCI Group. Interrogatory 25, which is based on a positive answer to interrogatory 24, has 11 sub-interrogatories some of which themselves have a number of sub-sub-interrogatories. Interrogatory 26 is based on the answer to interrogatory 24 being in the negative and is directed to establishing why the plaintiff refrained from filing a proof of debt with the Luxembourg liquidators.

The plaintiff objected to answering interrogatory 24 on the ground that "*it is not relevant to any matter in issue in this proceeding*". He objected to answering the remaining interrogatories in this group on the ground, in respect of each interrogatory that it was "*Not applicable in light of the answer to interrogatory 24*" and also, in the case of interrogatory 25(d)(iii), that it "*is directed to the contents of a document*".

Mr Hooker, for the plaintiff, submits that his client should not be required to answer these interrogatories on the grounds that they irrelevant, unnecessary given the plaintiff's discovery, oppressive and in breach of the principle that one is not permitted to interrogate concerning the contents of a document.

I do not accept any of these submissions, for the following reasons:

- (i) so far as relevance is concerned, whatever the position may have been before the defendant filed its statement of defence to the second amended statement of claim, the interrogatories are now relevant

because of the allegation made in that statement of defence that the plaintiff failed to mitigate his loss;

- (ii) while the plaintiff has discovered some documents relating to his dealing with the Luxembourg liquidators, in my judgment they do not cover all the matters to which the interrogatories relate and, in any event, the fact that there may be discovered documents is not of itself sufficient to render the interrogatories unnecessary;
- (iii) while the interrogatories are extensive, they are precise and, in my view, no more in number than appropriate properly to explore the issues to which they relate and, finally, are all directed to matters which are or should be within the knowledge of the plaintiff or his legal advisers;
- (iv) for the same reasons as I gave for my decision in respect of interrogatory 20(e)(iv)(1) interrogatory 25(d)(iii)(1) is clearly directed to the form of the document containing the acceptance or rejection of the proof of debt and not to its contents.

Accordingly, I make the following orders in respect of interrogatories 24-26:

- (i) interrogatory 25(d)(iii)(1) is amended by substituting the word "*form*" for the word "*nature*";
- (ii) the plaintiff is ordered to answer interrogatories 24, 25 (including interrogatory 25(d)(iii)(1) as amended) and 26.

(j) My ruling in respect of interrogatories 27-29

This group of interrogatories asks the same questions in respect of the plaintiff's dealings with the English liquidators of the BCCI Group as interrogatories 24-26 ask in respect of the Luxembourg liquidators.

The plaintiff has declined to answer these interrogatories on the ground that they are "*Not applicable in light of the answer to interrogatory 24*".

I do not agree. This group of interrogatories relates to the plaintiff's dealings with the English liquidators. His answers in respect of interrogatories 24-26 therefore do not supply, even had they been proper answers, the answers to interrogatories 27-29.

For the same reasons as stated in respect of interrogatories 24-26, I make the following orders in respect of interrogatories 27-29:

- (i) interrogatory 28(d)(iii)(1) is amended by substituting the word "*form*" for the word "*nature*";
- (ii) the plaintiff is ordered to answer interrogatories 27, 28 (including interrogatory 28(d)(iii)(1) as amended) and 29.

(k) My ruling in respect of interrogatory 30

This interrogatory is directed to the plaintiff's dealing with the Government of Abu Dhabi BCCI U.K. Depositors' Protection Fund. It parallels, although it is not in precisely the same form, interrogatories 24-26 and 27-29.

The plaintiff's answer to interrogatory 30(a) was baldly "*Not applicable*" and to interrogatories 30(b)(which has a number of sub-interrogatories) and 30(c) "*Not applicable in light of the answer to interrogatory 24*".

For the same reasons as I have set out in relation to interrogatories 24-26 and 27-29, I do not accept Mr Hooker's submissions in respect of this interrogatory.

Accordingly, the plaintiff is ordered to answer interrogatory 30.

I note that objection was not taken in the answers to the various sub-interrogatories of interrogatory 30 that they related to contents of a document. For the removal of any doubt, I hold that they do not and that when the plaintiff comes to answer interrogatory 30 he is to answer all sub-interrogatories that use the expression "*the nature of the document*" as if they read "*the form of the document*".

(l) My ruling in respect of interrogatories 31 and 32

I regard these interrogatories as repetitive and Ms Ford, for the defendant, has failed to satisfy me that they properly relate to any matter in issue between the parties and not covered by interrogatories 24-26 and 27-29. They are unnecessary and/or Oppressive.

I therefore disallow them, although not for the reason relied on by the plaintiff when he initially refused to answer them.

(m) My ruling in respect of interrogatories 33 and 34

For similar reasons to those expressed in relation to interrogatories 31-32, I disallow these interrogatories.

(n) My ruling in respect of interrogatory 38

This interrogatory is directed to establishing whether or not any of the relevant companies in the BCCI Group, the Luxembourg liquidators or the English liquidators have at any time acknowledged to the plaintiff, or any person or entity acting for him, that his funds were received by either BCCI (Lux) or BCCI (Lon) or denied the same.



The plaintiff has declined to answer the four sub-interrogatories comprised in this interrogatory on the ground, in each case, that it is "*Not applicable in light of answer to interrogatory 24*".

Interrogatories 25(d) and 28(d) request answers to the question "*If the proof of debt form has been accepted or rejected by the Luxembourg/London liquidators then ...*". It is my view that answers to those questions will adequately answer questions contained in interrogatory 38.

I therefore disallow interrogatory 38, although not for the reason relied on by the plaintiff at the time that he refused to answer it.

Application for further particulars of the plaintiff's second amended statement of claim

Paragraphs 2 and 3 of the plaintiff's third cause of action read as follows:

- 2      *That in the months of May 1991 to July 1991 the defendant had knowledge, or ought to have knowledge of the:*
  - (a)    *investigations into the financial transactions of the BCCI Group.*
  - (b)    *the imminent foreclosure of the BCCI Group.*
  
- 3      *That the defendant had knowledge, or ought to have knowledge of, the matters pleaded herein by virtue of:*
  - (a)    *Hearings and investigations into the BCCI Group being undertaken in public by the United States Authorities, and in particular the House of Representatives.*
  - (b)    *Newspaper reports in the London Financial Times during January to July 1991 (inclusive)*
  - (c)    *Newspaper reports in the Wall Street Journal between January 1991 and July 1991 (inclusive)*
  - (d)    *Newspaper reports in the Economist.*

The defendant has sought further particulars of the plaintiff's knowledge of the matters alleged in para 2 of the plaintiff's third cause of action.

Mr Hooker, for the plaintiff, submits :

- (i) that the particulars sought, relating as they do to the defendant's actual knowledge (as opposed to the grounds that it ought to have had for the alleged knowledge) relate to matters peculiarly within the knowledge of the defendant;
- (ii) that, in any event, the matters of which the defendant is alleged to have had knowledge are those pleaded in paragraph 3.

I consider that Mr Hooker's first submission has force and, to a lesser extent, that his second submission also has force.

However, in order to remove all possible doubt as to the basis of the plaintiff's claim, I direct, after discussing the matter with counsel in the course of argument, that paragraphs 2 and 3 of the plaintiff's third cause of action in his second amended statement of claim dated 11 February 1997 be amended to read as follows (amendments are in bold italics):

- 2 *That in the months of May 1991 to July 1991 the defendant had knowledge, or ought to have knowledge of the:*
  - (a) *investigations into the financial transactions of the BCCI Group referred to in para 3(a) of this cause of action.*
  - (b) *newspaper reports referred to in para 3(b)-(d) of this cause of action concerning the imminent foreclosure of the BCCI Group.*
  
- 3 *That the defendant had knowledge, or ought to have knowledge of, the matters pleaded herein by virtue of:*
  - (a) *Hearings and investigations into the BCCI Group being undertaken in public by the United States Authorities, and in particular the House of Representatives during [state earliest month] to [state latest month] 1991.*
  - (b) *Newspaper reports in the London Financial Times during January to July 1991 (inclusive)*
  - (c) *Newspaper reports in the Wall Street Journal between January 1991 and July 1991 (inclusive)*
  - (d) *Newspaper reports in the Economist during [state earliest month] to [state latest month] 1991.*

I do not consider that it is necessary for the plaintiff to itemise each and every report relied upon. These materials are available in easily accessible databases and there is no hardship in obtaining a printout of the relevant reports.

The further particulars may be provided initially by way of letter but, when the plaintiff's pleading is next amended, should be incorporated in the amended pleading.

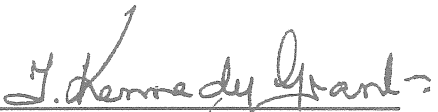
#### Orders

I therefore make the following orders:

- (a) The plaintiff is to answer interrogatories 8, 9, 20(b) and (c), 20(e)(i),(iii),(iv) and (v), 24-26 and 27-29 on oath by 10 October 1997 in a manner consistent with the directions contained in the section of this judgment headed Application for order that plaintiff answer interrogatories;
- (b) The plaintiff is to provide the further particulars ordered in the section of this judgment headed Application for further particulars of the plaintiff's second amended statement of claim by 10 October 1997.
- (c) The matter is to be placed in the Chambers List before me on 31 October 1997 at 10.45 am for the hearing of any further interlocutories and/or the making of pre-trial and mode of trial orders.
- (d) Any further interlocutories are to be filed and served by 20 October 1997 and notices of opposition and affidavits in opposition by 1.00 pm on 29 October 1997
- (e) Counsel are to file a joint memorandum or, if necessary, separate memoranda by not later than 1.00 pm on 30 October 1997 dealing with

all outstanding interlocutory orders and with the proposed pre-trial and mode of trial orders

- (f) I fix the costs of this application at \$750 plus disbursements to be fixed and order them to be costs in the cause.

  
MASTER T KENNEDY GRANT