

MR BENAUD'S POSITION PAPER

1. Mr Benaud is not really in the mood to negotiate (it is a long flight from Sydney). He has engaged a very aggressive firm of Australian lawyers, Lillee, Thompson & Co, who, in turn, have recommended to him a very well respected firm of English solicitors, Brearley & Boycott LLP. Notwithstanding Brearley & Boycott's cautious reputation, the advice Mr Benaud has received is entirely positive (of course he does not waive any privilege in relation to that advice). He is also prepared to instruct lawyers in the BVI, if necessary.

2. The following issues arise in relation to Mr Benaud's claim:-

(1) What possible defence can Kallicharran Ltd have to Mr Benaud's Pallant v Morgan claim? Mr Benaud introduced Mr Worrall to the property (having been told out it by a certain Dickie Bird, who was present throughout the discussions and is a Yorkshireman of the utmost integrity and will be an impeccable witness). It was at Mr Worrall's suggestion that they did not bid against each other on the basis 25% of the property would belong to Mr Benaud and they would develop it thereafter (indeed Mr Worrall was concerned that Mr Benaud was about to enter into a joint venture with 2 fellow antipodeans, Messrs Hadlee and Vettori, to purchase and develop the property without Mr Worrall). Mr Benaud's constructive trust claim crystallized the moment the hammer fell.

(2) Who are the directors and shareholders of Kallicharran Ltd? The point is almost certainly academic as Mr Benaud is sure that Mr Worrall was the ultimate beneficial owner of Kallicharran Ltd at the time of the purchase of the Mayfair property. If necessary, Norwich Pharmacal relief can be sought in the BVI to obtain this information. Further Mr Benaud is considering

pursuing accessory liability claims against all individuals involved.

- (3) Mr Benaud notes (but does not accept as accurate) that the directors of Kallicharran Ltd disclaim knowledge of Mr Benaud's interest in the property.
- (4) Mr Benaud also intends to pursue a claim for loss of an opportunity. If Mr Worrall and Kallicharran had not reneged on the deal the property would have been developed and sold on before the recent financial crisis at a vast profit. As it is, it is now worth less than Mr Worrall paid for it.
- (5) All these claims, on the advice of Brearley & Boycott, will be pursued in London unless a satisfactory resolution can be made at the proposed meeting.

David Lord QC
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