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IN THE SUPREME COURT  
OF NEW SOUTH WALES  
EQUITY DIVISION

5 HENRY J

MONDAY 2 DECEMBER 2019

10 **2018/00056845 - CHARTER PACIFIC CORPORATION LIMITED v  
SECURICOM (NSW) PTY LIMITED**

Mr R Alkadamani with Mr T J Krayem for the Plaintiff  
Mr A Behman for the First and Third Defendants  
Mr G D McDonald for the Second and Fifth Defendants/Cross-Claimants

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BEHMAN: Your Honour, I might briefly go first.

20 HER HONOUR: Yes.

BEHMAN: Just subject to what I say, the liquidator seeks to be excused from attending the hearing today. There's no relief presently sought against the liquidator or the two companies in liquidation. The liquidator doesn't take a position in relation to the amended cross-claim or the amended notice of motion.

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HER HONOUR: As I understand the position, if the plaintiff's notice of motion is successful the liquidator would effectively get the benefit of the deeds which I think the plaintiff's motion is seeking beside by one of the defendants or one or two of the defendants, is that right?

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BEHMAN: That's correct. And the liquidator's position is that if the court orders those deeds to be executed then the liquidator is prepared to execute.

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HER HONOUR: Yes. I take it that there's no issue with the liquidators being excused?

McDONALD: Correct, your Honour, no issue.

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HER HONOUR: Thank you, Mr Behman, I appreciate your attendance.

ALKADAMANI: Your Honour, before Mr Behman is excused, though, I anticipated this letter setting out the liquidator's position be tendered. It's from the liquidator. But I just thought I'd do that now because if there were any questions from the court its representative is here (handed).

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HER HONOUR: Yes, thank you. I'll mark that as MFI 1 on the hearing.

50 MFI #1 LETTER

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HER HONOUR: Thank you, Mr Behman.

(Mr Behman excused.)

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HER HONOUR: Yes, Mr Alkadamani?

ALKADAMANI: Your Honour, I have a copy of the court book which is the one that is to be, I guess, kept--

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HER HONOUR: Yes, I have that, thank you.

ALKADAMANI: I have another one for witnesses or what have you, so that's here.

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HER HONOUR: Yes, thank you. Why don't we bring it up here so that when the witnesses come my tipstaff can use those volumes.

ALKADAMANI: Certainly. (Handed). And what I propose to do, your Honour, if it's convenient to the court, is - sorry, I need to also clarify one thing. In the rush to produce the court book because we were in court on Friday and what have you, we omitted to include the second half of Mr Burke's exhibit.

20

HER HONOUR: Yes.

25

ALKADAMANI: So what we've got is a folder which contains the second half that I'm going to hand up to your Honour.

HER HONOUR: That's to Mr Burke's affidavit of 22 November?

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ALKADAMANI: Yes.

HER HONOUR: Yes, thank you.

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ALKADAMANI: So this could be either court book volume 4 supplementary--

HER HONOUR: I'll make it court book actually volume 1A because it will be - I think Mr Burke's affidavit starts in volume 1.

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ALKADAMANI: That's correct, your Honour (handed).

HER HONOUR: Well, it actually continues in volume 2, we'll make it volume 4 then. I'll mark this folder volume 4 of the court book and note that it is - what does it comprise, pages? Are these pages of the court book or pages of the exhibit?

45

ALKADAMANI: The original exhibit, your Honour.

HER HONOUR: Yes, it's a second - I haven't gone through all the evidence. Were the exhibits, did it have tabs for particular--

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ALKADAMANI: No.

5 HER HONOUR: It's pages 545-716 of exhibit CJB-1 to the affidavit of Christopher John Burke sworn 22 November 2019. Yes?

10 ALKADAMANI: So that's the housekeeping matters for now. I've also prepared a bundle of documents that I wish to take your Honour to with a brief opening. These documents are extracted from the court book. The pagination at the bottom of the page will be the same as the court book references.

HER HONOUR: Yes, thank you.

15 ALKADAMANI: So it's just for the convenience of the court (handed) so that your Honour doesn't have to go through too many documents.

HER HONOUR: Thank you.

20 ALKADAMANI: And if it is convenient to the court, I thought I'd give a brief outline of how we perceive our application to be in terms of how it relates to orders already granted. Your Honour has read our submissions.

25 HER HONOUR: I've read your submissions. Yes, I've read some of the papers, I haven't gone through all of the evidence yet, but I did have a couple of questions and maybe I will ask them now and you might say it'll be made clear by your opening, but I just want to clarify something.

30 As I read the - I think it was in evidence as part of an affidavit of Mr Burke's there was the SPA which had a schedule 5 which listed the business intellectual property.

ALKADAMANI: Correct.

35 HER HONOUR: And as I read that schedule 5, it included a number of patents in the name of Microlatch and Securicom, some of which were Australian registered patents, some of them were overseas registered patents, and there were some trademarks.

40 ALKADAMANI: Correct.

HER HONOUR: As I understand it, after the decision of Stevenson J there was order 7.

45 ALKADAMANI: Correct.

HER HONOUR: And there was a deed of an assignment that was signed by the parties which simply transferred or assigned five of the patents to the Australian patents; three for Microlatch and two for Securicom, is that right?

50 ALKADAMANI: Yes.

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5 HER HONOUR: And then I have not seen any evidence of any assignment of the patents that were registered overseas or the trademarks. And as I read the deeds that I think you are seeking to be executed, they relate to the overseas patents in the name of Microlatch and a separate deed for the overseas patents in the name of Securicom, is that right?

ALKADAMANI: Yes.

10 HER HONOUR: And as I understand the cross-claim of Mr McDonald, his issues only arise or relate to what is described as the beneficial ownership of the patents in the name of Securicom, not the Microlatch patents, is that right?

15 ALKADAMANI: It's not entirely clear but I think that is correct because I don't think that's how it's defined in the cross-claim but I think that's correct.

HER HONOUR: I want to make sure we know what is in issue in this case because I don't want--

20 McDONALD: That is correct.

25 HER HONOUR: --to have to debate something. So does that mean that there is no debate and no issue that Mr McDonald's what I will describe generally his side of the table will agree to execute the deed in respect of the Microlatch patents?

ALKADAMANI: I think Mr McDonald needs to answer that.

30 HER HONOUR: Yes. As I read your cross-claim, Mr McDonald, there is nothing there in respect of the ownership of the Microlatch patents, it's only in respect of the Securicom patents.

McDONALD: That's correct, your Honour.

35 HER HONOUR: So do you agree that the deed of assignment, and I think I read somewhere in either the submissions or the evidence that there was no objection to that deed of assignment being signed?

40 McDONALD: I think that's the case. Our case is in respect to the Securicom patents.

HER HONOUR: Yes.

45 ALKADAMANI: Can I just perhaps clarify something? Your Honour, I think the evidence as to not objecting to a deed being signed, and my friend can correct me, relates to a September 2018 deed which was signed, as distinct from any other deed. Now, my friend can say if I'm wrong.

50 HER HONOUR: Are you talking about the deed that assigned the five Australian patents?

ALKADAMANI: I think that is what the reference is to in relation to the no objection.

5 HER HONOUR: Yes, well, Mr McDonald, can you get some instructions on this? But as I read your cross-claim there is nothing in that at all that defends the claim that the patents that are held, overseas patents that are in the name of Microlatch, should not be transferred in accordance with the orders made by Stevenson J?

10

McDONALD: Yes, your Honour, that is the case, there is no contest in respect of any Microlatch patents.

15

HER HONOUR: Thank you. So is your client willing to agree to sign that deed in accordance with the orders that were made by Stevenson J?

McDONALD: Yes.

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HER HONOUR: Yes, thank you.

McDONALD: Oh, sorry, your Honour. There is an issue as to the contents of the terms of that deed. So one of the grounds of defending the further amended notice of motion is that the particular wording of the deed goes far beyond what is contemplated by the orders.

25

HER HONOUR: Well, at the moment your client has not complied with those orders, has it?

30

McDONALD: That's not our position. Our position is that--

HER HONOUR: Well, there are clearly patents that are in the name of Microlatch that were transferred by your client under a deed in November 2017 to another entity, CJBN I think it is, which have not been restored back to Microlatch.

35

McDONALD: My understanding is that there was a restoration in September '18.

40

ALKADAMANI: Perhaps it's not - not to Securicom.

HER HONOUR: Well, this is what I want to get clear, because as I started this I said that there were patents both in Australia and overseas in the name of Microlatch and Securicom. Yes?

45

McDONALD: Yes.

HER HONOUR: Have all of the Microlatch overseas patents been restored back to Microlatch?

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McDONALD: I'll seek instructions on that.

ALKADAMANI: Our position is they haven't, your Honour.

5 HER HONOUR: Well, that's what I've read the papers as. It might assist, Mr McDonald, if you go to page 106 I think of the court book which is an affidavit from Mr Burke who says that the business intellectual property was transferred at his direction by the first and third defendants to CJ Burke Nominees Pty Limited by way of deeds of assignment dated 18 November 2017.

10 McDONALD: Your Honour, I can address it this way. There was, and I think there will be a positive answer at the end of this, there were deeds provided by the liquidator, by the plaintiff, in September 2018 for our client to sign to put back whatever he thought had been transferred out.

15 HER HONOUR: That deed related to the five Australian patents, it didn't relate to the overseas patents, as I read the deed.

20 ALKADAMANI: That's correct, your Honour. It's at tab 5 of the opening bundle. The last two - sorry.

HER HONOUR: Schedule 1 refers to the Australian patents, it doesn't deal with, does it, the overseas patents?

25 ALKADAMANI: Correct.

30 McDONALD: Your Honour, we have been at cross purposes. My instructions have been based on the transfer of patents by registration, and those five patents that were transferred were Australian only patents and their registration had been changed. That was dealt with. But separately there is just the assignment of the beneficial interest whether or not registration had been changed.

35 HER HONOUR: No, I'm not talking about the beneficial interest in Securicom patents which I understand is a separate issue. What I'm talking about is the overseas patents that were transferred, as I understand it assigned, by a deed of assignment dated 18 November 2017 to CJ Burke Nominees Pty Limited.

40 McDONALD: Yes. So there is no contest that those patents are the subject of these proceedings, that an assignment should be executed by Mr Burke and CJ Burke Nominees to return those patents back to where they came from.

HER HONOUR: Which is to Securicom and to Microlatch?

45 McDONALD: To Microlatch, the Microlatch patents back to Microlatch. However, it's the terms of that assignment which we take issue with.

50 HER HONOUR: Well, the point that I have with that, Mr McDonald, is it was your client's obligation under the orders of Stevenson J to actually make it happen.

McDONALD: And my instructions are that my client signed what was put to my client as being--

5 HER HONOUR: It doesn't matter what it signed and was put before it, it is your obligation, isn't it, your client's obligation, under the orders, as I read order 7, that the second defendant do everything necessary to restore, that's an obligation on the second defendant?

10 McDONALD: And my client's position is that the registration that was transferred in any patents has been transferred back.

HER HONOUR: That's the Australian patents. What about the balance of the patents overseas?

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McDONALD: My instructions are that at that time the registration had not been transferred, so November '17. What has occurred in the last two months is a separate issue. But, yes, the deed would be signed. I think the clauses which we take exception to are matters that could be addressed fairly quickly.

20 Returning the patents to address those points doesn't require us to indemnify liquidators and give other warranties. I accept those are matters that can be addressed very quickly.

25 But the question your Honour put was would that document be signed? My answer is not in its current form, but we are 99% there. That's why I said--

HER HONOUR: Well, I think you better get some instructions to try and resolve those matters very, very quickly, because as I read it your client is in breach of those orders and has been for some time.

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McDONALD: And so, your Honour, I think I said a few minutes ago, I think I would get to a yes, and I don't mean it to be a tortuous path but there are some matters which concern my client which I'm sure we'd address very quickly to get to that absolute yes. That would be the Microlatch patents. The deed of assignment has been presented on terms which are fundamentally acceptable apart from some issues which we say go beyond it which we--

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HER HONOUR: And the Securicom patents should also be in the same boat, aren't they? Leaving aside the question of who owns them beneficially or legally, the order was that they were to be restored to Securicom.

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McDONALD: Yes. So apart from the substance of the cross-claim, I can't say anything further.

45 HER HONOUR: Yes.

McDONALD: Part of our resistance is the futility of the orders, that's something I'd like to address your Honour on, but--

50 HER HONOUR: Well, isn't that a matter that you should have come back to

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the court to say that you needed to be released from those orders?

McDONALD: Your Honour--

5 HER HONOUR: Your client is bound by a court order that it has to do everything reasonably necessary, everything necessary to restore the patents.

McDONALD: Yes. And up until the share purchased agreement--

10 HER HONOUR: It hadn't done that.

McDONALD: It hadn't, it hadn't. Nor--

HER HONOUR: I should say he hadn't.

15

McDONALD: Collectively, the company and Mr Burke.

HER HONOUR: Well, it was an obligation on Mr Burke personally, isn't it?

20 McDONALD: Yes, he was a party. I'm not going to defend my client any further on this point.

HER HONOUR: So I want to understand what is in issue now.

25 McDONALD: What is in issue now is whether the self-managed super fund and ownership of the patents.

HER HONOUR: Well, the Securicom patents only, not Microlatch, is that right?

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McDONALD: That's my position, which I think I'm the only one that could cause any difficulties here. Our difficulties are overcome by what your Honour has addressed, not the Microlatch patents, the deed would be signed, we can quickly deal with the concerns before today is out.

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HER HONOUR: Yes.

McDONALD: If your Honour's against my client in respect of the Superannuation fund, I'll simplify it and call it the Superannuation fund, it would flow--

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HER HONOUR: And I will ask Mr Alkadamani about this, even if I find that the Superannuation fund had a beneficial interest, why does that not mean that the orders should not still be complied with?

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McDONALD: I think it comes back to the comment I made about the futility of it, where--

50 HER HONOUR: That's a different issue, though. The futility I think you are raising is because you say the SPA has now come to an end.



McDONALD: The SPA has come to an end, but I think it goes further, and I hadn't considered this, it goes further that if the court determines that the self-managed super fund does have and retains the beneficial interest in the patents there would be no utility--

HER HONOUR: Well, no, what I would say is it may have had it, it may have sold it. It may have had it at one stage and then it's been sold under the SPA.

McDONALD: And that would be a complete answer to my case. If your Honour did not find so, there would be the ongoing current position of the self-managed super fund having the beneficial interest in these patents. There would be no utility in Mr Burke procuring an assignment of any interest other than those interests, because CJ Burke Nominees wasn't the trustee of the super fund in '17.

HER HONOUR: I will hear from you. I'm sorry, I have interrupted your flow, Mr Alkadamani, but I wanted to try and work out what was in issue. As I understand it, it's really the Securicom patents that we are talking about and it's the overseas patents, subject to your cross-claim in relation to the Australian patents.

McDONALD: Yes, your Honour.

HER HONOUR: Yes.

ALKADAMANI: And perhaps this is a further step that, as I understood it, it is also the case now that there is no dispute that at the very least the legal title needs to be restored to Securicom.

HER HONOUR: Yes. That's as I understand it.

ALKADAMANI: Yes.

HER HONOUR: We are talking about the beneficial interest only.

ALKADAMANI: Yes. Now, the deeds do require an acknowledgement of the assignment of the beneficial interest, the deeds that we seek to be executed to resolve that issue. We agree that, if anything, the beneficial interest was also transferred if it was ever split under the SPA. Of course, we don't say that the super fund owned the beneficial interest and there will be a plethora of evidence that we'll take your Honour to.

But we also say the order, order 7, that was made by this court, in circumstances where it has not been varied, it has not been stayed and has not been appealed, properly construed, was an order for the restoration of the entire bundle of property rights comprising the business intellectual property. His Honour Stevenson J was not ordering only the restoration of the legal title. His Honour was ordering the restoration of all the property rights that are referable to the business intellectual property.

And to make good that proposition, your Honour, other than the fact that Stevenson J in my respectful submission would make it clear if he was only ordering the restoration of the legal rights, but to make that proposition clear one goes to his Honour's judgment which is conveniently found, I don't know if your Honour has a separate copy of it but--

HER HONOUR: I do actually.

10 ALKADAMANI: Yes. If your Honour turns to paragraph 109 of the judgment, his Honour begins to consider whether or not specific performance should be ordered. And if your Honour starts at 113 and then 114, your Honour will see that it was the assumed position in court, the assumed position of Stevenson J, that the patents were owned by the companies, not just the legal ownership.  
15 We are talking about the commercial purpose of the SPA at the moment in this. And if your Honour continues to read to paragraph 120, in particular 119, your Honour will see what his Honour found about the commercial purpose of the SPA.

20 HER HONOUR: What did the actual SPA say about the ownership of the--

ALKADAMANI: I'll take your Honour to that. The SPA can be found at page 470, it's not in the opening bundle because it was rather thick, but page 470 of the court book, volume 2. If your Honour turns to page 474 your Honour will see the commencement of the defined terms.

HER HONOUR: Yes.

30 ALKADAMANI: Page 475 your Honour will see that there's a defined term known as "the business". And that's the business conducted by the company, which is a defined term, and it is the company, that's over the page, it's the first and, I think from memory, fourth defendant.

HER HONOUR: Company Securicom NSW Pty Limited Microlatch?

35

ALKADAMANI: Yes. They are the ones that are subject to the deeds that we propose.

40 So your Honour will see it's the ownership, development, exploitation and manufacture of the business intellectual property. Your Honour then sees what the business intellectual property is. It's in schedule 5. Schedule 5 commences at page 536. Among other things, it has the patents that we seek, that are the subject of the deeds, all the patents.

45 Then your Honour will find some warranty--

HER HONOUR: Just to clarify. As I understand it, the Australian patents have already been assigned to Securicom and to Microlatch?

50 ALKADAMANI: It's to Microlatch, isn't it?

HER HONOUR: Yes, there may be a debate as to the title that has been assigned but they have been assigned?

5 ALKADAMANI: Correct. Now, there are some seller's warranties that we say are important in relation to what is said. They start at page 514. Sorry, I should take your Honour to page 513 because that is the definition of "sellers". Your Honour will see his Honour Stevenson J made a comment that it was  
10 Mr Burke, that's recorded in the judgment, and that's because Mr Burke is selling the shares in the companies. But the sellers are defined in schedule 1, even though Securicom NSW Proprietary Limited is not actually selling anything because its shares are being sold. But in any event, schedule 2 is the seller's warranties.

15 If I can ask your Honour to turn to page 520 of the court book, there's a warranty in respect of the assets, and your Honour will see in particular (ii). And then there's another specific warranty in relation to a subset of the assets, namely the intellectual property, and that's at 521. And there's 12.1A.

20 And there are other things that point to it, but your Honour asked what does the SPA say about who the owner is? And we say the SPA says the owner is Securicom or Microlatch, the relevant companies as defined.

25 HER HONOUR: Yes.

ALKADAMANI: And Mr Burke gave those warranties, because he is, in fact, the only seller, but he is defined as the seller.

30 Just while we are on this issue, and to indicate how the pleadings joint issue in respect of this matter. In the opening bundle at tab 2. Page 625 is our commercial list statement, or part of it, it's paragraph 13, and your Honour will see that what was there pleaded was that the sellers agree to sell the shares in Securicom and Microlatch, including all rights to the patents listed.

35 And then if your Honour turns to the reply to that, the response to that, which is in the next tab, there's a very nuanced and in my respectful submission an accurate response.

40 HER HONOUR: Page?

ALKADAMANI: Page 635, paragraph 8 is in response to paragraph 13 of the commercial list statement. "Pursuant to the...in schedule 5". That's a fair point. "Instead, that property...or indirectly were"--

45 HER HONOUR: "Were to be acquired".

ALKADAMANI: Yes.

50 HER HONOUR: But it otherwise admits.

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ALKADAMANI: Yes.

5 HER HONOUR: So you say that's an admission that all the rights to the patents are owned by Microlatch and Securicom?

10 ALKADAMANI: I say it's an admission. I also say it was a premise for the reasoning of Stevenson J, in particular paragraphs 113-121 that I took your Honour to. And that in construing order 7, your Honour, we say order 7 contemplated all rights, beneficial and legal, and we say that is made abundantly clear by what was decided by the court in terms of the issues that were in dispute and the issues that were not in dispute.

15 HER HONOUR: I haven't looked at all the transcripts but my understanding is that order 7 was made by consent, is that right?

ALKADAMANI: I'll have to get instructions.

20 HER HONOUR: Can we check that? Yes.

ALKADAMANI: I think I've made clear to your Honour before that I was not at the first instance--

25 HER HONOUR: No, I understand.

ALKADAMANI: I wasn't even on--

30 HER HONOUR: Yes, and I don't think Mr McDonald was either so it might take some time, but I think it would be useful to find out. Because having read his Honour's judgment, I know that the question of orders was deferred and I assumed that there was some discussion between the parties as to the terms of the orders.

35 ALKADAMANI: This is not a direct answer to your Honour's question but it might throw up some clarity. Can I ask your Honour to turn to tab 2 which is our commercial list statement. Your Honour will see paragraph 30 pleaded that some patents had been transferred. That's at page 630.

40 HER HONOUR: They were the Microlatch ones?

ALKADAMANI: Yes.

HER HONOUR: It looks like Securicom 2 in the particulars.

45 ALKADAMANI: It does, but they are the Australian ones, your Honour. They are the ones subject to the September 2018 deed, the ones in respect of which there's no dispute. That's all we knew at the time, of course, your Honour, when this was pleaded.

50 Now, our friends at page 639 admit that paragraph. Your Honour has taken

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my friend to page 106 of the court book where Mr Burke deposed that he assigned everything pursuant to November 2017 deeds. There was an interlocutory application when some things came to light about things being transferred. That then was resolved by short minutes of order that are found at  
5 tab 10 of the opening bundle.

HER HONOUR: So was there, in fact, more than one transfer of assignment in relation to the patents?

10 ALKADAMANI: Purportedly, yes.

HER HONOUR: So it looks like there was the assignment that I referred to in November 2017.

15 ALKADAMANI: Which was two deeds in fact.

HER HONOUR: Two deeds.

20 ALKADAMANI: Yes.

HER HONOUR: But as I read Mr Burke's affidavit it looked like it related to all of the business intellectual property.

25 ALKADAMANI: That's correct.

HER HONOUR: And then there are these other transfers which are referred to in paragraph 30 of your commercial list statement which are admitted?

30 ALKADAMANI: Yes. Paragraph 30 came before we knew what had happened.

HER HONOUR: I understand.

35 ALKADAMANI: Yes. It's only a subset.

HER HONOUR: Yes. So there was subsequent transfers--

40 ALKADAMANI: There have been recent transfers, that's what my friend, or purported transfers in the last two months. I can take your Honour to that to show the kind of mayhem that is being caused we say on international registers. For example, at tab 9, if I can ask your Honour to turn to page 756 your Honour will see an email at the bottom of the page from Mr Burke's solicitors in these proceedings, Mr Grant McCartney, at the bottom of page 756, about a third--

45 HER HONOUR: Yes, I have that.

50 ALKADAMANI: So it's 7 August 2019. This is an email to patent attorneys in the United Kingdom, Venner Shipley. And Mr McCartney is saying as at August 2019 the November 2017 deeds are predominant and enforceable and

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that those assignments preceded the appointment of the liquidator so do some things with the patents and matters of that sort. And the patent attorneys are saying, wait, we get our instructions from the liquidator of Securicom, and this was Mr McCartney's response.

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There will be some evidence later on that in the United States were having some problems and that they have caused some things to be registered in the name of the second cross-claimant.

10 HER HONOUR: So those November 2017 is a reference to the deed of assignment?

ALKADAMANI: Yes, they are in the opening bundle as well.

15 HER HONOUR: Yes.

ALKADAMANI: They are at tab 7. And my friend's submissions on Friday, and it's the first time that we knew about it, say that in a sense it was misconstrued, I think is the terminology, to be acting on these deeds.

20

HER HONOUR: We'll hear from Mr McDonald in relation to those deeds, but as I read these deeds what they purport to do is to assign from Microlatch--

ALKADAMANI: Sorry, tab 8 has the one from Securicom.

25

HER HONOUR: --and Securicom all its rights, title and interest in and to the patents.

30 ALKADAMANI: Correct. And if you'll turn to tab 8, which is the Securicom 1, and your Honour turns to page 961 your Honour will see a warranty at 8.1C.

HER HONOUR: Yes, I see that.

35 ALKADAMANI: I'm sorry, but your Honour asked me a question about - I was talking about how one should construe order 7, and I've gone off slightly because your Honour asked me a question, I brought up what had been disposed of, and, therefore, what was in issue. But I only did that because we wanted to make the point that order 7 assumed that - and having regard to the November 2017 deed and what Mr Burke said about it in the affidavit that your  
40 Honour referred to at page 106 of the court book where he says I assigned everything.

HER HONOUR: And that affidavit had been filed in the proceedings before Stevenson J?

45

ALKADAMANI: No, I think in the interlocutory application, your Honour.

HER HONOUR: In the interlocutory application. Yes?

50 ALKADAMANI: Your Honour's question was was that order made by consent,

order 7. And I think in light of that background, I'm not sure it was made by consent or not, but I was giving your Honour some background as to how it came about that that order - I would submit a necessary order because of some of the transactions that had occurred or purported to occur.

5

HER HONOUR: Yes.

10 ALKADAMANI: Now, turning back to focusing on order 7 and our contention or submission that what it clearly contemplated is the restoration of the beneficial and legal ownership and all rights in the business intellectual property, we say this, your Honour.

15 Throughout these proceedings when your Honour is considering the relief that they seek, in effect a declaration that the SMSF is the beneficial owner, one asks if order 7, properly construed, was a restoration of all rights, namely the beneficial and the legal, how can their cross-claim not be the subject of an estoppel? Because it is inconsistent with the proper construction of order 7.

20 And we say the only way that it would be possible for order 7 and the relief that they seek in the amended cross-claim or the cross-claim to sit together would be if order 7 did not embrace the beneficial ownership. And from what your Honour has seen about what was in the reasons for judgment of Stevenson J, it must have. Because there is no way that - his Honour said that the commercial benefit to us is commercial ownership and commercialisation of the patents. We're not doing it for the benefit of the SMSF. We're not going to do that, so that all that is reaped goes to Mr Burke's Superannuation fund.

25 If we are not going to do that for them and the commercialisation of the patents is for CPC's benefit, whoever the shareholders may be, including Mr Burke if the SPA went through, that necessarily answers the question as to who was contemplated to be the beneficial owner of the patent in order 7.

30 I can take your Honour through further documents, I've touched on them, but really that's how we see our motion. We can discuss whether or not there should be an indemnity in the deeds. But I'll take your Honour briefly to the--

35 HER HONOUR: Presumably - well, I don't know, you'll need to tell me whether that's something you want the court to determine, whether or not the deeds in the form that you have referred to in the notice of motion are appropriate, because what I'm hearing from Mr McDonald there's a dispute about that.

40 ALKADAMANI: Yes. But I might just briefly take your Honour to the deeds.

45 HER HONOUR: Yes. Can I just come back to this before you do that. Your primary argument I think, as I understand it, is that there's an issue estoppel or an Anshun estoppel in respect of this ownership issue in circumstances where order 7 was made by the court, and in the context where Mr Burke had given evidence in relation to the interlocutory that the business intellectual property had been transferred to CJ Burke Nominees.

50

KCS:CAT

What if the position is - I don't know whether Mr McDonald will contend this or not - that all Mr Burke did was effectively transfer the legal title to the Securicom patents?

5 ALKADAMANI: We know that's not correct because we just saw the deeds.

HER HONOUR: You say that the court should rely on those deeds, those deeds provide that he transferred all title, legal and beneficial, to those--

10 ALKADAMANI: They are the deeds that he refers to in his affidavit.

HER HONOUR: Yes. Yes, I understand.

ALKADAMANI: Sorry, I was going to take your Honour quickly to the deed.

15

HER HONOUR: Yes, thank you.

ALKADAMANI: One of them is at tab 6. They are in the same form but they have a different schedule.

20

HER HONOUR: Yes, one's relating to the Microlatch and one's relating to the Securicom, is that right?

ALKADAMANI: Yes. The recitals bring out the issue that we say it's by way of background of course, it's not an operative part. The critical provision is clause 2, the assignment. And 2.2 is of significance, amongst other things, because your Honour has seen that even as at August 2009 Mr McCartney was relying on the 2017 November deeds.

25

30 HER HONOUR: Yes.

ALKADAMANI: Three is really confirmation of what an assignee expects to receive.

35 HER HONOUR: Yes.

ALKADAMANI: Four are warranties. I don't know if there's any particular objection to those. There's an objection to the indemnity. I'll seek instructions on that. And the balance are--

40

HER HONOUR: That's paragraph 5 that you understand is in dispute?

ALKADAMANI: Yes.

45 HER HONOUR: Sorry, clause 5.

ALKADAMANI: Yes. Then we have really just the normal - 6 to 7 can't really be anything. Objectionable I would have thought.

50 So I move on our further amended notice of motion. That was a brief



KCS:CAT

background I hope would just assist so that when we are dealing with the evidence your Honour can have a better informed view. I must say that I don't think I've actually informed your Honour very much.

5 HER HONOUR: No, that's helpful. Yes, thank you. Yes, do you want to start your evidence?

Mr McDonald, did you want to do an opening or do you want to wait?

10 McDONALD: I'll wait, your Honour.

HER HONOUR: Thank you.

15 ALKADAMANI: The first thing I do is I will read Mr Dart's affidavits. I've discussed with my friend the order of affidavits. Because we replied to Mr Burke's affidavit I thought that it would be best if I read Mr Dart's affidavit, then my friend read Mr Burke's affidavit, then I read Mr Cole's affidavit because he replied to some things that Mr Burke says, and whatever ruling goes for one may affect the other.

20

HER HONOUR: And one, as I understand it, number of the affidavits are probably read just on the cross-claim issues rather than the notice of motion, is that right?

25 McDONALD: Yes.

HER HONOUR: Yes, thank you. Yes.

30 ALKADAMANI: So Mr Dart's affidavits are at tab 7 and tab 8 of volume 1, and my friend and I have exchanged objections and responses to those objections so that your Honour only has to deal with - this is the bundle and your Honour only has to deal with where it says "press" (handed).

35 HER HONOUR: Thank you. So "do not press" means you're not reading, is that right?

ALKADAMANI: Correct.

40 HER HONOUR: Yes, thank you. So paragraph 6, that's what is E?

ALKADAMANI: It starts at page 90.

HER HONOUR: Yes.

45 ALKADAMANI: It's the deeds.

HER HONOUR: Aren't the deeds behind B and C? In your motion I think you refer to the deeds behind B and C of Mr Dart's affidavit. Paragraph 2.

50 ALKADAMANI: Your Honour might be right.

KCS:CAT

McDONALD: Your Honour, that was the basis of the objection but I don't think this is the relevant--

5 HER HONOUR: No. Is it just a consolidation of--

ALKADAMANI: I think that's right, your Honour.

HER HONOUR: Well, since we have B and C do we need to have D?

10

ALKADAMANI: I'm just checking that CJ Burke Nominees is a party to the other, to B and C?

HER HONOUR: CJ Burke Nominees is a party to the other deeds?

15

ALKADAMANI: Yes, I'm just checking that, yes.

HER HONOUR: But that's your objection, is it, Mr McDonald?

20 McDONALD: Yes, your Honour.

ALKADAMANI: I won't press it, your Honour, CJ Burke is a party to the other deeds.

25 HER HONOUR: Yes, thank you, I won't read paragraph 6. I'll read the affidavit of Kevin Dart sworn 30 October 2019 subject to the objections that have been notified and I will mark up on the affidavit.

30 AFFIDAVIT OF KEVIN DART SWORN 30/10/19 READ SUBJECT TO THE OBJECTIONS THAT HAVE BEEN NOTIFIED

ALKADAMANI: The next affidavit that I read is Kevin Dart, 31 October 2019. And that's at tab 8.

35 HER HONOUR: Yes.

ALKADAMANI: The first objection in issue are 10. 10 has two objections. In relation to the words "as referred to in my affidavit", I don't press that.

40 HER HONOUR: That's to the end of the sentence, yes?

ALKADAMANI: Yes. My friend takes the objection that the document will speak for itself. But I press the beginning of the first sentence up to "July 2019".

45

HER HONOUR: Yes, Mr McDonald, why can't the company director say that?

McDONALD: I won't press the objection, your Honour.

50 HER HONOUR: Thank you. Yes?

KCG:CAT

HER HONOUR: 16 to 17.

ALKADAMANI: With this objection, I don't press the words from "deliberately" to the word "steadfastly" and I know the grammar is not very good.

5

HER HONOUR: Sorry, which paragraph?

ALKADAMANI: 14.

10 HER HONOUR: Oh "press balance", sorry, I hadn't seen that. So you don't press the words "deliberately" down to "steadfastly"?

ALKADAMANI: Yes and I know the grammar doesn't then--

15 HER HONOUR: Yes.

ALKADAMANI: I don't press that first sentence, your Honour.

HER HONOUR: I won't read the first sentence.

20

ALKADAMANI: 15 to 17, I submit it is just a question of weight. They are clearly relevant. They are just weight.

25 HER HONOUR: Yes, Mr McDonald? I will treat it as an assertion rather than - 15 is a matter of fact. I will read that; 16 I will treat as an assertion, but it is difficult. It is a question of weight really, as to what weight I give it when I haven't got any further evidence on it and the same for 17. I will read those on that basis.

30 ALKADAMANI: If your Honour pleases.

AFFIDAVIT OF KEVIN DART SWORN 31/10/19 READ, SUBJECT TO ABOVE RULINGS ON OBJECTIONS

35 ALKADAMANI: That takes us to our objections to my friend's affidavits and my friend's evidence on the cross-claim, in a sense. I'm not sure how strict we should be on what we are doing, because it is going to all end up before your Honour.

40 HER HONOUR: Typically I would hear your evidence, but do you want to read your evidence now, or do you want to have Mr Dart give evidence?

McDONALD: I would rather a flexible approach, so we try and achieve the objective of finishing today.

45

HER HONOUR: Okay. So let's deal with all the objections now.

McDONALD: I think my friend suggested we should look at my affidavits next. I think that means we are looking at Mr McCartney.

50

KCG:CAT

ALKADAMANI: Does your Honour have the objections to that?

5 HER HONOUR: I do. The first one is 18. The third sentence. Is that the sentence "In that regard I refer to the email"? Or is it the fourth sentence, "I refer to the financial statements"?

10 ALKADAMANI: Sorry, it is "financial statements". It might be the fourth. On the issue of the financial statements, and we identified it there, they weren't done contemporaneously. They are unsigned. They appear on their face incomplete.

HER HONOUR: If it is just a question of what weight, does it make them not admissible?

15 ALKADAMANI: We say they are not financial statements. They might be drafts or something or other.

20 HER HONOUR: Why don't I read it as "I refer to the documents called 'financial statements'"?

ALKADAMANI: May it please your Honour. Can I say it is not a pedantic objection, because they seek to--

25 HER HONOUR: I understand that, but I don't think that they are not admissible. It's just a question of what weight.

ALKADAMANI: I accept your Honour's ruling. I just wanted your Honour to understand we are not just--

30 HER HONOUR: Yes. Paragraph 20.

35 ALKADAMANI: We don't accept it has been validly terminated. It's not the subject of what is before your Honour today in any event. We are here to enforce order 7, and whether it was terminated or not terminated does not go to the beneficial ownership. So it doesn't go to the issue of the cross-claim. I don't want it to be perceived that there is no dispute that it has been validly terminated. We are just not here to--

40 HER HONOUR: Well, it is a legal conclusion as to whether or not it's been terminated. But he can give evidence, can't he, that there was a notice sent?

ALKADAMANI: Yes.

45 HER HONOUR: I will read on 30 April 2019 that there was a note sent by Mr Burke purporting to terminate, but not the fact that it was terminated. 21, the last sentence, is that not the same?

McDONALD: Yes.

50 HER HONOUR: Why don't I read - I suspect that there is a number of--

ALKADAMANI: Your Honour, I think how this objection reads is we, object to everything, our friends press the last sentence. I accept the last sentence can go in on the basis of your Honour's previous ruling.

5

HER HONOUR: Any references to termination I will read as a notice purporting to terminate, rather than it actually at law having terminated.

McDONALD: Yes, your Honour.

10

HER HONOUR: Does that deal with 20? What about--

ALKADAMANI: That means the first sentence of 21 goes out.

15 HER HONOUR: The first sentence of 21?

McDONALD: That wasn't read. The first sentence of 21 wasn't read.

20 HER HONOUR: Not read. So the first sentence of 21, is it "the termination notice"? The notice purporting to terminate?

McDONALD: Yes.

HER HONOUR: 22?

25

ALKADAMANI: Objection is to relevance and we are not here to fight that. We don't accept--

HER HONOUR: Mr McDonald?

30

McDONALD: Our position is, there has been no reply, I don't think--

35 HER HONOUR: I will let it in, but question whether or not there is much relevance to it. I will hear submissions from the parties. 23? What are you saying in relation to this? Is it the whole or really just following the notice sent?

40 ALKADAMANI: 23 is a number of bundles. One is exercising rights under the SMSF. We can treat it all as a contention of their position, but we say they don't have rights to transfer the assets and matters of that sort, but your Honour can see the way it is framed is a legal conclusion.

HER HONOUR: I'm not reading it as a legal conclusion. I will read it as an assertion.

45 McDONALD: Your Honour, this is something that has caught me by surprise here. I didn't understand that there was an issue as to whether the trustee of the fund had been replaced. I understand that seems to be now an issue, because that is the subject matter of that paragraph 23. It's not about transferring assets of a self-managed super fund. It is just transferring or  
50 replacing the trustee thereof.

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ALKADAMANI: I hear my friend. I accept that.

5 HER HONOUR: I will read that, but I will note that it is following the notice. Do we need the first three words, Mr McDonald?

McDONALD: No, your Honour.

10 HER HONOUR: I won't read the first three words. 24? You press the last sentence, you just want the sale date? I won't read the first sentence. 25?

McDONALD: I don't need to press that now.

15 HER HONOUR: Subject to those objections, I will read the affidavit of Duncan grant McCartney affirmed 14 November 2019.

AFFIDAVIT OF DUNCAN GRANT MCCARTNEY AFFIRMED 14/11/19, READ SUBJECT TO ABOVE RULINGS ON OBJECTIONS

20 HER HONOUR: Mr Burke's affidavit?

McDONALD: I read Mr Burke's affidavit of 22 November 2019.

25 HER HONOUR: Paragraph 16?

ALKADAMANI: It is one of the big issues in the case, your Honour.

30 HER HONOUR: Isn't that a conclusion that the Court is going to have to draw?

McDONALD: It's the position of the mind of that company.

35 HER HONOUR: If that is how it is being advanced, that is very different to what it says.

McDONALD: It can only be that man's lay view of his facts. He is the person to give those facts; sole director of that company.

40 HER HONOUR: But it is a legal conclusion as to whether or not the company is acting as a trustee only.

McDONALD: He certainly couldn't give evidence on that.

45 HER HONOUR: I won't read the words "and acted as trustee only", paragraph 16. 24 is pressed?

McDONALD: No, on reflection. 38 seems to be a late addition.

50 HER HONOUR: 38, yes. It hasn't got an "NR" or anything next to it. What is the position in relation to 38?

McDONALD: That is pressed, your Honour.

5 ALKADAMANI: Our position is that is not the way to prove it. We have seen documents that say, and I will be cross-examining on it, where minutes of--

HER HONOUR: You don't object to the deed being put in, do you?

10 ALKADAMANI: I don't object to the deed.

HER HONOUR: I won't read the first sentence. You can have the deed and make submissions in relation to the documents, Mr McDonald. Paragraph 51?

15 McDONALD: That is pressed.

ALKADAMANI: My objection is--

20 HER HONOUR: Is it really "and to the SFMS trustee" although that is not an issue. You accept that it was a trustee of the superannuation fund?

ALKADAMANI: I accept that we were told that. I have actually not seen a document that appoints them and the deed I think may--

25 HER HONOUR: There is a trust deed. I don't know if it's the appointing deed.

30 ALKADAMANI: I will just check that. My issue is that it is the non-trading entity. It was the one that entered into the SPA selling shares and we don't accept that this is the way that one proves that it is a non-trading entity. One shows that--

HER HONOUR: I will read it as an assertion as a non-trading entity, but not as a matter of fact. 71?

35 ALKADAMANI: We say this only goes to--

HER HONOUR: I was going to say is this relevant to this question, or is it really only relevant to the misleading deceptive conduct claim?

40 McDONALD: No need to press it, your Honour.

HER HONOUR: I won't read 71. 74? Is that in the same category?

45 McDONALD: No that will be relevant to some matters under cross-examination.

ALKADAMANI: I object on relevance in the affidavit, and I will object when it comes time to cross-examine. These are not relevant to either the ownership issue or whether or not order 7 has been complied with.

50 HER HONOUR: Why is that relevant, Mr McDonald?

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McDONALD: I won't press it.

HER HONOUR: 85?

5

ALKADAMANI: My objection is it might inform some reliance, misleading and deceptive conduct.

10 HER HONOUR: I was going to ask Mr McDonald why is this part of this case, when it is referring to the CPC representations?

15 McDONALD: It informs the Court of Mr Burke's mind and that could inform the Court as to his mind in not raising the beneficial ownership issue in the proceedings before Stevenson J. The res judicata, the Anshun estoppel issue is before the Court. One of the principles is whether or not there is a need or a requirement to raise these issues and raise the issue of a self-managed super fund and the Court has recognised there are circumstances in which you might elect not to, that it could be commercially sound not to raise certain issues and that would be permissible. The fact that commercial circumstances were on  
20 his mind is relevant to whether there is a reasonable basis of not pursuing.

25 HER HONOUR: It is hard to see how it is relevant. I will allow it provisionally and we'll see how it goes. I'm loathe to actually completely take it out on the grounds of relevance at this stage. But 86 is there provisionally and I will hear from you later Mr El Kadamani--

ALKADAMANI: I think we are dealing with 85 at the moment, your Honour.

30 HER HONOUR: Oh 85, sorry.

ALKADAMANI: It is similar to 86 and in fairness, I would expect that your Honour would rule the same.

35 HER HONOUR: Yes, 85 Mr McDonald, how is that relevant?

40 McDONALD: It's on the basis as I put, to the extent that there is a commercial justification and reason for a person not to run a case, not to run a cause of action, not to run a defence, that could be justification in the res judicata Anshun estoppel principles and this is the evidence of the commerciality that is in the mind of Mr Burke. I haven't explained my case. Can I take a moment? I know it is in the middle of this.

45 HER HONOUR: I'm very conscious of the time. At the moment I'm going to allow it provisionally and you are going to have to convince me that it is at all relevant to your case. That is 85 and 86, Mr McDonald. The next one?

McDONALD: 97.

50 ALKADAMANI: Our objection is, it doesn't go to the enforcement of order 7. It doesn't inform your Honour about that and it doesn't inform your Honour about



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who owned that and who owned the patents.

HER HONOUR: What do the statements say?

5 ALKADAMANI: They say CPC has entered into an agreement with Securicom, first of all it was non-binding agreement in June. In October it was a binding agreement.

HER HONOUR: What is the relevance?

10

McDONALD: One of the statements says that my client will be getting shares in a listed public company.

HER HONOUR: What has that got to do with the ownership of the shares?

15

ALKADAMANI: The SPA speaks for itself.

McDONALD: Again I can explain. It is not to do with the ownership of the shares. It is to do with the ownership of the patents and the fact that we  
20 accept that Securicom was the legal owner of the patents. Securicom had ownership of the patents for all intents and purposes, other than this beneficial ownership through the super fund. But we have to accept that there must have been some other agreement to put ownership in the hands - beneficial, total complete ownership in the hands of Securicom and that is where there is this  
25 agreement, and we accept Mr Burke didn't document it. Mr Burke didn't communicate it.

20

25

HER HONOUR: I'm not convinced that the CPC making statements to the ASX about that is at all relevant to that. I have allowed the provisional  
30 relevance of what was in your mind, that what you thought the shares could be worth. I won't read 97.

30

HER HONOUR: 104 to 166?

35

EL KADAMANI: Just to shortcut this. Can I propose this: 105 and 106 provisional relevance. Your Honour can then see whether it is relevant to the Anshun estoppel point or not. 104 I will still press it.

McDONALD: And I won't.

40

HER HONOUR: 105 to 106 I will admit provisionally and hear from the parties later as to relevance. Is there anything else? 150 to 151?

ALKADAMANI: 150 really requires the documentation that shows the  
45 transactions of the company. The proper financial reports of the company.

45

HER HONOUR: Yes, I think consistent with my earlier rulings, I'm not going to read paragraph 150. 151?

50

ALKADAMANI: These are again assertions as to the transfer of ownership

KCG:CAT

from one entity to the beneficial ownership of the SMSF without any documentation.

HER HONOUR: Mr McDonald?

5

McDONALD: Your Honour, what if there wasn't any documentation? We have the man that was on both sides of the transaction.

10 HER HONOUR: Yes, but he is making a conclusion. He is not giving the facts which support the conclusion. It just says here that "Securicom acquired the patents from me" and that Securicom had held. At the very least if there was no documentation, there needs to be some facts which support that conclusion.

15 McDONALD: In my submission, that fact flows from the second part of paragraph 151.

20 HER HONOUR: I won't read the first sentence of 151, but isn't the holding of the Securicom patents in its own right and following various loans - again where are the facts which support that?

ALKADAMANI: And which regulator are things being regulated with?

25 HER HONOUR: Mr McDonald, in that form I'm not going to read the rest of paragraph 151. Paragraph 152, I will allow the second sentence which are the copies of the bank statements, but "in consideration for the purchase" again if you haven't got any facts supporting it, it is a matter of conclusion, isn't it?

30 McDONALD: I accept that, your Honour.

HER HONOUR: I will read the first sentence "On or about late 2012 to 2013 Securicom paid the amount of around 335,000 to me", but--

35 ALKADAMANI: Sorry, can I interrupt your Honour? The documents speak for themselves.

McDONALD: I accept that, your Honour.

40 ALKADAMANI: The numbers are completely wrong.

HER HONOUR: I will not read that sentence then. 176? How is this relevant?

McDONALD: No need to press that now.

45 HER HONOUR: Thank you. I will read the affidavit of Christopher John Burke sworn 22 November 2019 subject to those objections.  
AFFIDAVIT OF CHRISTOPHER JOHN BURKE SWORN 22/11/19 READ,  
SUBJECT TO RULINGS ON OBJECTIONS

50 EL KADAMANI: Sorry, your Honour.

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HER HONOUR: There are documents. Yes, sorry. Are these in the fourth volume?

5 ALKADAMANI: Yes, they are. 503 to 544 are in volume 2, in the supplementary bundle that was handed up.

HER HONOUR: So they are court book numbers, not affidavit numbers, are they?

10

ALKADAMANI: I think they are affidavit pages, not court book pages.

HER HONOUR: Mine starts at page 545 not 503.

15 ALKADAMANI: I'm sorry. I apologise for this. I will find 503 in volume 3. 503 will be in volume 3, but the others are not.

McDONALD: Volume 2.

20 HER HONOUR: I have that. 563 of the court book.

ALKADAMANI: We apologise.

25 HER HONOUR: That's all right. So this is the intellectual property indicative valuation report, is it?

ALKADAMANI: Yes, by some patent attorneys in September 2016 and we would say it does not inform your Honour as to the--

30 HER HONOUR: How is it relevant, Mr McDonald?

McDONALD: No, not on this case.

35 HER HONOUR: Thank you. I won't read that part of the exhibit. 652?

ALKADAMANI: That will follow your Honour's earlier ruling about financial statements.

40 HER HONOUR: Yes, I will read them as documents which are stated to be financial statements, but won't read them as anything more than that.

45 ALKADAMANI: 665, what we object to is the email at the top third of that page from Mr Sattout. Your Honour can receive the email as an email that was sent, but we object to the email being received as to the truth of its contents. It is an email from Sam Sattout, 13 July 207 to Steve Cole.

ALKADAMANI: Mr Sattout cannot, by an email--

50 McDONALD: It is a business record.

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HER HONOUR: It's just an email between the parties.

McDONALD: Yes. Can I clarify, your Honour?

5 HER HONOUR: We are dealing with the affidavit at the top of the page from Steve to Sam Sattout and I think the proposal is it is read, not as to the truth of its contents, but just the fact it was sent and what it says.

10 McDONALD: Email from Sam Sattout to Steve Cole, rather than the one below it?

HER HONOUR: Yes.

15 ALKADAMANI: That's correct, your Honour.

HER HONOUR: There is no objection to the email from Mr Cole, is there?

20 ALKADAMANI: No, I can't object to that, because our friends are trying to use it as an admission.

25 McDONALD: I do press it as evidence of the fact. My friend has said to you before that the way of proving some facts as to whether a company trades or not is, for example, financial statements. Those were his submissions. You do not prepare, or certainly the accountant forms the view that if the company does not trade, you don't prepare financial statements, so unprepared financial statements is one way; not having financial statements is one way--

HER HONOUR: The objection really, it is hearsay, is it?

30 ALKADAMANI: Yes. I accept that Mr Sattout can say they have not prepared any financial statements, tax returns. I don't accept he can say the conclusion "as it does not trade". That may be his reason for not doing it. The SPA, for example, we say shows that it was trading, it was selling its shares and entering into transactions, but he is a person that says he hasn't even entered  
35 all of the transactions into his programme. He is awaiting a response before finalising and then he asserts it only acts as a trustee.

40 HER HONOUR: I will read the email on this basis: I will read it as a matter that Sam Sattout did not prepare any financial statements or tax returns. I will read it as to his assertion that the company does not trade and that the company acts as trustee, but not as proof of those matters.

ALKADAMANI: And the last sentence as well.

45 HER HONOUR: Yes, with that last sentence, the whole of that last sentence is an assertion by Mr Sattout, but not as evidence of those matters as a matter of fact.

50 ALKADAMANI: The next objection is page 666 and the reason for that is it can't be a business record. It should follow what your Honour earlier ruled. It

can't be a business record. There was litigation at that point being contemplated and proceedings having already been undertaken. And he is talking about a whole bunch of changes to documents which are not before your Honour. So it is secondary evidence of those. It is in an affidavit by  
5 Mr Burke. Mr Sattout could give evidence step by step as to these matters so, for example, things such as "the payments were incorrectly allocated as an in-house loan account", "incorrect as the fund regulations do not allow that to happen" - all of these things are just conclusions as to transactions that are  
10 meant to be recorded in the primary business records and presumably that is what he is looking at, or something, on the basis of instructions from Mr Burke, in which case Mr Burke should give the evidence. These are all just assertions as to things that have happened and it can't be a letter that gives your Honour the evidence of that.

15 HER HONOUR: Yes. Mr McDonald?

McDONALD: I seek to press the second last paragraph, "The attached financial statements and tax returns have been lodged with the Australian Taxation Office".

20 HER HONOUR: Yes. Mr El Kadamani?

ALKADAMANI: I want Mr Sattout to say that they have. Mr Sattout will be here. My friend can have leave. I don't know that they have. I haven't seen  
25 the finalised document with an ELD that has been signed.

HER HONOUR: What I will do is, I will not read this, but I will allow you to adduce evidence from Mr Sattout on that point.

30 ALKADAMANI: The following documents 667 to 679 are the attached documents so my friend will have leave--

HER HONOUR: The leave will cover that.

35 ALKADAMANI: Yes.

HER HONOUR: Just to make clear, the leave extends to proving that the financial statements and tax returns that appear at pages 667 to 679 were lodged with the Australian Taxation Office.

40 ALKADAMANI: 678, I apologise. It's 678.

HER HONOUR: Yes.

45 ALKADAMANI: The 679 to 691 I think I need some clarification from my friend if he is saying these were also lodged or not. These are covered by that covering letter.

50 HER HONOUR: They are all covered by the covering letter, aren't they, up to 698? Mr McDonald?

KCG:CAT

McDONALD: I'm just checking, your Honour.

McDONALD: Up to 697, yes, your Honour.

5

ALKADAMANI: I'm sorry.

HER HONOUR: Yes, the leave that I have given to you, Mr McDonald, will extend to all of those documents as well. Yes. 707?

10

ALKADAMANI: I submit this is similar to the document at 665, I think it was. It was again an assertion as to the matters that are before your Honour in a letter from Mr Sattout annexed or exhibited to an affidavit of Mr Burke.

15

HER HONOUR: I'm not sure what can be made of the email, even if it was taken, because Mr Sattout can't confirm certain things.

ALKADAMANI: Are we looking at 707?

20

HER HONOUR: Yes, I'm looking at the fourth paragraph. Mr McDonald, doesn't this fall within the same category as the email we just had a look at?

McDONALD: It is certainly similar. If I could just review the letter.

25

ALKADAMANI: The penultimate paragraph also has matters, "we are attempting to obtain documents to verify this situation, but it seems reasonable to assume". I think it just goes on.

McDONALD: There is evidence of accounting transactions.

30

HER HONOUR: But that evidence, if you have that evidence, you can rely on that evidence. It's not this email and this email doesn't even say what the accounting evidence is.

35

McDONALD: If I look at the paragraph "When we were approached", it is evidence of an error taking place. It is evidence of Mr Sattout's opinion that there is an error.

40

ALKADAMANI: Mr Sattout needs to say on oath "Your Honour, I swear that I looked at these things"--

45

HER HONOUR: I'm not going to allow this email or this letter by itself to be evidence of those matters. I will reject that letter. Subject to those matters, do you want me to mark the exhibit to Mr Burke's affidavit as exhibit A or shall we treat--

McDONALD: Or shall we treat the court book - my preference is the court book as an exhibit.

50

HER HONOUR: Yes, thank you. Mr Sattout?

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ALKADAMANI: No, your Honour, I think it is Mr Cole next.

HER HONOUR: This is in response?

5

ALKADAMANI: Yes.

HER HONOUR: What tab--

10 ALKADAMANI: I see the time and this is only for your Honour and your Honour's staff.

HER HONOUR: I think we should keep going through, subject to transcript, otherwise we are not going to get through this today. Mr McDonald, are you content with that?

15

McDONALD: Yes. My friend and I spoke before and we thought we would almost surely get through the evidence today, such that we could then at worst get through the evidence today such that then we can tailor the rest of the time.

20

HER HONOUR: Let's talk about that later. If we get through the evidence, you can always come back and give me some written submissions and perhaps if you want to address orally, then we can arrange a short time.

25

McDONALD: That's what we contemplated. Thank you, your Honour.

HER HONOUR: Tab 11. 30 is the first one. As I understand it. It is really submission. I accept that it may not be in dispute. 45?

30

ALKADAMANI: There are two matters that were left over from Friday. They were the amendments to our two disputes, sets of amendments.

HER HONOUR: These go to the estoppel argument.

35

ALKADAMANI: And the way I seek to read that paragraph is the assurances or representations go no higher than what is in the evidence, so it is only what has been adduced, such as and I have noted the SPA and the documents referred to in paragraph 47. I'm not going to bring up representations that are not before your Honour.

40

HER HONOUR: What about paragraph 12?

ALKADAMANI: Paragraph 12 is in the affidavit.

45

McDONALD: In my submission if there is nothing further to be brought, there is no utility in that paragraph and if it doesn't assist the Court in identifying how CPC was led to identify certain things, so form was the basis of the objection. It doesn't assist the Court in identifying what were the assurances provided by Burke. If there were matters already in evidence in other parts of the affidavit,

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then this doesn't assist you.

5 HER HONOUR: In that form I understand, Mr El Kadamani, that you are going to limit it, but in that form I can't read it. I will allow you to adduce evidence from him to identify specifically the matters that you rely on. Paragraph 45 is rejected, but I will allow the plaintiff to adduce evidence to identify what the witness says he relied on in terms of the matters that are referred to by the plaintiff at paragraphs 12, 147 and the contents of the SPA. 46? It is an assertion really, isn't it? You can cross-examine him about that.

10 McDONALD: It is an assertion, but I don't understand what "articulated" is meant to mean and "prior to any conversation or meeting". There is no context. So it is so vague I don't think it assists the Court, whether this was the first meeting articulated, whether that word means "described in detail" or whether it was ever mentioned. So my objection is that the evidence is sufficiently uncertain that it doesn't assist the court.

15 HER HONOUR: That goes to weight, rather than admissibility, doesn't it, Mr McDonald?

20 McDONALD: There are two ways of dealing with it.

25 HER HONOUR: I will read it, but I hear what you say and you can make submissions as to what weight it has. 47?

30 ALKADAMANI: I only read 47 on the basis that I just tender the documents. This was just a summary of what is in the documents. If the objection is that the documents speak for themselves, well, I tender the documents.

35 HER HONOUR: Are all the documents in evidence?

ALKADAMANI: Yes, all the documents in 47, from A the N are in the exhibit.

40 HER HONOUR: So you are not reading the first two lines of 47, is that what you are saying?

ALKADAMANI: Yes. Can I also say I don't read the words in B? I don't read the words in brackets in B. That is a different court book.

45 McDONALD: There is an issue as to the provenance of these documents and that is why I took objection, particularly to the first line and the words "I discovered".

50 HER HONOUR: They are not being read any more.

McDONALD: And that then affects the provenance of the documents that are now being tendered. My objection to the whole of the paragraph is that the Court can't be satisfied as to the admissibility of these documents, if Mr Cole cannot say how he got them.



5 ALKADAMANI: I seek leave to withdraw my earlier comment. I thought I was making things simpler. I do read the words "whilst I completed my due diligence on behalf of CPC, I discovered the following documents". I don't read the words "which indicated". He discovered them during his due diligence. It makes it obvious where it was coming from. If my friend wants to cross-examine or say the particular document was not from the source from his camp at the time, he can.

10 HER HONOUR: Yes, Mr McDonald?

McDONALD: If my friend is submitting to the Court that the words "due diligence" means the documents were provided by my camp, I don't accept that.

15 HER HONOUR: No, I don't think he is saying that. I think he is saying when he completed his due diligence on behalf of CPC. That doesn't necessarily just mean the documents he gets from his client.

20 McDONALD: That is what I thought I heard my friend saying.

HER HONOUR: That is as I understand it.

ALKADAMANI: Your Honour is correct and I am sorry.

25 HER HONOUR: Sorry, are we ad idem that I will not read the words "which indicated that the patents were owned by Securicom" and just read the introductory words "and the documents"?

30 McDONALD: We now are.

HER HONOUR: What is the next one?

ALKADAMANI: 50.

35 HER HONOUR: Pressed, except for the second last sentence which is "essentially"?

40 ALKADAMANI: Yes, I don't press "essentially". Your Honour has seen the November deeds--

HER HONOUR: Sorry, this is talking about the September deeds and the November deeds.

45 ALKADAMANI: Yes, but in the objected to section.

HER HONOUR: Is the whole of it objected to? No, it is just "however".

50 ALKADAMANI: So in the objected to section - sorry, I will ask my friend to explain.

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McDONALD: Can I pause for a moment, your Honour and just reconsider whether I need to press this?

5 ALKADAMANI: Your Honour would have seen Mr Grant's email of August and the November deeds and how it is still being relied on.

McDONALD: To the extent that there are the November deeds in evidence, they speak for themselves.

10 HER HONOUR: The point I think that it was unknown to him.

ALKADAMANI: Yes, and that they are being relied on because - and that is one of the things that is causing us a bit of havoc, which goes to why we want these deeds executed.

15

McDONALD: What is not clear is when the man was unaware of these deeds. Clearly he is aware of them now. One would think that they were aware of those deeds when the September deeds were prepared that made reference to them. September 2018. So it's just unclear as to--

20

ALKADAMANI: I won't read the words "unknown to me" or--

HER HONOUR: If you are not reading those words.

25 ALKADAMANI: The reason I want the words "however, Mr Burke purported to execute assignments" and all of those other matters, is that gives rise to why we want the clarity that we seek in the relief.

30 HER HONOUR: I understand that, but that is a matter you don't need. The documents speak for themselves. If it is read in that way "without unknown to CPC or me", I think Mr McDonald, you are dealt with?

McDONALD: Thank you, your Honour.

35 HER HONOUR: 55, what is the objection here? There is a conclusion at the last sentence, isn't there?

ALKADAMANI: 55. I don't press--

40 HER HONOUR: It refers to draft financial statements.

ALKADAMANI: I do press the documents, your Honour. They came from Mr Burke's accountant.

45 HER HONOUR: But what I'm saying is what about the last sentence?

ALKADAMANI: I don't press "There is no mention".

HER HONOUR: And the last sentence?

50

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ALKADAMANI: I don't press that.

HER HONOUR: Mr McDonald, is there any objection now?

5 McDONALD: The documents speak for themselves, your Honour.

HER HONOUR: But you don't object to the documents being annexed?

10 McDONALD: Correct. I don't object to that. On page 615 there is a sentence "The financial statements indicate".

HER HONOUR: I will read that as assertion only, not as to the truth of fact. The documents do speak for themselves.

15 McDONALD: I haven't had a chance to cross check whether it is perfect.

20 HER HONOUR: And the same with the words "do not" - I won't read the words "do not show that any patents held by the SMSF". Mr El Kadamani, you can make a submission in relation to that. The same for "the financial statements prepared indicate that"; the documents will speak for themselves. 57, the third sentence, that is the sentence "The transaction was proceeding on the basis of what was recorded".

25 ALKADAMANI: Sorry, I think I have marked up the wrong thing, your Honour.

McDONALD: That is the sentence objected to.

30 ALKADAMANI: The objection is "The transaction was proceeding on the basis of what was recorded in the SPA".

HER HONOUR: Yes.

35 ALKADAMANI: I don't press that, your Honour. Things are marked up incorrectly, so I'm just trying to renumber. That goes, amongst other things, to reliance and detriment. What we would have done if we had learned that Securicom did not beneficially own the patents that we were buying under the SPA. So what steps would we have taken, for example.

40 HER HONOUR: So this is in relation to the sentence "The transaction was proceeding on the basis of what was recorded in the SPA".

McDONALD: We have moved past that.

45 ALKADAMANI: I don't read that sentence.

HER HONOUR: You are not reading that. So now we are looking at "I am sure if I had seen that email and read it", down to the end of the paragraph?

50 ALKADAMANI: Yes. The reason is that email says "The patents are owned by the SMSF and if we had known that, contrary to what was in the SPA, we

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would have taken certain steps".

5 HER HONOUR: Yes, isn't that relevant on the reliance point for an estoppel? You can cross-examine him in relation to that as to whether or not that was in fact--

10 McDONALD: It is relevant. It is my submission that it is speculative as to what, two years ago, they may or may not have done and self-serving. It's a matter for cross-examination.

HER HONOUR: A matter for cross-examination and submission as to weight. I will allow it.

15 ALKADAMANI: 58, there is a question of construction as to a particular email that Mr Cole wrote. So it is Mr Cole's email and he writes a paragraph and our friends want to say that is what that paragraph means and Mr Cole was explaining what he meant in the paragraph that he wrote. It is not a contract case. It is not a case that the Court has to objectively determine the communications that passed between the parties. It's a question of whether  
20 that email from Mr Cole is an admission that he knew or was saying that the patent was owned by the SMSF.

I can take your Honour to the email if your Honour wants, but our friends are tendering an email. It's the one that I said we could not object to, because it  
25 was from Mr Cole and they were seeking to rely on it as admissions and your Honour will be asked to say, well those words must mean that we knew that the patents were owned by the SMSF and Mr Cole is saying "This is what I meant by that email, by that particular paragraph", my own words. If it is not being relied on to say "This is the contractual term because this is what I had  
30 in my head, I'm not admitting that I knew that the patents were owned by the SMSF. What I am saying is X". I think it is page 665 of the court book.

McDONALD: 663--

35 HER HONOUR: 665, isn't it? It is an email dated - is it 27 June and is it the second paragraph - not the second paragraph. No, that is not the right one. 663, is it the paragraph "I confirm that according to my records"?

40 ALKADAMANI: Yes.

HER HONOUR: Yes.

McDONALD: I certainly propose to cross-examine on the subject.

45 HER HONOUR: I have no doubt. I will allow it, yes. 61, the third sentence, is that "furthermore"?

ALKADAMANI: Yes, that goes to reliance.

50 HER HONOUR: That goes to reliance, doesn't it, Mr McDonald? There may

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be a question of weight; you will cross-examine, won't you?

McDONALD: It is the lack of details of how CPC had been informed. That is just a mere assertion.

5

HER HONOUR: You are saying if in fact it was informed. It is not saying it was informed, it's saying if it had been informed.

McDONALD: We are on the same basis.

10

HER HONOUR: Thank you. 62?

ALKADAMANI: I don't press the last sentence of 62.

15

HER HONOUR: 63, 64.

McDONALD: Do not press.

20

HER HONOUR: Sorry, that is not pressed. Sorry, thank you. Do not read. I will read the affidavit of Stephen Alan Cole sworn 26 November 2019.

AFFIDAVIT OF STEPHEN ALAN COLE SWORN 26/11/19 READ, SUBJECT TO THE ABOVE RULINGS ON OBJECTIONS

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That is all of the plaintiff's evidence, as I understand it?

30

ALKADAMANI: No, your Honour, because Mr Sattout swore an affidavit that we got on Thursday and we are here today and your Honour heard what happened on Friday, so we prepared something over the weekend on the basis that if my friend is given leave to rely on Mr Sattout's affidavit of Thursday afternoon, we will seek to read another affidavit of Mr Cole

HER HONOUR: Yes.

35

McDONALD: I now seek leave to rely on Mr Sattout's affidavit.

ALKADAMANI: I object to that, unless we get leave to rely on Mr Cole's.

40

HER HONOUR: I would assume Mr McDonald is not objecting to Mr Cole's affidavit being read?

McDONALD: I would object to two paragraphs in it, but otherwise I would not object to it being read.

45

HER HONOUR: So the submission that Mr Sattout's affidavit will be read, subject to objections on it and Mr Cole's, yes.

McDONALD: And he is here available for cross-examination.

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HER HONOUR: Mr Sattout is in volume 3. So behind tab 12. 12, paragraph 12.

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ALKADAMANI:: Your Honour this conversation is just a conversation between an agent and his or her principal and it can't therefore be evidence as against us as to the truth of the matter. It's just a self-serving conversation between the same side.

5

HER HONOUR: Yes Mr McDonald?

MCDONALD: I am just catching up.

10 HER HONOUR: I take it 13 is in the same - no, That's a conversation with Mr Cole.

MCDONALD: Your Honour I do press paragraph 12.

15 HER HONOUR: You press paragraph 12?

MCDONALD: Yes.

HER HONOUR: As to the truth of what is said or just the fact that it's said?

20

MCDONALD: The truth of what has been said, that Mr Sattout's component, that he has not done accounts for Securicom, only for the self-managed super fund, so I am in the third-

25 HER HONOUR: Yes, I see that. Well that's consistent with the letter, previously, wasn't it, that he hadn't done the accounts. I think it was admitted on that basis.

I will admit paragraph 12 but I will make a section 136 order that it's only evidence of what was said rather than the truth of the words that were said other than "I have not done accounts for Securicom only for SMSSH" in the third paragraph.

30

Paragraph 13

35

ALKADAMANI:: Your Honour our point about paragraph 13 and the relevance of it is that Mr Sattout saying the patents are not owned by Securicom, cannot be evidence.

40 HER HONOUR: I understand that.

ALKADAMANI:: And therefore it's not relevant. If your Honour wants to admit it on the basis that words were spoken between the parties.

45 HER HONOUR: I will admit it on that basis.

I will admit paragraph 13 on the basis that the words were spoken but not as to the truth of what Mr Sattout is alleged to have said about the nature of the interests of the Securicom patents.

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ALKADAMANI:: The next objection is to 17. With respect it's scandalous material but in any event it's not relevant, and for good measure it's denied, but your Honour doesn't need to have any cross-examination about this.

5 HER HONOUR: What is it relevant to Mr McDonald?

MCDONALD: It's relevant to the degree of communication between CPC and Mr Sattout about preparation of financial statements or accounts. The focus on or the attention which was given to the Microlatch accounts but the lack of attention or lack of conclusion given to any preparation of Securicom accounts or Securicom self-managed super fund accounts. It goes to the degree of attention that was given, according to Mr Sattout, by CPC to those financial statements for Microlatch, as part of the SPA, that's the relevance of this evidence.

15

ALKADAMANI:: Your Honour in my submission it doesn't engage with those issues at all. It's not saying 'I was only asked to look at Microlatch accounts or 15 out of 16 conversations of Microlatch accounts.

20 HER HONOUR: I can't. Well I am struggling to see it. If you want to make that submission Mr McDonald, haven't you got evidence there from 16 and 15, to the extent you can make that?

MCDONALD: But it goes further.

25

HER HONOUR: But the issue that it goes further on, how is that relevant? It's got no relevance. Whether or not he asked for certain things to be removed or not has got no relevance to the issues that the court has got to determine on these applications.

30

MCDONALD: I certainly won't ask the court to make a finding as to whether that request was made. I don't seek to go that far.

ALKADAMANI:: Well do I cross-examine on it or what?

35

MCDONALD: Your Honour, a further submission which I contemplate making is that the information which would be in Securicom financial statements, if it was trading in its own right, if it was a non-trading entity or an entity that simply was acting as a self-managed super fund, would be so negligible that CPC wasn't interested. They weren't interested in a set of accounts of a \$2 or \$4 company.

40

HER HONOUR: That has got nothing to do with Microlatch's accounts. This is about Microlatch's accounts.

45

MCDONALD: And by comparison there is a significant difference and my submission is that the difference between the attention given to the Microlatch accounts to this degree of this evidence stands in quite contrast to the attention that was given in the self-managed super fund accounts or the Securicom accounts, such that they didn't bother. That's indicative of CPC not

50



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worrying about the existence of this transfer agreement which my client says.

HER HONOUR: Which was not documented on your own records.

5 MCDONALD: That's right. That's right, they didn't worry about it and that's the contrast.

HER HONOUR: I am not going to allow 17. The issue of the Microlatch  
10 patents is not in issue in this case. There is evidence Mr McDonald in 15 and 16 that you can rely on in relation to looking at the issues. 18?

ALKADAMANI:: Well the objection to 18 is--

HER HONOUR: The money withdrawn Burke.  
15

ALKADAMANI:: Yes.

HER HONOUR: It's just those words?

20 ALKADAMANI: The money withdrawn from the fund by Burke down to loans by Burke.

HER HONOUR: So it's that whole sentence?

25 ALKADAMANI:: Yes.

HER HONOUR: Yes, Mr McDonald? And the fourth sentence as well 'we amended'?

30 ALKADAMANI:: Your Honour, my issue with the fourth sentence is that I actually want to see what was given to the ATO because this is in issue. If my friend wants to press the money withdrawn and matters of that sort I will be tendering a document from Mr Sattout's office on a voir dire.

35 HER HONOUR: Yes Mr McDonald why don't you tell us whether or not you are still pressing the sentence 'the money withdrawn' down to 'loans by Burke' and the fourth sentence 'we amended' down to 'about this request'.

40 MCDONALD: I won't press the fourth sentence. However, yes, the second sentence I press.

ALKADAMANI:: Your Honour what's on the bank statement is not objected to but what conclusion or what inference one--

45 HER HONOUR: Is it the, sorry, go on?

ALKADAMANI:: Our problem is this, when one looks at bank statements, the purpose of the transaction or what it was for is one where the person  
50 transferring the funds needs to give the evidence, 'this was for X', and this is an email Lina Candy from Sattout's office to Mr Burke in which she explains to

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him that in relation to bank statements, he needs to identify the deposits and withdrawals, as she cannot guess as to what they are or where they came from in relation to related--

5 HER HONOUR: Well in terms of the bank statement itself, Mr McDonald, don't the bank statements speak for themselves?

MCDONALD: Yes.

10 HER HONOUR: Then we don't need the words down to 'or patent' and what about the last part 'was incorrectly reported to the ATO', where is the evidence of that?

MCDONALD: I don't press that your Honour, I will consider it further.

15

HER HONOUR: I won't read that second sentence either. I don't need that. Do you need me to take this--

ALKADAMANI:: No.

20

HER HONOUR: Yes, the whole of 20? Is this just the point about financial statements?

ALKADAMANI:: Yes, it is your Honour, it follows your Honour's earlier ruling.

25

HER HONOUR: Shall I read it as the documents referred to as financial statements?

ALKADAMANI:: Yes.

30

HER HONOUR: 21? Well the emails speak for themselves don't they?

ALKADAMANI:: Yes. Your Honour this goes again to Mr Sattout saying something in an email. I object.

35

HER HONOUR: My previous ruling, is this the one that was at 665?

ALKADAMANI:: I think that's right, your Honour.

40

HER HONOUR: I have already dealt with the 13 July email and I will read the 27 June email on the same basis. The emails are in, aren't they?

ALKADAMANI:: Yes.

45

HER HONOUR: Mr McDonald what does this do other than refer to the emails and have a conversation, which isn't identified what was discussed?

MCDONALD: Your Honour there is no need to press the paragraph on the basis the emails are--

50

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HER HONOUR: The emails are already part of Mr Burke's--

MCDONALD: Yes.

5 HER HONOUR: 23?

ALKADAMANI:: This is the same as paragraph 12, your Honour. Sorry this follows the rulings about, I would have thought, the provisional relevance.

10 HER HONOUR: The provisional relevance, yes.

MCDONALD: Provisional relevance is accepted.

HER HONOUR: I will admit them provisionally subject to relevance.

15

Subject to those objections I read the affidavit of Samuel Sattout sworn 27 November 2019.

Mr Cole?

20

ALKADAMANI:: Yes, I hand up the original and a copy. I can get another copy over lunch. That will give the court two copies, but I just can't locate mine.

25 HER HONOUR: I grant leave to file in court the affidavit of Stephen Alan Cole sworn 2 December 2019. Now the objections?

MCDONALD: Your Honour could I have a moment with my friend, just mere seconds?

30

HER HONOUR: Yes.

MCDONALD: Your Honour paragraphs 12 and 13 are objected to on the basis they are not responding to the affidavit of Mr Sattout. They were an elaboration of earlier evidence.

35

ALKADAMANI:: Your Honour I accept that they don't respond to Mr Sattout. Mr Burke puts in more admissible form paragraph 12. He sets out, paragraph 12 says, I was told some things but not in first person. These are the conversations. I would press for them to be received by the court unless my friend says he is taken by such surprise because they are different to the substance of paragraph 12 beforehand that he has prejudiced.

40

MCDONALD: Your Honour I will have to have a chance to read them.

45

HER HONOUR: I don't know how you could object to them if you haven't read them Mr McDonald.

MCDONALD: The first sentence was plenty, your Honour.

50

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HER HONOUR: Why don't we do this, why don't you look at it over the lunch break and we can deal with that then. Is that all right with you? I assume we can do the cross-examination? I want to start the evidence before lunch but we may not get to Mr Cole.

5

ALKADAMANI:: Sorry, I propose to call Mr Cole first because his spouse is undertaking some surgery tomorrow and so.

10 HER HONOUR: Yes, I don't want Mr Cole waiting around. The alternative is that we put him in at 2 o'clock.

ALKADAMANI:: Interpose him, yes.

15 HER HONOUR: Yes we can interpose him at 2 o'clock and that will have an opportunity to put the submission.

ALKADAMANI:: Sorry, your Honour, I simply discussed calling Mr Cole first so I didn't take my friend by surprise. I didn't inform the court.

20 HER HONOUR: No, I understand that and I want to try and accommodate him. How long do you think it will take you Mr McDonald to read that and make a decision on the objections. Would you like me to adjourn for five minutes or 10 minutes?

25 MCDONALD: I can certainly do it over the lunch break depending on what would otherwise be proceeding now, if that's a more convenient course?

30 HER HONOUR: I thought that Mr ALKADAMANI: would like to probably put Mr Cole on first, if we can. How long do you think he'll be? If we can finish him by 2 o'clock?

MCDONALD: No, he's going to be--

35 HER HONOUR: If he is going to be longer than 1 o'clock then we may as well put him in at 2, and then you can have an opportunity to read that in detail.

MCDONALD: That would be my preference.

40 ALKADAMANI:: May it please the court. I call Mr Dart (sworn).

Your Honour, there has been a pleasant development. My friend has informed me that by reason of objections and things not being read, my friend doesn't need to cross-examine Mr Dart.

45 HER HONOUR: Lucky Mr Dart. You may step down Mr Dart.

50 ALKADAMANI:: Your Honour I propose to call Mr Cole, and to allow my friend if he needs to, to recall Mr Cole after lunch. Mr Cole will be here until I expect 4. He has just stepped out. He needs to be in Brisbane tomorrow.

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HER HONOUR: Yes, why don't we start with Mr Cole and the balance of the cross-examination can finish after 2 o'clock?

5 ALKADAMANI:: And I have assumed that Mr Cole goes in before my friend's witnesses.

HER HONOUR: Yes.

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<STEPHEN ALAN COLE, INTERPOSED, SWORN(11.18AM)

5 <EXAMINATION-IN-CHIEF BY MR ALKADAMANI:

Q. Could you please tell the Court your name?

A. Stephen Alan Cole.

10 Q. Your address?

A. 114 Bamboo Avenue, Benowa, Queensland.

Q. And you are a director?

A. Yes.

15

Q. In front of you there will be three volumes. Could you turn up volume 2 and at page 605 there is a tab 11?

A. 605.

20 Q. Tab 11?

A. Yes.

Q. Is that an affidavit you have sworn in these proceedings?

A. Yes.

25

Q. Might the witness be shown his original affidavit of 2 December, your Honour? And have you also sworn an affidavit of 2 December 2019?

A. Yes.

30 Q. Can I ask you to turn to the affidavit in the volume 2 and turn to page 612?

A. Yes.

Q. Now I just want to ask you some questions. I am going to ask you some questions about paragraph 45?

35 A. Yes.

Q. Because I have been given leave to do so. That's the topic of the leave that I have been given. In your affidavit of the 2 December at paragraph 12, can I ask you to look at that? You depose to a conversation?

40 A. Yes.

Q. Now I am going to ask you to identify, to the extent you can and certainly not everything that you have, occasions on which you have seen a document or you have been told by Mr Burke that the patents were owned by Securicom or Microlatch? So you don't have to say all of them and in fact I am going to limit them because of prejudice to my friend, so is the conversation in paragraph 12 of your 2 December affidavit one of the occasions that you were told things about the patents?

45 A. Yes, it is.

50

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Q. And the ownership of the patents?

A. Not specifically the ownership other than the fact that they were owned by his companies which were identified as Microlatch and Securicom.

5 Q. In the SPA, was that an occasion in respect of which you were told things or CPC was told things?

10 A. Leading up to the SPA many times, many times, I had many conversations with Mr Burke and in the presence of others, and I was particularly interested in who owned what patents and that's why schedule 5 came into being on the SPA.

15 Q. In the SPA there are some things that are said there about the ownership of the patents. Sorry, I don't need to ask that, sorry. Can I ask you to look at paragraph 47 of your affidavit. You will see there a number of documents that you refer to?

A. Yes.

Q. What was your point in referring to those documents?

20 A. In each of those documents the ownership of the patents was clearly identified to me personally and also to CPC that the owners of the patents were Securicom NSW Pty Ltd and Microlatch Pty Ltd and in the early days there were five patents called the remote entry system patent which had been transferred out of Securicom into Microlatch Limited (UK) which is a UK domiciled company. And after late 2016 there was some issues arose about some claims against Microlatch Limited UK. I spoke with Chris Burke and it was agreed that we would transfer those back to Securicom NSW Pty Ltd which I undertook to do for him and he signed all the documents and subsequent transfers took place.

30 ALKADAMANI:: No further questions in relation to the leave.

<CROSS-EXAMINATION BY MR MCDONALD

35 Q. Sir you just give evidence that you were particularly interested in who owned the patents?

A. Correct.

Q. And you are aware that patents were registered in the names of Securicom and/or Microlatch, being the patents the subject of the SPA?

40 A. Correct.

Q. Are you aware of the concept that registration may not indicate beneficial ownership?

45 A. Up until August of this year, no.

Q. You didn't understand that?

A. No.

Q. That such a concept existed?

50 A. No.

SKB:CAT

Q. And what happened in August this year to cause you to become familiar with that concept?

5 A. We in, on the 31 July the Liquidators sold the Securicom patents to CPC Patent Technologies and there were assignment documents executed between CPC Patent Technologies, Charter Pacific Corporation Limited and the Liquidator of Securicom NSW Pty Ltd and the documents were assigned by the Liquidator to CPC Patent Technologies. Those assignments were  
10 lodged at the relevant patent offices and we discovered then that some of them could not be registered because they had already been transferred or assigned across to C J Burke Nominees.

HER HONOUR

15 Q. Can I just ask a question, because I think it's important for me to understand this, those patents that you are talking about, are they patents that were registered overseas or are they patents registered in Australia?

A. Just the international patents.

20 MCDONALD

Q. Sir you executed the assignment documents with the Liquidator as a director of CPC Patent Technologies?

25 A. On the 31, yes; sorry as the Company Secretary I think, I am not sure.

Q. You do recall executing those documents?

A. I do, yes.

Q. On behalf of CPC Patent Technologies in some capacity?

30 A. Correct, yes.

Q. Do you recall that there was a carve out in that document?

QUESTION WITHDRAWN

35

Q. I will take you to the document. I am taking the witness to the part of the court book that was missing?

HER HONOUR: This is volume 4 of the court book?

40

MCDONALD: Volume 4.

HER HONOUR: Part of Mr Burke's exhibit.

45 MCDONALD: Yes, we didn't have that, just a spare copy for the witness.

ALKADAMANI:: Your Honour we can give this now to the court, so this can be the second, and it's a clean copy.

50 HER HONOUR: Thank you.



SKB:CAT

MCDONALD

Q. I will take you to page 636?

5 A. Yes.

Q. Do I understand your evidence that you didn't understand that the concept of beneficial ownership of the patents being different to the registration of the patent until something happened in August?

10 A. No, my understanding that you are talking about is I didn't realise the difference between registration at a patents office and legal title to the patents until August.

Q. And what do you understand the difference is between registration at patents office and legal title?

15 A. Prior to early August my understanding was if a patent was registered in a patent office anywhere in the world and it was registered in XYZ, XYZ was the owner of the patent, the same as it is for real property titles here in Australia.

20 I learned after all the changes that went on and the problems we had that once a deed of assignment is executed between an assignee and an assignor of the patent, that is the moment that legal title changes from XYZ to ABC. It took a while for the penny to drop but--

25 Q. So you are of the view that legal title passes when a deed of assignment is executed?

A. Correct.

Q. And that registration is not the indication of legal title?

30 A. No, that's a publication of the owner of a title at a particular point in time, as it was described to me by a patent attorney.

Q. Do you understand the concept that there can be beneficial ownership as distinct from legal ownership?

35 A. No.

Q. You don't understand that concept?

A. No, if you legally own it, you own it.

40 Q. That is your understanding?

A. That's my understanding.

Q. And it's been your understanding?

A. And it's been my understanding and still is.

45

Q. Do you understand that Securicom NSW Pty Ltd which I will refer to as Securicom?

A. Yep.

50 Q. Acted as the trustee of a self-managed super fund?

SKB:CAT

A. I do.

Q. And it acted as the trustee of Mr Burke's self-managed super fund. That was the particular fund that we are talking about?

5 A. My understanding is it was the Securicom NSW Pty Ltd superannuation fund and also was the trustee of the Burke family unit trust.

Q. And do you understand that it also at some point in time traded in its own right as Securicom NSW Pty Ltd?

10 A. Yes, I learned that third hand from Mr Burke and one of his colleagues and also from I think it might have been Mr Sattout.

Q. And you gained that understanding from your due diligence process?

A. Correct.

15

Q. So your understanding would have been formed in mid 2016?

A. Yeah, mid to late 2016. So from where I sat Securicom had two hats, one, the holder of patents in its own name, two - well actually three hats - second hat, trustee for the superannuation fund. Third hat, trustee for the Burke family trust.

20

Q. And do you understand there was a fourth hat at some stage where it traded in its own right?

A. But that had ceased in 2006 or 8, I don't know the definite date.

25

Q. Many years before?

A. Correct, but it was trading in its own right. Chris Burke's comment to me about that was that he had received advice from somebody, I can't remember who he said, that you should not be trading in the company that's holding those patents, you should keep them quarantined. If there is a problem with somebody about creditors or whatever and there is a dispute they will have a claim on those patents and you don't want that, so you need to close down the operations of that business and keep them quarantined, just in a holding company.

35

Q. And one way of quarantining them was to transfer ownership into the self-managed super fund?

A. Absolutely never ever mentioned to me until the date of the 11 April at the Liquidator's meeting.

40

HER HONOUR

Q. Sorry when you say 11 April, is that 11 April this year?

A. Correct.

45

MCDONALD

Q. When you say that wasn't mentioned to you, the question was, do you understand, that to achieve the objective, you said, which was to quarantine assets, one way to do so would be to transfer those assets into a

50

SKB:CAT

self-managed super fund?

A. May be, I don't know. One question I would just like to ask you? I am probably not here to ask questions.

5 MCDONALD: No, I think your counsel can assist you in re-examination if that's the best way.

HER HONOUR: Yes.

10 MCDONALD

Q. Now sir what was it that you were told at this creditors meeting in April '19?

A. Chris Burke looked across the table and said the super fund, my super fund owns the patents.

15

Q. And I put it to you that Mr Burke had told you that the super fund owned the assets back in 2016?

A. No, he did not.

20 Q. I put it to you that Mr Sattout told you that the super fund owned the patents when you spoke to Mr Sattout back in 2016?

A. No, he did not.

25 Q. I won't need you to look at that page. Let me go back sir. At the time CPC - can I refer to your company as CPC?

A. Yeah.

30 Q. At the time CPC entered into the share purchase agreement, was it still a diversified investment company?

A. Yes.

Q. How diversified was it?

OBJECTION. RELEVANCE

35

MCDONALD: The relevance will become very quick.

Q. How diversified was it?

40 A. Charter Pacific usually had one or two transactions on the go, sometimes it only had one, but since its inception it's been diversified in real estate, bio-tech.

Q. In mid-2016?

A. No, no, it changed since 1988.

45

Q. I asked you about 2016?

A. In 2016 we were looking for other deals to do and we just extracted ourselves out of mining.

50 Q. At that stage you had no deals other than the Securicom Microlatch deal?

SKB:CAT

A. Correct.

Q. You had no other investments, this was the transaction?

A. We did have other investments, but they were minor.

5

Q. I put it to you then sir that the Microlatch Securicom transaction was extremely important for the future of CPC?

A. It was definitely the largest transaction we were involved in at that time, yes.

10

Q. The substance of the transaction I put to you sir was to obtain control of these patents?

A. Absolutely. Sorry for CPC to gain control of those patents, yes, not me personally.

15

Q. No, never suggested. That was important?

A. Absolutely.

Q. That was critical to the transaction?

20

A. Absolutely.

Q. And the fact was that the patents were registered in the name of either Microlatch or Securicom?

A. And Microlatch Limited UK at that time.

25

Q. So at the time all the patents were registered in the names or registered to the companies that were parties to the share purchase agreement?

A. Correct.

30

Q. And you understand now that that means they had legal title to those patents?

A. Yes.

Q. Did you understand back then that they had legal title to those patents?

35

A. Yes.

Q. It was a term of the share purchase agreement that financial statements were required from Microlatch and Securicom?

A. And Microlatch UK and they needed to be audited.

40

Q. So not only did you need financial statements, but they needed to be audited?

A. Correct.

45

Q. And that was a requirement of the Stock Exchange?

A. And under the takeovers code for the Corporations Act.

Q. There was no need for you to have the financial statements of the Securicom self-managed super fund, was there?

50

A. No concern of mine, didn't own anything, weren't dealing with it. Chris

SKB:CAT

came to me in August/September telling me he had a problem with the super fund and the ATO. Don't want to know about it. It's nothing we are dealing with. Fix it yourself.

5 Q. In your due diligence do you ever recall seeing financial statements for the self-managed super fund?

A. Yes.

Q. Do you recall asking for those statements?

10 A. No, I was copied in. Chris Burke sent information to me, as did Lina Candy. I was copied in on emails between Chris Burke and Lina Candy.

Q. Who is Lina Candy?

A. She is Mr Sattout's assistant at the accounting office.

15

Q. Do you recall that Mr Sattout became the accountant for Mr Burke's companies around the time that you started your due diligence process?

A. No, at the time I started my due diligence process all I knew that Mr Sattout was the accountant, I didn't know when he started doing work for Mr Burke.

20

Q. Do you know that there was another accountant involved before Mr Sattout, that he hadn't been the accountant for the company--?

A. I do now, but I didn't at that stage.

25 Q. Do you recall receiving any financial statements for Microlatch, Securicom or this self-managed super fund from an accountant other than Mr Sattout?

OBJECTION

30 ALKADAMANI:: If there is a proposition in a statement my friend wants to say the witness saw, we should just get to it. We should just see this statement and get to what the relevance of it is. I mean this is just all about cross-examination as to what happened during the due diligence and who were the accountants and when did it change.

35

HER HONOUR: I allow the question but we are going to have to hurry up, otherwise we are not going to finish today Mr McDonald.

A. Sorry, what was your question again?

40

MCDONALD: I will withdraw it for the moment.

Q. Do you recall having a conversations with Mr Sam Sattout in November 2016 regarding the share purchase agreement?

45 A. Is that to do with the email of the 7 November?

Q. No, did you talk to him at all about the subject?

A. I did talk to him, yes, I can't remember the details about the conversation at that time.

50

SKB:CAT

Q. Is it fair to say that the contents of any email that you have seen will have an accurate record of any conversation it purports to record?

A. Absolutely my understanding.

5 Q. In November 2016 you were aware that Securicom was acting as the trustee of the self-managed super fund?

A. Yes.

10 Q. You are aware that Mr Burke proposed to replace Securicom and find another trustee?

A. I became aware of that, yes.

Q. You became aware of that in November 2016?

A. Yes, because Mr Burke was disqualified by the ATO.

15

Q. So for whatever reason he was going to change the trustee of the super fund?

A. That's what I understood, yes.

20 Q. Sir can you have a look at, I will go to the same folder, page 663, on the bottom right-hand corner?

A. The same folder as before?

Q. In court book 4?

25 A. This one has got 2 on it.

Q. I think that's it?

A. Okay, what was the number 66--

30 Q. 663?

A. Yep.

Q. Now sir I ask you to read the second paragraph to yourself?

A. Of my email to Sam?

35

Q. Yes your email to Sam of the 7 November 2016, 10.28am. There is a paragraph that starts "I confirm that according to my records as provided by Chris Burke"?

A. Yep.

40

Q. Do you recall what records they were?

A. Sorry, do I recall?

Q. Do you recall what records were provided to you by Chris Burke?

45 A. Yes, that would be all the information I had asked for about the patents, being Microlatch patents, Securicom patents, all my own searches that I would have done on the patent registers globally where they have come up in the same names. There was a myriad of scraps of paper that he gave me because his accounting was quite frankly in a mess. I told him I would help  
50 him get it sorted out because I needed audited accounts, but I can't identify

SKB:CAT

right now any particular document.

Q. Do you have a recollection of any particular document being provided by Mr Burke to you? You said that you did searches, that's your own?

5 A. I did a lot of searches.

Q. That's not being provided by Mr Burke, I am interested in what Mr Burke provided to you, do you recall?

10 A. He gave me a lot of information regarding his companies in Hong Kong, the UK, here. Most of it was bits and pieces of scraps of paper and they all pointed to Securicom and Microlatch and Microlatch Limited UK as the owners of the patents in schedule 5.

Q. Do you recall, if I could take you to page 667-668?

15 A. 667 and 668?

Q. Do you recall seeing those documents before?

OBJECTION

20

ALKADAMANI:: I just want to clarify the answer so it has meaning for the court. Does my friend mean before the affidavit was served or any time before today because--

25 MCDONALD

Q. So the document at 667, 668 is a bit more memorable, it's entitled self-managed superannuation fund annual return 2013, which goes to page 678?

30 A. Yes, I don't particularly recall that document but if I had I wouldn't have given it any credence because it didn't own the patents. I don't remember seeing tax returns around the time of the SPA, no.

Q. Do you recall dealing with Mr Sattout about a year later in 2017?

35 A. I do.

Q. That's when there was a request for audited accounts for--?

A. The requests for audited accounts started on day 1 when we signed the term sheet.

40

Q. And you insisted upon audited accounts for Microlatch?

A. Correct.

Q. You didn't insist on audited accounts for Securicom, did you?

45 A. No, because I was told about a hundred times by both Mr Burke and Mr Sattout that Securicom had not traded and there were no financial statements for Securicom NSW Pty Ltd, the holder of the patents.

Q. You were told that it was a \$2 or in this case a \$4 company?

50 A. No, they didn't tell me what it was. I knew because I searched on the ASIC

SKB:CAT

records.

Q. Sir, do you deny receiving a copy of this document?

5 A. Let me put it this way, I don't remember seeing this document before these proceedings.

Q. And I think your evidence is if you had received it you wouldn't have paid regard to it because the self-managed super fund was not part of the transaction?

10 A. No, that's right. Can you show me anywhere in here where it says it's the owner of the patents?

Q. If you go to page 676 you will see a figure next to letter O described Other Assets of \$196,909?

15 A. I do.

Q. Do you see that figure?

A. I do.

20 Q. I'll take you to another document. Sir I am just cross referencing my books. I apologise. Can you go to page 653, sorry 652 it starts?

A. Yep.

Q. Have you seen this document before these proceedings?

25 A. Yes, I have.

Q. Do you recall when you first saw this document?

30 A. Not particularly, no, I can't remember. I suspect I would have seen it after Securicom NSW Pty Ltd was placed into administration.

Q. Why do you think you would have received what purports to be the financial statements for the super fund after the company went into liquidation, what makes you think that?

35 A. Because we had no interest in the superannuation fund prior to that stage. Any documentation that I got from that may have been because Chris Burke had asked me for some assistance back in 2016 for his ATO problem and I was copied into emails, put them into files but didn't bother looking at them, because they didn't own the patents.

40 Q. So you could have received this document back in 2016, you just don't recall?

45 A. I don't think it was 2016. If you can show me it was 2016, that's good. I noticed on page 666 that the letter attaching the tax return was addressed to Gavin Moss, the Liquidator for Securicom, that was dated the 3 July this year.

Q. That's long after these documents are in this file, so you might not be connecting the right documents. Let's go to page 652, financial statements 30 June 2014?

50 A. Yes.



SKB:CAT

Q. If you can turn forward to page 655?

A. 655, yes.

OBJECTION

5

ALKADAMANI:: This is all speculation. My friend's evidence has not been we provided these documents to Mr Cole.

10 HER HONOUR: I think he has answered the question as to whether or not he recalls seeing them and he says he doesn't until some time on the liquidation.

MCDONALD: After administration.

15 ALKADAMANI:: But we are going on and on and I don't know what my friend's point is and that's why I am objecting as to relevance. Their case is not, their evidence is not we supplied these documents. In fact these documents were provided or made not on the dates that they purport to record. I don't even know if they have ever been lodged, that's something Mr Sattout will have to give evidence of. But if they say, this was provided to you on such and such a date, let's get on with it. But we are just going on now, when did you see it, do you recall seeing anything?

20 HER HONOUR: I understand the nature of the objection and Mr McDonald you can ask one or two more questions but ultimately just asking the witness whether he sees a figure on a page is not going to get you very far, is it?

25 MCDONALD: We will have to see how it--

HER HONOUR: Plays out.

30

MCDONALD

Q. 665 you see there it has 2013 comparisons?

A. Yes.

35

Q. You will see a figure of \$196,909 in the right hand column against assets known as patents and trade marks?

A. I do.

40 Q. And in the tax return that we looked at?

A. On page, what was that number again?

Q. 676?

A. Yes, I have got that.

45

Q. You have got the same figure?

A. Correct, it's on two pages, correct.

50 Q. And the same figure appears, Other Assets in the super funds tax return, it appears as patents and trade marks in the same year of Securicom

SKB:CAT

superannuation fund as patents and trade marks?

A. That is correct.

Q. And you can't deny this document was provided to you?

5 A. I can. I am not sure where I got it from or whether I have seen it other than in these things leading up to these proceedings and got it from the Liquidator and, quite frankly, the way Mr Burke's accounting has been done I wouldn't trust any numbers on a page unless I saw the supporting documentation for it.

10 Q. And if you did see these numbers, yes, you would want supporting documents?

A. Absolutely I would.

Q. You would ask, you would make enquiries?

15 A. Yes.

Q. If you saw that the self-managed super fund had an interest in patents and trade marks, that would be something of interest to you?

A. Absolutely it would.

20

Q. And this transaction would be quite critical, wouldn't it?

A. Absolutely.

Q. You would make further enquiries?

25 A. Absolutely.

Q. In fact you did make enquiries of the accounts of the superannuation fund, didn't you?

30 A. On behalf of Mr Burke I helped him pull information that he could not find himself, in conjunction with Lina Candy, but other than that there was no request for super fund accounts in respect or in relation to the ownership of any patents.

Q. How would you differentiate the two, sorry I don't quite understand?

35 A. Well the patents are owned by Securicom NSW Pty Ltd which is what all of my due diligence pointed to, what Mr Burke told me, and he came to me in August/September or something of 2016 and said I have got a problem with the ATO, the tax office, about \$160,000 I think. And I said Chris, I can't help you, that's a personal thing, you have got to do that. And he said can you help  
40 me pull all this stuff together. I said what do you need, I don't know.

Q. And at that time you knew that Securicom NSW Pty Ltd was the trustee of that super fund?

45 A. And also his family trust. He also told me he had been through a divorce and he was trying to settle everything up with his wife and I said well, you know, I can't help you, I don't know anything about it.

Q. Sir did you ever state to Mr Burke that your assistance to him in respect of his superannuation fund had nothing to do with the due diligence of the SPA?

50 A. In those words, no.

SKB:CAT

Q. And sir I would like you to have a document. I show the witness a document.

5 HER HONOUR: Is it a new document?

MCDONALD: It is. It's an email and my friend has a copy of it.

HER HONOUR: Do you have a copy for the court?

10

MCDONALD: In the rush of everything, I am sorry, your Honour. It was after midnight on Saturday when I realised that the court book did not have it.

HER HONOUR: But there was Sunday and Monday morning to perhaps get a copy.

15

MCDONALD: Not enough, I am sorry, your Honour.

Q. Do you see on what is page 135 at the top?

20

A. Yes.

Q. That you were sent an email to Mr Burke, do you recall this email?

A. I do now I have seen it, yes.

25 HER HONOUR: What's the date of that email?

MCDONALD: It's the 26 September 2016.

Q. Sir in that email you will see that there is a request by you for Mr Burke to provide you with bank statements for the Securicom super fund account from 2012, so point 6?

30

A. Sorry?

Q. The first numbered point at number 6 on--

35

A. No, I have gone - the email from me on the 26 is "Chris can you go back to Ben Tam as follows".

Q. And who is Ben Tam?

A. Ben Tam was Chris Burke's accountant prior to, as I understand it, 2013.

40

Q. And you are suggesting to Mr Burke that he needs to provide this information to his accountant?

A. Yeah, I will read what I say. "I have spoken to my accountants who advise me", this is me saying Chris this is how you have got to go back to Ben Tam to get the information we need, "I have spoken to my accountants who advised me that so they can complete the Microlatch and Securicom financial statements they require the following information from yourself, Securicom NSW Pty Ltd as at 30 June 2012, profit and loss statement, balance sheet, all notes to the accounts, mark up, trial balance, general ledger, copies of bank statements, details of Securicom super fund accounts".

45

50

SKB:CAT

Q. Yes?

5 A. Okay. That follows on from conversations and emails from Lina Candy saying I have got nothing from Ben Tam at all and Chris told me that Ben Tam did his accounts up to the end of 2012, 2012 financial year. I want to get all the accounts, and I said this is how you go about getting it.

Q. Your evidence to the court was, this is the information we need, this is the information that CPC needed?

10 A. For Securicom NSW Pty Ltd as at 30 June 2012.

Q. I am just trying to clarify your evidence sir, I have written down here that you said this is the information that we need?

15 A. Correct, yes, absolutely. Sorry, this is me telling Chris you have got to put this information into an email from you to Ben Tam.

Q. But ultimately that CPC needed?

20 A. No, no, CPC needed all the stuff from Securicom NSW Pty Ltd. Chris is writing this. Chris asked me to help him. I'm helping him write an email to Ben Tam to get all the information he needed, firstly, for Securicom NSW Pty Ltd and then because he had a problem with his super fund and the ATO at that time.

25 Q. So this is your thoughts on what Burke needed to get together from his accountant?

A. No, no, from his prior accountant, because Sattouts didn't have any start up information to commence their first numbers for the 13-14, 15-16 year onwards.

30 Q. And when you said this is information we need?

A. No, no, this is me saying Chris, this is the letter you have got to write, so this is the information that he needs, him and his accountant.

35 Q. Okay I am just checking. I have written down that you said this is information that we need, I am just checking?

HER HONOUR: I think the witness has clarified now what he is saying.

MCDONALD

40

Q. Sir can I just put it to you, when you say this is the information we need, it was the information--?

A. So, where do I say that?

45 Q. I thought I heard you say that in the evidence. I just want to clarify to be fair to you. Did you assume that CPC would receive this information?

A. No, it was to go to Burke's, Mr Sattout's office. I am not Burke's accountant, I am not going his financials, he is and his accountant.

50 Q. And Mr Sattout would then provide it to CPC?

SKB:CAT

A. Mr Sattout would supply it to Burke who would give it to me.

Q. So ultimately CPC would end up receiving it?

A. Absolutely, that's what I was after and also the Microlatch stuff below it.

5

Q. Okay. And what you are after included superannuation fund account, 2012 up to date, and details of any Securicom or super fund bank accounts?

A. No, can you show me where I say that?

10 Q. Points 6 and 7 in that email?

A. Copies of any bank statements for Securicom super fund account up to 1 July 2012, from 1 July 2012 up to now. The next sentence, details of any Securicom or super fund bank accounts.

15 Q. Yes?

A. Well that fits in with Securicom Pty Ltd. Chris has also got a problem with the ATO because he has been disqualified and he has got \$163 grand he has got to pay back to the superannuation fund which I said I am happy to do what I can to help you, but it's not a problem of mine. So Tam has got all the

20 information, if we get the information from Tam we kill two birds with one stone.

Q. I just want to clarify. You said it would go, there would be a path?

A. Can I just stop you there.

25 Q. No?

A. I will clarify to you what I said. Chris came to me and said "I've got to get all this stuff".

30 Q. It might be quicker sir. You agreed before that the information would go to Sattout if this information could be gathered at your suggestion?

A. Yes.

Q. It would go to Sattout?

A. Yes.

35

Q. For Sattout to send to Burke, who would then send to you?

A. Only the Securicom NSW Pty Ltd company stuff and Microlatch Pty Ltd company stuff, which would come to me after they have done their part to it. I don't want to know all their stuff from their personal information about the super fund. It's no business of mine.

40

Q. Did you make it clear at this stage that despite points 6 and 7 you didn't need to see that information?

A. I was trying to help Chris pull, no, no, bear with me, I was trying to help Chris pull his accounts together so I could complete a transaction that we were putting in, that was subject to a share purchase agreement which was executed the day after this was sent on the 27 September. So it had become critical that I got audited financial statements for Securicom, Microlatch Pty Ltd

45

and Microlatch Limited UK. So I am helping Chris secure or get information from his prior accountant so he can give it to Sattout, so they can go and

50

SKB:CAT

complete all the work up to 2015, 14 15 and 16, the three years prior to when the deal was done.

MCDONALD: Your Honour is now a convenient time?

5

HER HONOUR

Q. Yes, it is a convenient time. Mr Cole, as you are in cross-examination you won't be able to discuss your evidence with anybody?

10

A. I understand.

Q. So if people aren't talking to you you obviously know that's the reason why?

A. Yes.

15

HER HONOUR: We will adjourn to 2 o'clock and before Mr Cole gets back into the witness box we will deal with any objections you might have in relation to the second affidavit. Thank you.

20

LUNCHEON ADJOURNMENT

CNK:CAT

KADAMANI: Your Honour, just a couple of housekeeping matters. First of all my instructing solicitor tried to file notices of appearances on Friday in respect of CPC Patent Technologies Pty Limited, and because of the timing for when the hearing was on, matters of that sort--

5

HER HONOUR: We can file it in court.

KADAMANI: So I have three copies of that. I also have two copies of Mr Cole's affidavit of 2 December because your Honour gave Mr Cole the original.

10

HER HONOUR: I've got one.

KADAMANI: Here's two copies and if that's too much so be it. (Handed up).

15

HER HONOUR: One can be with the Court file and one can be a spare and I'll grant leave to file in court the notice of appearance on behalf of CPC Patent Technologies Pty Limited.

20

KADAMANI: Please the Court.

HER HONOUR: Now Mr Cole's affidavit, I think you were considering paragraphs 12 and 13.

25

McDONALD: No objection.

AFFIDAVIT OF STEPHEN ALLEN COLE SWORN 02/12/19 READ

HER HONOUR: We'll resume the cross-examination.

30

WITNESS: Your Honour, am I right to talk? I just wanted to put in context what I was trying to say before I went for lunch, that's all. I haven't spoken to anybody.

35

HER HONOUR: If the witness would like to put something in context Mr McDonald?

WITNESS: It will clearly explain what I was trying to say.

40

HER HONOUR: If it's going to assist the Court, you can obviously cross-examine and ask questions about it.

Yes, Mr Cole?

45

WITNESS: In this book, after we retired for lunch I had a look--

HER HONOUR: Can I just ask to you pause there. Did you manage get a copy of that email that you had put to the witness? That's all right, so long as you can give me a copy later. I assume someone is going to tender it.

50

CNK:CAT

McDONALD: We have three bundles of those documents, one of which is with the witness and therefore that would end up being tendered.

HER HONOUR: Yes Mr Cole?

5

WITNESS: I'd just to refer to page 134 in the binder that I was given.

HER HONOUR: In the bundle.

10 WITNESS: Yes. That's an email from myself to Chris Burke dated 6 September 2016. I'll read it. It says:

15 "Chris, can you follow up with Lina about the completion of the financial statements up to 30 June 2016 for Microlatch and Securicom. As mentioned yesterday timing is now becoming critical for completion of these documents. Kind regards, Steve Cole."

20 Then you turn to page 135 and 136 which is a string of several emails. If you go to page 136, bottom half of that page 136 is an email from Ben Tam who's the accountant, accounting company before Mr Sattout, and it's an email from Benjamin Tam to Microlatch, Mr Burke, and it reads:

25 "Hi, taking away the guesswork please ask your current accountant and advise us exactly what records/information she/he required. If the information or records are still available we will pass on to your current accountant. Of course if necessary we will revise the invoice. Regards, Benjamin Tam."

30 This is followed by an email on the same day, 22 September. That one, the one from Ben Tam was 10.55, the one from Chris to me that followed is at 11.06 and it goes:

35 "Hi Steve, please see response from Tam. Will discuss with you in Sydney. Regards, Chris Burke."

40 Then I respond to Chris on 26 September with the email that I was questioned about by Mr McDonald and I had listed those things that were required, and I sent that back to Chris and that's the email that he had to send back to Tam in response to Tam's email of 22 September at 10.55. And then immediately after I sent that, I sent another email that says:

"Chris, can you ask for an urgent reply from Ben Tam".

45 So I was after the accounts for Securicom (NSW) Pty Ltd and Microlatch Pty Ltd. Also Burke had a problem with his, with the ATO and his super fund, so I took the opportunity at the same time. If they were going to hunt up records they may as well get the records for the super fund and help him out. That's the sum of it

50 HER HONOUR: Thank you.



CNK:CAT

McDONALD

5 Q. Thank you. Do you accept that at that time of these emails Mr Burke was  
reliant upon you to assist him to gather this information?

KADAMANI: I object. I mean what kind of case are we having now, a fiduciary  
duty case reliant on - it's got nothing to do with who owns the patents.

10 HER HONOUR: I think there's an issue in relation to knowledge and reliance  
isn't there in relation to your estoppel case.

KADAMANI: May it please the Court.

15 HER HONOUR: I'll allow the question.

WITNESS: Sorry, can you repeat the question please?

McDONALD

20

Q. Do you accept that at that time Mr Burke was reliant upon you to assist him  
in gathering this accounting information?

A. He asked for my help and I was happy to offer my help. I don't know  
whether he was reliant or not.

25

Q. You understood his records were, I think you used the description  
"disorganised"?

A. No, "amiss" I think I said.

30

Q. In those circumstances did you have a view as to Mr Burke's ability to keep  
records?

A. I did, personal view, yeah.

35

Q. He was not good at it?

A. No, he was hopeless.

Q. In those circumstances that was the view you formed?

A. That is.

40

Q. In those circumstances sir do you accept that he was relying on you to  
assist him?

A. No, he had accountants. We're talking about records by other accounting  
firms, not anything that I had anything to do with but I was happy to assist.

45

Q. Do you accept that Mr Burke had no appreciation of what would be needed  
for you to conduct your due diligence?

A. No, I told him quite clearly a dozen times, if not more. He understood. He  
was lazy.

50

Q. What did you tell him?

CNK:CAT

A. I told him I needed financial statements that needed to be audited so I could comply with the listing rules and the Corps Act, and I needed that for a shareholders' meeting and I also needed it for a prospectus document.

5 Q. You knew that without you telling him he had no idea?

A. I told him a hundred times. It's set out in the SPA. He got legal advice on the SPA so they're in black and white. I wasn't there to do his work for him. I was happy to help but I wasn't going to do his work for him. I'm not Christopher Burke, I don't know what goes on in his mind. I don't know anything about his transactions or his accounts. There is no way I was ever going to compile them.

Q. You did help him?

A. I did as best I could.

15

Q. Now sir, around this time, that is September 16, do you recall receiving any information from the previous accountant Mr Tam?

A. Yes, I do.

20 Q. That information, is that at page - I'd ask you to turn to page 1138 of the Court Book which is volume 3?

A. Volume 3?

Q. Volume 3.

25

HER HONOUR: What page?

McDONALD: 1138.

30 Q. Do you recall receiving this information from Mr Tam at around that time?

A. Yes, I was copied in on an email from, between Lina Candy and Chris Burke which had all this documentation attached to it.

Q. Did you receive that information at the time?

35 A. Not particularly, no.

Q. Did you pay any attention to whether or not this information disclosed ownership of patents?

40 A. Never even arose. I had no idea. Burke had never ever mentioned to me that the super fund owned the patents. All my searches confirmed that the patents were owned by Microlatch and Securicom and Microlatch UK.

Q. Paragraph 55 of your affidavit which was at page 615 of the Court Book?

A. Which book are we after now?

45

Q. Page 615 of the Court Book which is Court Book 2, paragraph 55?

A. Court Book 2. What page number again sorry?

Q. 615?

50 A. 615, yep.

CNK:CAT

Q. Now sir, whether or not that paragraph is in evidence, you formed - please read that to yourself?

A. Which paragraph am I looking at?

5

Q. 65 - 55?

A. 55.

Q. Page 615?

10 A. Page 615 of Court Book 2, volume 2 of 3?

15 KADAMANI: Might I clarify something your Honour? On the second half of the Burke exhibit, which is Court Book I think Volume 4, there's a post-it note, a misleading post-it note that says "2" because it's the second half of the exhibit so the witness may be picking that up and not realise it.

HER HONOUR: So it's Volume 2 of 3. It should have on the outside Volume 2 of 3.

20 WITNESS: I have that.

McDONALD: Could we take that post-it off?

KADAMANI: We're writing one with "4" on it your Honour.

25

McDONALD

Q. Mr Cole, apologies for that.

A. That's okay. Page 615 was it?

30

Q. Yes. Paragraph 55, please read it to yourself for a moment?

A. (Witness complied).

35 Q. Sir, it is your view now that these financial statements do not indicate that the superannuation fund held any patents?

A. Correct.

Q. You had no view one way or the other back then?

40 A. I didn't look at it back then. It was only when all these proceedings commenced that I looked at it.

Q. Thank you. Sir, your affidavit of 2 December 2012, can I take you to paragraph 11?

A. Yeah.

45

Q. I just want to double-check. You refer to an email about the third sentence from Mr Sattout to yourself dated 13 July. Now that email appears in Court Book 3 at the second last page?

A. Of Court Book 3?

50

CNK:CAT

Q. Right at the end?

HER HONOUR: What page?

5 McDONALD: Second last page, 243.

WITNESS: Second last page which is 449?

McDONALD

10

Q. No. Court Book 4 - sorry Court Book 3?

A. 3 of 3?

Q. Down the bottom right-hand corner?

15 A. It says 449, then 450.

McDONALD: Can my friend and I approach?

HER HONOUR: Yes.

20

(Counsel approached).

KADAMANI: Maybe the front page is wrong.

25 HER HONOUR: We've just got the wrong page.

KADAMANI: The front page is wrong.

WITNESS: I have it.

30

McDONALD

Q. At paragraph 11 of your affidavit of today?

A. Yep.

35

Q. You say that you have not seen this email I take it. I just want you to confirm that it is this email that we're talking about, the email at 1243 at the top, Sattout to you of 13 July 2017, 9.34am, that's the one that you say you haven't seen till you're compiling documents for your affidavit of 26 November--

40 A. That's correct.

Q. You hadn't seen it at all?

A. No. I don't know why.

45 Q. Sir, did you have any involvement in the proceedings in which Stevenson J made the orders that you're seeking to enforce?

A. Yes, I did.

Q. Did you swear an affidavit in those proceedings?

50 A. I did.

CNK:CAT

Q. Sir, you see the number at the top of the page?

A. 44.69?

5 Q. Sir, that indicates that this document has from the Court Books of those proceedings?

A. Yes. I guess so if you say so.

10 Q. If it was in the Court Books of those proceedings sir would you have seen this document?

A. Not necessarily. I don't know how many Court Books, probably three or four. Not necessarily.

15 Q. And you accept that if this document was within the Court Books for the proceedings that were in August 2018?

A. July 2018.

Q. July?

A. Yep.

20

Q. 18. The document must have existed at least by that time?

A. I don't deny it existed. It was on my database.

Q. When you say it was on your database--

25 A. Where our database - where we store our emails, that's how I discovered it.

Q. So you accept that it was received by CPC but you just don't recall reading it at the time?

30 A. Absolutely. If I'd have seen that alarm bells would have gone off. All sorts of things would have happened.

HER HONOUR

Q. Sorry, can I just clarify that you do accept that it was on your database?

35 A. Absolutely it was. No doubt.

40 KADAMANI: I don't know which Court Book it also came from. There's no dispute as to the concession that was made but I don't necessarily - I don't think that it was from the Court Book in front of Stevenson J. There were other proceedings as well.

HER HONOUR: There were some proceedings before Rees J, wasn't there?

45 KADAMANI: There are also Queensland statutory proceedings.

HER HONOUR: Yes.

McDONALD: It's now not of any issue I think.

50 HER HONOUR: Yes.

CNK:CAT

McDONALD

5 Q. Sir, can I take unto the email that appears halfway down page 1243?  
A. Yep.

Q. Sorry, I apologise. I go back to the email. That email is in June 17. Back to the email on page 663 of Court Book 4?

10 A. That's this one, 663?

Q. Correct. Bottom right-hand handwritten?

A. Yep. Got it.

15 Q. Now sir, what do you understand the position of a company to be when it has not operated in its own right?

A. That it hasn't traded, hasn't got creditors, debtors, suppliers, customers.

Q. No assets, no liabilities?

20 A. No, no. I didn't say that.

Q. I'm asking?

A. No, it could have assets. It could just be a holding company sitting there not trading and holding things.

25 Q. For a company to own assets do you understand that people have to buy them?

30 A. I understand that Securicom (NSW) Pty Limited operated up until sometime around 2008. It may have gained assets, which I'm assuming are the patents that it owned, and it ceased trading in 2008. As I said earlier Mr Burke told me that he had received advice from somebody that he should stop trading so that if there's any problems with customers, suppliers, whatever it may be, they are not going to impinge upon or have a claim against the assets that were held by the company.

35 Q. Sir, do you accept that a company can be in a non-trading position but it would have assets?

A. Absolutely.

Q. And liabilities?

40 A. Absolutely.

Q. So this company could have had patents and millions of dollars' worth of liabilities?

45 A. Yes, but if--

Q. You understood that's what--

A. Yeah, yeah. It could have, yeah.

50 Q. And if this company owed millions of dollars you would want to know about it?

CNK:CAT

A. Absolutely I would have.

Q. You'd want to see a balance sheet for it?

A. Yep.

5

Q. You didn't see a balance sheet for this company?

A. No, that's because there was nothing in there except for the patents. That's what I was told.

10 Q. You didn't see a balance sheet for this company?

A. No, I did not.

Q. So if they had said to you there's only patents there that they were misleading you about the existence of liabilities?

15 A. Then they would have been caught under the warranties. I asked Mr Burke and Mr Sattout if they could provide a certificate to say that all the company had was its assets which were the patents.

Q. Is that what the certificate was to be, was--

20 A. I was going to use the certificate to provide evidence to the ASX for the listing rules, to ASIC for the requirements under the Corps Act because I needed three years of audited financial statements.

25 Q. So you felt that certificate was going to satisfy the obligation to supply audited financial statements?

A. Yes.

Q. Rather than any financial statements?

A. Yes.

30

Q. And the contents of that certificate that you were asking for, was to say that the company - sorry, can you tell the Court again what did you think the contents of that certificate was to say?

35 A. That it was a non-operating, inverted commas, trading company and therefore did not require to have financial statements provided.

Q. Sorry, there's a difference between whether a company is required to have financial statements and what might be in those financial statements?

A. True.

40

Q. So is the only reason why the certificate was going to be issued was because financial statements weren't needed regardless of what was in them?

A. No, the financial statements - if the company's - sorry, repeat the question?

45 Q. I'm just trying to differentiate who - you said the certificate was to say that the company was non-trading and therefore didn't need to have financial statements?

A. Correct. At that time that's what my mind was telling me, yes.

50 Q. Do you accept that there are a number of reasons why a company might

CNK:CAT

not need financial statements?

A. There's lots of reasons why they wouldn't need financial statements I'm assuming. I can't answer that question here. I can't think of a reason.

5 Q. So I'm just trying to clarify the certificate and the purpose of the certificate?

A. Basically to say that it was a dormant company, hadn't traded, so I wouldn't have profits and loss statements et cetera to provide.

Q. That's what you assumed?

10 A. That's right. After representations by Mr Burke that the only thing in the company was the assets which we were going to purchase pursuant to the SPA.

15 Q. I'm just trying to understand the position. Is it not that you're relying upon representation of someone who you said is hopeless to satisfy you of the financial position of this company?

A. Absolutely. And he's hopeless in keeping his records, but all the searches, every document that I had, demonstrated that the patents were owned by Securicom (NSW) Pty Ltd.

20

Q. You didn't obtain financial statements for the superannuation fund?

A. No, because they had no patents. That's what I was told. The patents were owned by Securicom (NSW) Pty Ltd in its own right.

25 Q. Now sir I put it to you around November 2016 you were communicating with Mr Sattout?

A. Yes.

30 Q. Your understanding was that Securicom (NSW) Pty Limited was only acting as a trustee of the super fund?

A. No. Securicom had - turned out I'd - sorry. When I wrote that email I was aware that Securicom (NSW) Pty Ltd was the holder of patents in its own name. It was also a trustee of the super fund. I since found out that it was also the trustee of a family trust, the Burke Family Trust, so it had three hats it was wearing.

35

Q. So you could see on the second paragraph how you set in brackets "acting as trustee of the super fund only"?

40 A. Yes. At that point in time I was only aware that it was a trustee of the super fund. I subsequently found out it was trustee of the family trust as well.

Q. And in acting as the trustee of the super fund or the trustee of that other trust, Securicom-

45 A. Are you trying tell me that I was saying that the only thing that Securicom did was act as the trustee?

Q. That was your understanding at the time?

50 A. No. Two hats; one, it was the holder of the patents in its own right which I say here, "I confirm that according to my records as provided by Chris Burke that Securicom (NSW) Pty Ltd has not operated in its own right". Forget the



CNK:CAT

brackets at this stage and keep reading the sentence, "and is the holder of certain patents only and that the consideration for those patents was the shares issued to Chris Burke". That was my understanding at the time. Put the brackets in, "other than also being the trustee of the super fund". So take  
5 the brackets out, read the sentence, and the other hat it wore was trustee of the super fund.

Q. Okay, that's what you intended at that stage?

5 A. Well, my English taught me that if I wanted to put something in put it in parenthesis, that was an addition. When you take the parenthesis out the sentence should still make sense, and it does. "I confirm, according to my records as provided by Chris Burke, that Securicom NSW Pty Ltd has not operated in its own right and is the holder of certain patents only, that the consideration for those patents was the shares issued to Chris Burke". That was my understanding at the time. Parenthesis, "It also acted as trustee of the super fund". Two separate things.

10

Q. All right. Sir, I take you forward in time to the next email, page 665.

A. Sorry, 665? Yep.

15 Q. At this stage do you recall whether you'd received audited financial statements for Microlatch?

A. No, we hadn't.

Q. Do you recall whether they were being prepared, the audited financial statements of Microlatch?

20

A. They certainly would have been being prepared, they were in the process of being prepared. I think if my memory serves me correctly I assisted by finding or locating an auditor that would do the audit for the Microlatch accounts, and I think that was in November, towards the end of November of 2017.

25

Q. Your understanding is that Mr Sattout's' email that appears on that page was not seen by you at the time?

A. No, I didn't see that until I was preparing my affidavit in, I think it was the 26th of November this year.

30

Q. Can you move forward to 698?

A. 698. Yep.

35 Q. This is in July 2017, not long after the email that we have just considered between you and Mr Sattout?

A. Yep.

Q. You are chasing up Mr Burke?

40

A. Which one am I looking at here?

Q. I'm sorry. Let's go in the chronological order, start at the bottom of the page. So there's an urgency in obtaining these financial statements?

A. Yes.

45 Q. Mr Burke's chasing up Mr Sattout?

A. I was chasing Chris to chase Mr Sattout, yes.

Q. Let us assume that Mr Burke was chasing Mr Sattout. Mr Sattout, in fact, was emailing you and had conversations with you around this time?

50

A. I think the majority of my - short answer, yes.

Q. Page 700.

A. Yep.

5 Q. Now, I think, sir, this email confirms the evidence that you have given before, earlier today, not long ago, that the auditor has advised that he'll accept a letter from Sattouts confirming something. Can you read that paragraph quickly to yourself? Not quickly, at your convenience?

A. (Witness complied).

10

Q. Sir, you see the sentence about "the auditor has advised"?

A. Yep.

15 Q. So I understand that's the person who is to audit the Securicom accounts has advised you, is that--

A. Yes.

Q. And he has advised you that he will accept a document from Sattouts?

A. Yes.

20

Q. The document I think is the confirmation that you were talking about earlier?

A. Yes.

25 Q. And the confirmation that the auditor has indicated to be acceptable is, as is quoted by you there--

A. Yep.

Q. --"Securicom has not operated in its own right"?

30

A. Correct.

Q. If it has not operated in its own right, sir, on what basis has it operated? I put it to you it's operated as the trustee of the super fund?

35

A. "Operated" is probably not the correct word. "Traded" is probably the correct word in that - in that email. It still doesn't mean to say it doesn't hold patents for itself. I mean--

Q. Well, let's look at the next part of the sentence. "Therefore, the Securicom accounts", we are talking, do you accept at that stage are the financial statements?

40

A. Yes.

Q. "Should show just". So you accept that what you are indicating at this point in time is that the only contents of those financial statements are whatever follows? Is that your--

45

A. Yeah, that's what I'm saying there.

Q. "And all that it will indicate is issued capital to you". In this case we accept it's a \$4 company rather than a \$2 company? But issued capital, that's all it would show?

50

KCS:CAT

A. That's correct. Now, if we go back to the previous email that we were talking about.

Q. Let me--

5 A. No, no.

Q. Let me go through what your understanding was--

A. Okay.

10 Q. --and what this letter communicated.

A. Okay.

Q. Did you understand that the financial statements would only indicate all that would be on those financial statements is \$4 of issued capital?

15 A. Yes, and the \$4, the company issued those \$4, or four shares of \$1 each, to Chris Burke for the patents.

Q. That was your understanding?

20 A. That's my, and I say that in one of the previous emails that we've just been through, 'cause that's what Chris Burke told me.

Q. And then you query the last sentence in that main paragraph, "Sam, please confirm". So if you're requiring confirmation from Sam Sattout there's still some uncertainty, isn't there, do you accept that?

25 A. No, I'm trying to confirm what my understanding is to make sure that what we've gone forward on is correct. The only other person that can change that is Sam Sattout. This is after the previous letter of the 13th which I didn't get to see. So why would I be asking that question if I'd had seen the 13th's letter?

30 Q. You may be seeking confirmation you just want to get it right? It's important?

A. No, that's exactly what I was trying to do.

Q. So, therefore, at that point you weren't a hundred per cent certain--

35 A. No, no, I was a hundred per cent certain, I wrote down what it is and I wanted Sam to say "yes" or "no".

Q. You don't accept that indicates some degree of uncertainty?

40 A. No, that was my understanding as portrayed or represented to me by Chris Burke. He said that he got his shares in Securicom because he put his patents in there. And that's what that sentence says to me, and I'm saying is this right or is this wrong?

Q. At that time there was a possibility that they were part of the super fund?

45 A. No, not at all, never heard of it, not at all.

Q. Never heard of it?

A. No. Never heard of the patents being in the super fund.

50 Q. Why would you raise the question, sir, if you'd never heard of it?

KCS:CAT

A. Well, we've - at the 27th of July 2017 we were exactly 24 days after my shareholders approved the SPA, so we had to get that going. We'd already spoken to--

5 Q. Sir, my question--

ALKADAMANI: No, no, I object.

WITNESS: You asked me why, I'm telling you why.

10

McDONALD

Q. Why did you raise the possibility that they were part of the super fund was the question?

15 A. I didn't say, though, are they part of the super fund. I say, "Sam, please confirm whether it is Securicom in its own right that holds these assets or are they a part of any other". Oh, sorry, I did, "as super fund".

Q. You did--

20 A. There was no doubt in my mind that that was the case. I had to put a prospectus document out as part of the capital raising and the re-listing of the company, and there's no way I was going to get my directors to sign a document that was not right.

25 Q. Sir, you accept that you did ask the question--

A. Yes.

Q. --whether the patents were part of the super fund, you accept that?

30 A. Yeah, I wanted absolute confirmation. And every - every sentence you put in a prospectus you must be able to support with a document.

Q. And, sir, you said that you were certain?

A. Absolutely. I was certain right up until I think it was April the 11th.

35 HER HONOUR: Is there a response to this email?

WITNESS: No.

HER HONOUR: Well, there's an email on 701, is there, is that it?

40

McDONALD: There is a response but not a direct response, your Honour. The subject matter wasn't discussed.

WITNESS: Maybe it was the same reason that I didn't respond to the 13th because I didn't see it.

45

HER HONOUR: There is a response but it's non-responsive.

50

KCS:CAT

McDONALD

5 Q. I put it to you, sir, that the reason why you raised the possibility that the assets were in the super fund is because you had some inkling that they were there in the super fund?

A. No, absolutely not.

10 Q. No inkling?

A. I'm me, it's my brain, I know.

10 Q. I'm asking?

A. I'm telling you no. You're not listening.

15 Q. I'm hearing you.

A. You're hearing but you're not listening.

Q. You're putting to her Honour you had no inkling, no thought that these assets were in the super fund but you asked the question?

20 A. That's exactly right, so that I could know that I was one hundred per cent correct with what I was going to put in a prospectus document. If somebody comes along afterwards and asks me why did you put that statement in there when it's incorrect I need to show. Every other document I had proved it was in Securicom NSW Pty Ltd.

25 Q. Sir, do you recall that Mr Burke issued a notice to produce to CPC in these proceedings?

30 ALKADAMANI: I object, your Honour. That notice to produce hasn't been called upon and when it is I'll seek to set it aside and we've indicated that to our friends.

HER HONOUR: How is it relevant?

35 ALKADAMANI: Sorry. There have been multiple notices to produce. Three of them we'll seek to set aside. So if my friend needs to - maybe my objection was a little bit early but let's see which one it is.

40 McDONALD: It's relevant in that the solicitors responded to the notice to produce, but I have to concede they responded on the basis that they reserved their rights to set it aside.

I'll put the question directly. I'll just cover it this way, your Honour.

45 Q. Sir, are you in book 3 of 3?

A. I'm in 4. Hang on.

Q. If you could go to book 3 of 3.

A. What page?

50 Q. 1179.

KCS:CAT

A. Yep.

Q. Do you recall receiving financial statements from Mr Sattout for Microlatch for the 2015 year?

5 A. Yes, I remember seeing many sets of accounts for Microlatch Proprietary Limited from Mr Sattout's office.

Q. And those accounts ultimately were audited?

10 A. Yes, for - yes, there were audited accounts, I can't remember what years.

Q. There were audited accounts for Microlatch. There was not ultimately audited accounts for Securicom?

A. No.

15 Q. It was only Microlatch that had audited accounts?

A. They were the only ones that had accounts to be audited.

Q. Sir, you recall seeing these financial statements from Mr Sattout's office. Do you recall when you received these financial statements?

20 A. Probably around November of 2016 maybe or--

Q. That's the time of the email on the page before it, 1178?

A. Is it? I'll have a look.

25 Q. November 2016.

A. Yep.

Q. And that's the time you were pursuing financial statements for the 30th of June '15 for Microlatch?

30 A. Yep.

Q. And then it was the following year that you were looking for the December sixth monthly figures, that was in mid '17 that you started to request those December '16 figures?

35 A. No, I was - yeah, that's after - 'cause the figures are not allowed to be any more than eight months old.

Q. Sir, if you could go to page 1220.

40 A. 1220. Yep.

Q. And these documents are described as financial statements for Securicom super fund?

A. Yep.

45 Q. And, sir, I put it to you that you received these documents either from Mr Sattout or Mr Burke at or around the same time you received those for Microlatch?

A. Most likely.

50 ALKADAMANI: Your Honour, I object to the question. I was a bit late, but my

KCS:CAT

friend doesn't have any of his witnesses saying I sent it to them, to Mr Cole.

5 McDONALD: The issue is not how they necessarily got to Mr Cole, it's whether he got them at that particular time, and the extent of his admission is likely to have received them at that time.

10 HER HONOUR: I recall there was a question about some other - were there some other statements than the 2013 ones that he said that he received, is that right? Am I missing something?

McDONALD: No, you're not missing something.

ALKADAMANI: No, they were at 1149, your Honour.

15 HER HONOUR: Yes.

ALKADAMANI: Well, some of the journal entries are at 1149.

20 HER HONOUR: Yes, 1138 is the one that I was looking at.

ALKADAMANI: That's where it starts.

HER HONOUR: Yes. And that's the ones that he referred to in his affidavit.

25 ALKADAMANI: Yes.

HER HONOUR: Yes.

30 McDONALD: And they were the ones from the other accountant, these are from Sattout.

HER HONOUR: Yes, and you are asking him whether he recalls seeing these ones as well.

35 McDONALD: Receiving these as well, yes.

HER HONOUR: Yes, well, I think you need to ask the question.

40 ALKADAMANI: So that I don't get up again, your Honour, I'd like the date to be put to the witness as well. These are undated, as in we don't know when they were signed. It was my objection earlier, and we don't know when they were submitted, so let the witness be asked when did you receive them, and I'll ask Mr Sattout when were they prepared.

45 HER HONOUR: Yes.

McDONALD

50 Q. To give you context, sir, I think you've accepted that the Microlatch financial statements at 1179 were received by you around



KCS:CAT

November/December 2016?

A. Yeah. Yep, I concede that, I don't disagree with it.

5 Q. And, sir, I put it to you that the financial statements of Securicom NSW Superannuation fund appearing at 1220 through to 1229 were received by you at or around the same time?

A. No, I disagree.

10 Q. The reason why you disagree is that you have a recollection of exactly when you did receive them?

A. I think I got them from the liquidator, the Superannuation fund, yeah.

Q. You're not sure?

15 A. No, I'm not sure, but that's where I think I got them from. And they were compiled by Mr Sattout and sent to the liquidator sometime in April/May this year.

20 McDONALD: Yes. Your Honour, we accept that if anything has been provided through the liquidator we are talking from April 2019 onwards, a very different time period, we accept that.

HER HONOUR: Yes.

<RE-EXAMINATION BY MR ALKADAMANI

25

Q. Can I ask you to turn to page 700 of volume 4?

A. Yep. Yep.

30 Q. Did you ever receive the certificate that you refer to there?

A. No.

Q. Do you remember you were asked some questions about what you understood in relation to patent registration and ownership of patents--

A. Yes.

35

Q. --at the beginning?

A. Yep.

40 Q. And you talked about a particular understanding that you had until about I think August of this year--

A. Correct.

Q. --is that correct?

A. Yep.

45

Q. And do you believe that registration - your evidence I'm just going to recall it and if I've done it incorrectly let me know - you believe the registration of the patent was the legal ownership, correct?

A. Correct.

50

KCS:CAT

Q. And that the legal owner had all the rights to it?

A. Correct.

5 Q. Correct. Now, going back in time, if you turn to page 663 of volume 4?  
A. 663?

Q. Yes, of volume 4.

A. Yep.

10 Q. And where you say in that second paragraph of your email which is about  
halfway down the page?

A. Yep, "I confirm".

Q. Yes, and it says "and is the holder of certain patents only"?

15 A. Yep.

Q. When you were writing that, that was with your understanding as it was  
prior to August 2019, correct?

20 A. Yes, correct.

Q. What did you mean by being the holder?

A. That Securicom only held patents in its own name, that's - but no trading,  
no creditors, debtors or customers or anything.

25 Q. And held them as the legal owner?

A. Yes.

30 Q. And you didn't at that point understand any difference between - and your  
evidence earlier about the legal owner was that that person had all the rights,  
correct?

A. The registered owner on the patents office was the legal owner.

Q. And the legal owner had?

35 A. All rights and title, entitlements to the patents.

Q. Okay. Can I ask you to turn to page 1243 in court book volume 3?

A. 1243?

Q. Yes.

40 A. Yep.

Q. And the second last paragraph on that page there's some words that are  
underlined. That email from you is July 2017. So your understanding as we've  
just discussed would apply to that email as well, would that be correct?

45 A. Yes. Yep.

<THE WITNESS WITHDREW

50 ALKADAMANI: Your Honour, I just have a documentary tender. It's notices to  
produce and some solicitors' correspondence. Ultimately the submission

KCS:CAT

will be that this shows that there are no documents in relation to certain categories. My friend's already conceded that there's no documents in respect to the particular transfer but there's other things in there that. So there are two notices to produce, some solicitors' correspondence and two bundles of the tender (handed), and this is one for my friend.

HER HONOUR: Yes. Are they the same bundles? Are they just a copy? Are they copies of the same or are they two separate bundles?

10 ALKADAMANI: They are the same bundle. One is a working copy and one is a--

HER HONOUR: Thank you. I'll mark as exhibit A of the hearing the notice to produce addressed to CJ Burke Nominees Pty Ltd dated 22 November 2019. And is it solicitors' correspondence in response?

ALKADAMANI: There's also a notice to produce to CJ Burke, it's in the same terms, and then the solicitors' correspondence.

20 HER HONOUR: Yes, and then the notice to produce. So it's in the bundle, notice to produce to CJ Burke and solicitors' correspondence. Yes.

EXHIBIT #A NOTICE TO PRODUCE ADDRESSED TO CJ BURKE  
NOMINEES PTY LTD DATED 22/11/19 AND SOLICITORS'  
25 CORRESPONDENCE TENDERED, ADMITTED WITHOUT OBJECTION

ALKADAMANI: Can I return to the court Mr Cole's filed affidavit because it's got some handwriting without leave (handed).

30 HER HONOUR: Yes, thank you.

ALKADAMANI: That's our evidence, your Honour.

HER HONOUR: Yes, thank you very much.

35 McDONALD: Your Honour, may I have one minute just to confer with my instructing solicitor? We might not read his affidavit which might give us some more time. My friend won't need to cross-examine. Better chance of finishing. It will only take seconds just to confer.

40 HER HONOUR: Yes, thank you.

McDONALD: Your Honour, I won't need to read Mr McCartney's affidavit.

45 HER HONOUR: Yes.

McDONALD: He, therefore, won't be needed for cross-examination.  
Mr Sattout--

50 HER HONOUR: So I should no longer read that affidavit?

KCS:CAT

McDONALD: Correct, your Honour.

HER HONOUR: Thank you. Mr Burke?

5

McDONALD: Could we call Mr Sattout?

HER HONOUR: Yes.

10 McDONALD: He's been waiting outside.

KCG:CAT

McDONALD: Before Mr Sattout takes the stand, you enquired about that separate book that was in front of Mr Cole. There is one email that is not in the other, I should tender and--

- 5 HER HONOUR: Are you going to be asking Mr Sattout any questions about that folder?

McDONALD: No.

- 10 HER HONOUR: If you hand that folder back, if you can identify that, you can tender it after his evidence.

KCG:CAT

<SAMUEL SATTOUT, SWORN(3.00PM)

<EXAMINATION-IN-CHIEF BY MR MCDONALD

5 Q. Sir, could you state your full name?

A. Samuel Sattout.

Q. Have you sworn an affidavit in these proceedings?

A. I have, yes.

10

Q. Dated 27 November 2019?

A. That's correct.

Q. The contents of that affidavit are true and correct?

15 A. As far as I'm aware, yes.

Q. Sir, can I take you to page 38, bottom right-hand corner of your affidavit. Sorry, could you turn to court book 3 of 3, volume 3 of 3?

A. Mm-hmm.

20

Q. And at tab 12 is your affidavit starting at tab 12?

A. Yes.

Q. Can I take you, sir, to page 1220?

25 A. Yes.

Q. Sir, do you recognise that document that starts at 1220?

A. Yes. Financial statements of the Securicom New South Wales super fund for year ended June 2014.

30

Q. Sir, did you prepare those financial statements?

A. Yes, I did.

Q. Sir, did you receive instructions to prepare those financial statements?

35 A. From Mr Burke.

Q. Do you recall what instructions he gave you to prepare those financial statements?

40 A. It went back to the prior year. He brought over to my office copies of prior year financial statements which were prepared by a previous accountant and gave me the bank statements of the super fund for the financial year ending June 14. On that basis I had a look at the 2013 reports, because I needed that to be my starting point, and realised that there seemed to be some sort of anomaly there, in that there were no records of patent or trademarks or  
45 anything like that in the fund and the money had been treated as a loan to Burke, which was in breach of the Superannuation Industry's Act and upon further investigation of the bank statements for all these withdrawals, the notation on the withdrawals at the time were noted as "patents". I asked  
50 Mr Burke what was meant by that and what happened and he said: Well, the money was transferred over to Microlatch Hong Kong and the money was

KCG:CAT

used for the furtherance of the trademarks and the patents and trademarks for the intellectual property. So my recommendation was that we treat them as being the purchase of those trademarks in order to rectify the breach in the Superannuation Industry's Act by way of loans to members or related parties.

5

Q. You said you recommended that to Mr Burke?

A. I recommended that to Mr Burke and he told me to proceed and as far as he was concerned, that was the real purpose of the funds. It was not--

10 ALKADAMANI: I object.

WITNESS: It was not to--

15 HER HONOUR: When an objection has been raised, Mr Sattout, if you could wait.

ALKADAMANI: Mr Sattout can give evidence about what he understood, but certainly not--

20 McDONALD: I place no weight on that.

HER HONOUR

Q. You said that you recommended he treat it as a purchase?

25 A. Of the patents, that's correct. At that stage, the patents were still being worked upon. There was no final product.

Q. But you said that was to avoid a breach of the superannuation legislation?

30 A. That's correct, yes. Chris told me that the only way he could continue to do the development of the patents and things was, he needed the funds. The only place that he could get the funds was from his super fund. The super fund had received the money from the sale of a commercial property that was owned by a unit trust in Rockdale the year before. The only unit holder of the unit trust was the superannuation fund.

35

McDONALD

Q. Sir, do you see at page 1222 there are comparative figures for 2013?

40 A. Yes.

Q. What do you understand those figures to be?

ALKADAMANI: I object, your Honour.

45 HER HONOUR: We are looking at the figures on page 1222.

WITNESS: Detailed operating statement, your Honour, of the super fund.

HER HONOUR: Yes, just--

50

KCG:CAT

ALKADAMANI: Your Honour, the grant of leave was in relation to showing when were these documents finalised? Have they been lodged? When were they lodged? Have they been signed?

5 HER HONOUR: That's right.

ALKADAMANI: Not to go through the history of all his instructions, which they could have put on evidence and which I would have had a better chance of preparing for. In any event, it is outside the grant of leave.

10

McDONALD: Your Honour, in addressing when documents were prepared and filed, they need to have the context of those documents.

15 HER HONOUR: Well, Mr Sattout has said he recognises the documents and he prepared them.

McDONALD: Yes, your Honour. In any event I will move on?

HER HONOUR: Thank you.

20

McDONALD

Q. Can you go to page 1231?

A. Mm-hmm.

25

Q. Do you recognise the document at 1231 which continues to 1242?

A. Yes.

Q. What do you recognise that to be?

30

A. I think a copy of the super fund income tax return for 2013.

Q. Do you know whether that return has been lodged?

A. That return was lodged, yes. That was an amended return amending the previous tax agent's tax return.

35

Q. Do you recall when it was lodged?

A. Not exactly sure, but it would have been no later than April 2017.

Q. And sir - if this is not part of the leave your Honour, I apologise - sir can you go to page 1201?

40

A. Yes.

Q. Through to 1208?

A. Yes.

45

Q. Have you seen these documents before?

A. Yes.

Q. What do you recognise them to be?

50

A. The bank statements of Securicom Pty Limited in trust for the super fund.



Q. And sir, I take you to page 1202 you gave evidence before about payments for a patent. Do you recognise the entries on page 1202 as being the entries that you were referring to before?

5 A. They're the entries and that's where I would have accounted for the payment of the patents.

<CROSS-EXAMINATION BY MR McDONALD

10 Q. Mr Sattout, you were earlier saying that you made a recommendation that we, that is Mr Burke's and your firm - but I gather you mean Mr Burke - treat the payments as a purchase of patents, so as to avoid a breach. Do you recall that?

A. Yes, I do.

15

Q. And the payments that you were referring to are the payments at page 1202, aren't they?

A. Partly.

20 Q. Are there other payments?

A. There were other payments in the 2012 year, I believe.

Q. Well, they are not--

25 A. The bank statements don't seem to be here for that period, but they were, there was a fair amount in there. When I said "in rectification of a breach", I meant that it was a rectification of what was deemed to be a breach by the ATO, where I believe the previous accountant was incorrect in how he recorded those payments.

30 Q. Well, how an accountant records payments depends on what they are instructed about the payments, correct?

35 A. Well not necessarily. Some accountants will automatically say "Well okay that's a breach of the thing, we are going to treat them as a loan". I don't - I'm not privy to what the previous accountant would have said to Chris, but I know what I said to him and I said to him that to me, it is an obvious payment for a patent which the bank statements stipulate.

Q. Well, did Ms Lina Candy work for you in about August 2016?

40 A. Yes, she did.

Q. And she dealt to some extent with Mr Burke under your direction in relation to the super fund accounts, correct?

A. Yes, that's correct.

45 Q. I would like to show you this email. (Shown). I will ask you to read that.

A. Yes.

Q. Can you turn over the page. You will see that the payments are the ones that are at 1202. Would you agree with me?

50 A. Mm-hmm.

Q. And you can see on the second page of that email, Lina asks "What are the below deposits from 2013"?

A. Yes.

5

Q. And what she meant is the payments from the super fund out, because they are debits; you would agree with that, wouldn't you?

A. I would presume that would be the case, yes.

10 Q. And so you will see Mr Burke's response?

A. I have seen his response, yes.

Q. And were you aware of that response?

A. Yes, I was.

15

Q. And what Mr Burke is saying is, and telling your firm, is not that the payments were for patents, but they were an investment in Microlatch Hong Kong; correct?

20 A. No, what he's saying is that the ATO subsequently views them as salary, which was incorrect as well.

Q. No, but he is also saying--

A. "However I want to argue they were invested into Microlatch Limited Hong Kong as an investment". Now, Mr Burke--

25

Q. They were your instructions, weren't they?

A. Sorry?

Q. They were your instructions from your client, weren't they?

30 A. He said, "I want to argue they were invested" and after that I actually had a conversation with Chris and said, "They are actually treated as payment for patents and we will treat them that way in the fund accounts".

35 Q. You said that to Mr Burke well after - sorry - I withdraw that. The bank statements of 2013 record something that Mr Burke entered on to the bank statements, is that correct?

A. That's correct, yes. Well, I presume it was him.

40 Q. He then instructs your firm in this email what he contends they are for, correct?

A. Which was three years after.

Q. Which was three years after. And you hadn't had involvement in the three years in between, had you?

45 A. No, I didn't see Mr Burke until 2016, when he asked me to prepare and get his records up-to-date.

Q. And he is telling your firm what the purpose of the payments that he contends they are for, correct?

50 A. He's telling my firm that he wants to argue that argument, not what he

5 contends. I don't believe Mr Burke was capable of deciding the right accounting terminology when it comes to these sorts of things and I don't think he's accountant minded, accounting minded in any way. A lot of the times when he says something, what he actually says isn't what he really wants. He just doesn't know how to put it into the correct terms.

Q. Right, well--

10 HER HONOUR

Q. Can I just stop you there? You are talking about accounting terms, aren't you?

A. That's correct, yes.

15 AL KADAMANI

Q. Your advice is these payments were for a purchase of an asset, correct?

A. On the face value of what I see on the bank statement when it says "patent payment", I agree with that, yes.

20

Q. But the face value is simply the description that Mr Burke put, or the person that had access to the account, put on the transaction; correct?

A. So Mr Burke said, "Yes". I wrote down on there that they were for a patent.

25 Q. And you just told her Honour that he doesn't have a very competent or high level grasp of accounting terms?

A. Mm-hmm.

30 Q. And what you have to try to determine or what the accounts need to reflect is what is the underlying transaction, correct?

A. That's correct.

Q. And he wanted to contend that they were for investment into Microlatch Hong Kong, correct?

35 A. You can't assume one way, your way and one way, the other way. You are telling me that when he put "patent payment" on the bank statement, that he meant something different. Well, what happens if he said "No, I think it should be investment in Microlatch Hong Kong", but you are willing to accept that and not accept what he put in the first place when he actually did the transaction  
40 three years earlier.

Q. We are now preparing the accounts - I will make submissions about that. Anyway, he tells your firm that he wants to contend they are for an investment in Microlatch Hong Kong; correct?

45 A. That's what he's got in the email.

Q. Correct. Do you know whether Microlatch Hong Kong owns any patents at all?

A. No, I don't.

50

KCG:CAT

Q. You don't? Did you assume that it did?

A. No.

Q. You didn't?

5 A. I don't make assumptions, I'm sorry, when it comes to accounting.

Q. So you didn't assume that it owned any assets, any patent assets? You didn't make that assumption?

A. (No verbal reply).

10

Q. You didn't see - usually when an asset is purchased for a cash sum, one would expect to see in accounting records a credit to the cash account for that sum and a debit to the relevant asset account; would you agree with me?

15 A. Not necessarily, no. If I don't have access to Microlatch Hong Kong's records or the access to the records of where those payments actually were made to, I can only go from the payments that are in front of me.

Q. The super fund's records should have shown the movement, a journal entry for the movement of the cash out and a journal entry for the movement of the asset in, correct?

20

A. Which is what it does show. There is no journal entry. It's the actual cash purchase price.

Q. That's right. But there is no journal entry for the asset that came in, is there?

25

A. There is an asset on the balance sheet which shows patents, which agrees with those transactions.

Q. Only after you constructed the accounts; correct?

30

A. I had to construct the accounts. They wouldn't have been there otherwise. How am I going to create where the payment which is made to, if I don't have a debit side?

Q. Well, first of all, you had accounts, the primary accounts that you had were from the previous accountant; correct?

35

A. Copies, yes.

Q. You didn't have any primary records from the superannuation fund that recorded the purchase?

40

A. Yes, I did. I had the bank statements.

Q. And they're the only records you had?

A. They are the records that I had.

45

Q. So you didn't have any record, other than that bank statement, which would tell you that the assets had been assigned to the super fund, correct?

A. There is nothing in there that would say that, other than the payment for those things.

50

Q. Other than that notation on page 1202; correct?

KCG:CAT

A. And the notations on the previous bank statements which I had seen for the year before.

ALKADAMANI: I call for those, your Honour. They are not in evidence.

5

WITNESS: I presume they're readily available, because the liquidator actually took all of those records. So there will be a copy somewhere in my email system somewhere along the way.

10 AL KADAMANI

Q. Mr McCartney will talk to you about that. Let's work out what the records were and what you say you made your conclusions from.

A. Mm-hmm.

15

Q. You had the bank statements which, in relation to the payments, are at 1202?

A. Mm-hmm.

20 Q. And you had no record of a document that recorded the assignment or the transfer of the asset to the super fund, correct?

A. That's correct.

25 Q. So that wasn't documented. You had no journal entries that recorded - I withdraw that. When you were putting the accounts together, that was 2016, wasn't it?

A. That's correct, yes.

30 Q. You had no journal records or book entries from 2013 when these transactions occurred that recorded that the payments were for patents; correct?

A. That's correct.

35 Q. And the way that you concluded that that's how they should be characterised, is in discussions with Chris Burke, correct?

A. Mm-hmm.

HER HONOUR

40 Q. You might need to say "yes" or "no" for the transcript.

A. I'm sorry. That's correct, yes.

AL KADAMANI

45 Q. And those discussions included a range of possibilities, one of which is Mr Burke wanted to argue that they were investments in Microlatch Hong Kong Limited?

A. That's according to that - in accordance with that email.

50 Q. That's correct, isn't it, that is one?

KCG:CAT

A. As I said, in accordance with that email, yes.

Q. The ATO took the view that they were a salary?

5 A. No, the ATO did not take that view at all. The ATO were advised by the prior accountant that moneys had been taken out of the bank account and were treated as a loan to the members.

Q. And were they treated as a loan to the members by--

10 A. By the previous accountant.

Q. So the previous accountant treated them as a loan?

HER HONOUR

15 Q. Sorry, can I stop you there? As a loan to Mr Burke or to the company?

A. No, to Mr Burke.

AL KADAMANI

20 Q. And as you understood it, those accounts had been lodged with the ATO and that's how the ATO knew about it?

A. That's my understanding, yes.

Q. That's the only way it can happen; correct?

25 A. That's my understanding. That's correct.

Q. You have a very good understanding of the procedures of the ATO, correct?

30 A. I do.

Q. And that is the only way it could happen, by the lodgement of the accounts, is that correct?

A. Whatever you say is correct, is correct, yes.

35 Q. Sorry--

A. I'm agreeing with you, sir.

Q. Thank you. I did not want your agreement to be contingent on my belief.

40 The next step is for those documents to be lodged with the ATO by the previous accountants, which dealt with these payments that are on 1202--

A. No, they didn't deal with the payments on 1202. He dealt with the payments on the - previous to that, 1202. He prepared the accounts up to June 13. These statements are after June 13.

45 Q. Well, looking at that email in front of you, you will see that on the second page Lina is asking Mr Burke about those payments in August 2013?

A. That's correct.

50 Q. Mr Burke is saying, "These are the disputed payments" and the ones the ATO subsequently views as salary?

KCG:CAT

A. Well then he is incorrect, because they weren't the ones that were in question at the time. The tax office had no idea of those at that time, because they had never been recorded.

5 Q. All right. So you are saying there are other ones?

A. The ones prior to that.

Q. And they were the ones that you say must have been the ones the subject of the lodgement?

10 A. That's correct, yes.

Q. And the lodgement could only have been effected with Mr Burke's signature or acceptance of their contents?

A. That's correct, yes.

15

Q. So he adopted whatever was lodged, correct?

A. That's correct, yes.

Q. Because that's the normal procedure for lodging tax returns or super funds statements; correct?

20

A. That is normal.

Q. If we turn to the preceding page at 1201, you will see that that's a credit?

A. That's right.

25

Q. And that means moneys coming into the fund?

A. That's correct, yes.

Q. So those cannot have anything to do with a purchase of an asset by the fund?

30

A. That's correct, yes.

ALKADAMANI: I tender the email that is with the witness at the moment.

35 EXHIBIT #B EMAIL CHAIN WITH HEADING "FROM STEVE COLE",  
SUBJECT "FORWARD BANK STATEMENTS 13 TO 14", WITH THE  
MICROLATCH EMAIL FROM C BURKE TO LINA CANDY DATED 26/07/16  
TENDERED, ADMITTED WITHOUT OBJECTION

40 Q. So, I want to ask you when Mr Burke - you had discussions with Mr Burke and you told the Court earlier when my friend was asking you questions that the money went to Microlatch Hong Kong?

A. That's what Mr Burke told me.

45 Q. And you don't know whether Microlatch Hong Kong has any patents or not, do you?

A. I have already stated, no.

50 Q. And when you come to advise Mr Burke about the proper way to record the purchase of the patents, if Microlatch Hong Kong does not have any patents, it

could not be that those funds were for the purchase of those patents, would you agree with me?

A. Not if they - not if they were owned by Microlatch Hong Kong and I had no idea of.

5

Q. But if the patents were not owned by Microlatch Hong Kong and the money was going to Microlatch Hong Kong, what you had said about the money being for the purchase of the patents could not be correct?

A. No, it could be correct.

10

Q. How could it be correct?

A. It could be correct, in that the money was used by Securicom, the trustee and asked him to send the money direct to Microlatch Hong Kong, which is Microlatch Hong Kong at the time was doing most of the research and development for the product. So he would have been purchasing the IP from Securicom New South Wales Pty Limited and Securicom New South Wales Pty Limited was asking him to pay the money direct into the Hong Kong bank account. Now, that to me is a standard, normal procedure.

15

20

Q. Standard, normal procedure for a super fund transaction?

A. For any type of business transaction.

Q. Including a super fund?

25

A. Including a super fund. You can be directed to pay the moneys - as long as they are recorded correctly, you can direct moneys to be paid to whoever you wish.

Q. In respect of those intermediate steps, did you have any written instructions from Chris Burke that that is what was happening?

30

A. That's what I asked and I spoke to Chris about and I said, "Mate, are these for - the bank statements note on there that they are for payments for a patent. Are these for patent purchases?" And he said, "Yes".

35

Q. And was this after or before the email, the date of the email that I just showed you?

A. It would have been after the email to Lina.

Q. So he then gave you those instructions. Did you know at that time about what he had told to Lina?

40

A. Yes.

Q. You knew at that time when you had your conversation with Mr Burke?

45

A. It was after the email to Lina, because we needed to prepare the accounts and they were prepared after that date. We needed to get - I actually lodged an amended tax return, an amended financial statements for the 2013 year to record them - to advise the ATO that they were incorrect the year before and treated incorrectly and they should have been treated in this way.

HER HONOUR

50



KCG:CAT

Q. I need to ask a question about this, because it comes back to the evidence earlier about, I think you said that it was treated that way, because it would avoid a deemed breach of the legislation?

5 A. The breach had already been deemed to be by the ATO from the year before, and we needed to rectify that by advising the ATO that it was recorded incorrectly the first time.

Q. Because it was recorded as a loan to Mr Burke?

10 A. That's right and it should have been recorded as a purchase of patents.

AL KADAMANI

15 Q. What I want to put to you is that the way you have advised for the transaction to be constructed, was so that Mr Burke wouldn't have problems with the ATO, as he had experienced in the year before ;do you agree with that?

A. Yes, because it was treated incorrectly the year before, in my opinion.

SKB:CAT

HER HONOUR

Q. When you say it's treated incorrectly, are you treating it incorrectly because you want to avoid a breach?

5 A. Not only that, the bank statements clearly stated that they were patent payments.

Q. But why couldn't that be a loan to Mr Burke to buy a patent?

10 A. If it was a loan then why would it be treated, why would he call it a patent payment? Why wouldn't he say it was used, it was a different thing, a loan to Chris. At the time that the actual withdrawals were made it was obvious to me that it was treated by Chris as for the patents. Whether it was patent  
15 development or patent purchase I am not sure, but it was mentioned the word patent payment, and as far as I am concerned and after talking to Chris I said what was this all about? He said well, I needed to develop the programmes and the only way I could do it was from my super fund moneys and I had to use it for the patents and I said to him then, okay, we will then say that they were the purchase of those patents. There is no other way to treat them in the actual accounts.

20

ALKADAMANI

Q. But it could well have been still a loan to Microlatch Hong Kong but that would have been a breach, correct?

25 A. It could have been a loan to Sam Sattout and that would have been a breach as well, but it wasn't. As far as I am concerned it was a payment for a patent and they've been recorded correctly in the accounts to show that it was for a patent.

30 Q. You know that Chris, Mr Burke entered into the SPA with CPC, correct?

A. Yes I do.

Q. And you know that CPC under that was seeking to obtain the shares in Securicom and Microlatch, correct?

35 A. Not exactly 100 percent, but pretty much so, yes.

Q. You knew that the substance of the transaction was that CPC would obtain control and ownership of the patents, correct?

A. Yes.

40

Q. You knew that?

A. Yes, I did.

Q. And when did you know that?

45 A. Probably around about the same time as these were all being prepared.

Q. Right, and in that transaction as you knew it, did you understand that Mr Burke was selling the shares in the trustee company and since you thought the patents were in the super fund, CPC was not going to get the patents?

50 A. No, that was not what my belief was. My belief was that CPC were going to

purchase all of the patents. Regardless of which company actually owned them, they would all end up with CPC on payment. Whether it was owned by Securicom NSW super fund or what-have-you the payment for the patents would be apportioned accordingly to whichever company owned them. That  
5 was my understanding of what was to take place. So there was no intention by me or I don't think by Mr Burke of trying to isolate those patents away from the transaction with CPC.

10 Q. Now ultimately your evidence as to the payments on 1202 and some other bank statement depends on nothing more than the notation that's put on the bank statement and what you view as a proper way to record the transaction so that there is no breach, correct?

A. Partly, as well as my consultations with Chris as to how he wanted them treated.

15

Q. But you were very very, shall I say concerned to make sure that however it was treated was not a breach of the Act, correct?

A. That is correct, yes.

20 Q. And that was one of the factors in how you would advise Mr Burke to treat the transaction, correct?

A. It was one of the factors, yes.

25 Q. I put it to you it was the primary factor, Mr Sattout?

A. It depends on what you want to call primary.

Q. Was it a material factor?

A. It was material, of course it was.

30 Q. It was the predominant factor, wasn't it?

A. I don't know about predominant, but it was a material factor.

Q. You don't deny that it was the predominant factor, do you?

35 A. I do deny it was the predominant factor because there were other factors concerned as well.

40 Q. The most important factor was making sure that you could sort out the regulatory issues and you saw that the way to do so would be to say notwithstanding Mr Burke's instructions as to why he made the payment, to say, no, we will treat these as a purchase of the patent, correct?

A. It was, my preferred option was to treat them as being the patents because it was not only for the compliance factor but to alleviate any problems in the future.

45 HER HONOUR

Q. I am sorry, just stopping you there, what do you mean by problems, are you talking about problems with the ATO?

50 A. Problems with the ATO may be, there could have been other issues that cropped up, I am not sure, but the main issue was to get the tax returns

SKB:CAT

correct.

ALKADAMANI

5 Q. To get the tax returns--

A. You can't forget the tax returns sir.

Q. The main concern I put to you was to make the tax returns compliant with the Act because of a concern about past transactions including--?

10 A. It was to make the tax returns as correct as I thought they should have been possible.

Q. Did you ask Mr Burke whether the patent payments on 1202 were for upkeep of patents or for patent attorneys as distinct from purchase of the patents?

15

A. No, I did not.

Q. But that's entirely possible within what's notated on 1202?

A. Anything is possible.

20

Q. Correct, that's right, isn't it?

A. (No verbal reply).

Q. Now you said the SMSF returns were lodged no later than April 2017?

25

A. The amended tax return for 2013 and the actual tax returns for 2014, 2015 and 2016 would have all been lodged I think on the 1 April 2017.

Q. Now if you turn to page 1210 of that volume?

A. Mm-hmm.

30

Q. You will see Mr Burke had been disqualified?

A. Well I contend that I don't know whether that is correct or not because there is no date on that letter.

35

Q. Sorry?

A. If you see the letter it says XX November 2013. Now to me that does not constitute a notice from the ATO because it's undated.

Q. Have you told the ATO that I have not been--?

40

A. I have advised the ATO and I have requested that he be reinstated as a trustee of his own fund and I haven't had a response as yet.

Q. Okay, if you turn to 1209?

A. Mm-hmm.

45

Q. I just want to ask you, when you lodged those returns no later than April 2017, was Mr Burke, Chris Burke the person that signed the documents on behalf of the trustee?

A. He did.

50

SKB:CAT

Q. And is the only way that he could do so at that time if these notices of disqualification were not effective?

A. Well I don't believe they were effective because as I said there is no dates on them.

5

Q. I simply don't believe that Mr Sattout?

A. Can you see a date on these statements? Well then how can they be legally binding if I don't know the date.

10 Q. Mr Sattout I am not really here to answer that?

OBJECTION. CALLS FOR LEGAL OPINION

15 HER HONOUR: The question has been asked and answered. Shall we move on.

ALKADAMANI: Yes.

20 HER HONOUR: I think I heard the witness say that the witness actually put some submission in to have the disqualification voided, which suggests that there was an acceptance there was a disqualification, wasn't there?

ALKADAMANI: Well that's what I am just trying to get to the bottom of.

25 HER HONOUR: Continue please.

ALKADAMANI: That's all I have, your Honour.

NO RE-EXAMINATION

30

<THE WITNESS WITHDREW

SKB:CAT

<CHRISTOPHER JOHN BURKE, SWORN(2.38PM)

<EXAMINATION-IN-CHIEF BY MR MCDONALD

5

Q. Could you say your full name for the court?

A. Christopher John Burke.

Q. Sir have you sworn an affidavit in these proceedings?

10 A. Yes.

Q. It is 22 November 2019?

A. Yes.

15 Q. Are the contents of that affidavit true and correct to the best of your knowledge and belief?

A. Yes.

<CROSS-EXAMINATION BY MR ALKADAMANI

20

Q. Mr Burke when I refer to the SPA I am referring to the share purchase agreement that was signed in September 2016. That's just so that I am clarifying what I am referring to?

A. Okay.

25

Q. And when I refer to the business's intellectual property I am referring to the items described in schedule 5 of the SPA?

A. Yes.

30 Q. Prior to signing the SPA the parties signed a non-binding terms sheet in about June 2016, do you recall that?

A. Yes.

35 Q. And then they moved from a non-binding terms sheet to a binding terms sheet, correct?

A. Yes.

Q. And then from the binding terms sheet to the SPA in September 2016, correct?

40 A. Yes.

Q. And draft documents were exchanged between the parties and the SPA and the binding term sheets were negotiated by the parties, correct?

A. Yes, mainly written by Charter Pacific, but yes.

45

Q. You were represented in those negotiations by Mr McCartney, correct?

A. No.

Q. Who represented you?

50 A. Nobody, I had no legal representation throughout.

Q. So you received the documents from?

A. Charter Pacific.

5 Q. From Charter Pacific, and looked at them and the negotiations went to and fro?

A. To some degree.

10 Q. Now when you signed the SPA you knew full well that you were entering a transaction which involved CPC acquiring the shares of Securicom and Microlatch Pty Ltd because those companies owned the business's intellectual property, correct?

A. The patents are owned by my superannuation fund and those companies were the registered owners, the registered recordings of those patents.

15

Q. So when you entered the SPA were you entering a transaction where you were just going to give the legal title to, sorry, you were going to give the shares in Securicom and Microlatch to CPC and they would only have the legal ownership of the patents held in trust for your super fund, is that what you envisaged under the SPA?

20

A. That's what Charter Pacific wanted. They wanted Securicom and Microlatch on the SPA. I accepted that that's what they wanted, operating companies or real companies, not superannuation fund.

25 Q. They wanted the patents, isn't that right?

A. They wanted the patents, yes.

Q. And they wanted the whole of the rights attaching to those patents?

A. Yes.

30

Q. Including the beneficial ownership, correct?

A. Yes, and that's what they would have received.

Q. That's what they would have received under the SPA?

35

A. Yes.

Q. Because under the SPA, CPC were receiving the shares in Securicom and Microlatch, correct?

A. They were getting the patents through, you know, through the relationship.

40

Q. They were getting the shares in Securicom and Microlatch Pty Ltd, correct?

A. They were getting everything, you know, the intellectual property it was. In my view they were getting everything.

45 Q. Under the SPA they were getting everything?

A. Yes, in my view.

Q. Pursuant to the SPA and only the SPA they were getting everything, correct?

50

A. In my view they were getting the patents upon completion, that's right.

SKB:CAT

Q. Well including the ownership, correct?

A. The patents however it transferred in, yes.

5 Q. Right, and your super fund would have no interest in the patents, correct?

A. The super fund, once the SPA completed, the patents would be in the new company.

10 Q. Can I ask you to turn to court book, volume 1, page 470.

HER HONOUR: 470?

ALKADAMANI: Yes.

15 HER HONOUR: Book?

ALKADAMANI: Volume 1.

20 Q. Sorry it's volume 2, I am sorry, Mr Burke. Mr Burke, that's the SPA, correct?

A. Yes.

Q. And you signed that document, correct?

25 A. Yes.

Q. Page 513 you can see that you are identified in the definition of sellers, correct?

A. Yes.

30 Q. Now at page 475 you can see that the business is defined at the top of the page and it's the ownership, development, exploitation and manufacture of mobile biometric solutions and exploitation of the business intellectual property, own licence to be developed by the sellers?

A. Yes.

35

Q. And the business's intellectual property means the business name is patents and trade marks in schedule 5 to truncate it?

A. Mm-hmm.

40 Q. And what would be purchased from the sellers would be the shares that are recorded at page 513, four shares in Securicom NSW Pty Ltd and shares in Microlatch Limited United Kingdom?

A. Mm-hmm.

45 HER HONOUR

Q. You are going to have to say yes or no I think?

A. Ah yes.

50 ALKADAMANI



Q. Now going over to page 514 you gave some warranties as a seller because you are a seller on page 513, correct?

A. Yes.

5

Q. And some of those warranties are as follows, at page 520 under assets, all of the assets of the company (i) are fully paid for (ii) are legally and beneficially owned by the company, and that's a defined term, do you see that?

A. Yes.

10

Q. Now you understand that what you are now telling her Honour is, and what your case today is, is that the company as defined did not beneficially own the business's intellectual property, correct?

A. It represented the patents in my view and all the information was given to Charter Pacific in that regard.

15

Q. Are you saying they should have found out for themselves that what you were saying was not accurate?

A. I told them. I told them--

20

HER HONOUR

Q. Could you please just answer the question that was asked originally?

25

ALKADAMANI

Q. You know that your case now is that Securicom did not beneficially own the patents in contradiction to what is recorded in 10(a) (ii), do you understand that?

30

A. Yes, it was a registered owner, it was the registered owner I took it as.

Q. But 10(a) (ii) says that all the assets of the company are legally and beneficially owned by the company, correct?

A. Yes.

35

Q. And that's what you promised CPC but you gave them a warranty, and that's what you promised them, correct?

A. I said it was the registered owner.

40

Q. No, no, in this document you signed it, correct?

A. Yes.

Q. And in this document that you signed you told CPC that the assets of the company are legally and beneficially owned by the company, correct?

45

A. I meant that, you know, I told them that it was the registered owner as represented, represented the patents.

Q. I see, so Mr Burke you are saying that what you promised them and signed under the SPA did not matter because you told them something else beforehand, is that what you are saying?

50

SKB:CAT

A. I told them throughout and they knew and they had all the documentation to that.

5 Q. Why did you sign this document if the company was not the beneficial owner of the assets?

A. Because it was the registered owner. I signed because they wrote the document, they wrote it, they prepared it and had all the information for it and it was the registered owner and I thought that's what they want, that's what they are happy with.

10

Q. They want, as you understood it, you understood it, you are promising them by signing these warranties that the company is the legal and beneficial owner, do you agree with that?

15 A. I believed there was a registered owner. Is there a difference in legal terminology between registered owner and beneficiary?

Q. Mr Burke that is your case today, is it not? Is it not that the beneficial ownership of the patents was not owned by Securicom Pty Ltd, isn't that your case?

20 A. It was a registered owner. It was a registered, it represented the superannuation fund because it was a trustee and I believe and still believe that that representation is accurate.

25 Q. Do you say that under the SPA, CPC was getting the shares to the companies that owned the whole of the patent rights, whether beneficial or legal?

30 A. They were getting the company, it was the registered owner and they were getting the patents through my association with that company and its relationship to the superannuation fund. I still see that as the trail, you know, as a valid position that they get the patents upon completion and that was, you know, I wanted that to complete. I didn't want it to fail, I wanted it to complete.

Q. Mr Burke, isn't it your case that under the SPA, CPC does not get the beneficial ownership or the beneficial right to the patents?

35 A. I believe it always did and would and that representation is sufficient or is accurate enough.

Q. Do you tell the Court today that the representation at page 520 under the heading Assets is the true state of affairs?

40 A. Just how you define 'beneficially' I am not sure from a legal perspective, but in my view it was a registered owner and it was the representative of the superannuation fund where the patents were clearly on record in the accounts and all that information was given to them and I explained that so many times because it was a very important discussion point for many reasons.

45

Q. And these are discussions which you put in your affidavit, where exactly?

A. Just with Steve Cole.

Q. Where did you put these conversations in your affidavit?

50 A. Where is my affidavit?

SKB:CAT

Q. Your affidavit is in volume 2?

A. I spoke with Steve Cole.

5 Q. Sorry it's in volume 1, tab 10, volume 1. I just want to know what conversations you are referring to from your affidavit Mr Burke?

A. Well there were many.

10 Q. Can you tell me where you have recorded these many conversations or one of them in your affidavit?

A. I spoke to Steve Cole on several occasions, many occasions.

Q. Okay, you point me?

15 A. I will have to go through the affidavit. It's in there. I wrote it down. I have just got to find it now.

Q. Yes. Is 155 your evidence about that?

A. No, I just can't find that.

20 MCDONALD: Your Honour, can I assist? We are prepared to make the concession, if it assists, the concession that there is no evidence of conversations prior to the date in paragraph 154.

HER HONOUR: Prior to 7 November 2016?

25

MCDONALD: Yes.

HER HONOUR: When was the date this started?

30 ALKADAMANI: September 2016.

MCDONALD: If that assists, it's a matter of concession.

HER HONOUR: I don't know.

35

MCDONALD: We assume it does.

ALKADAMANI

40 Q. Mr Burke did you understand that if the super fund owned the beneficial title to the patents and Securicom only held it as a trustee, it meant that even if the SPA completed the super fund would still be saying or could still say we are the beneficial owner of the patent, did you understand that?

45 A. My belief was that it represented the patents. It was, you know it was the representative, the legal representative.

HER HONOUR

Q. What, like an agent?

50 A. Like an agent or, you know, the way we defined in the document--

SKB:CAT

Q. Can I just ask, this is important please Mr Burke?

A. Sorry.

5 Q. Did you believe that the company owned the patents, the right and title of the patents, both the rights and the title of the patents?

A. The superannuation fund owned the patents.

Q. No I am asking you whether you believed the company did?

10 A. It represented it was the registered owner.

Q. Would you please answer the question, did you believe that the company owned the rights and title to the patent?

A. Can I say that it represented.

15

Q. No, if you could please answer my question?

A. Now I look at it, your Honour, and I say, you know, the super fund owned the patents, you know, full stop. So now I look at it and say that but at that point in time I believe that was a legal representation of the superannuation

20 fund, you know, that was my belief.

Q. At the time you signed the SPA did you believe that the company owned the rights and title to the patents, so that when the signing was done you were agreeing to effectively sell shares in companies that owned the rights and title to the patents?

25

A. Your Honour I believed that it could sign for that, I did. I believed that it could sign for it.

Q. When you say you believe it could sign for it?

30

A. I believed it to be the case that it could legally sign and the super fund wasn't party to the SPA because Charter Pacific didn't want to put it in there for whatever reason, but still that was a valid legal representation. I believed that. I did believe it at the time. But always I have shown and noted and discussed that the superannuation fund owns the patents.

35

Q. Well as I understand from your counsel, you didn't have any conversation to that effect prior to the time that you signed the SPA?

A. I must have had, we must have talked about the superannuation fund.

40 HER HONOUR: The concession I think from your counsel is there was no discussion of that type.

MCDONALD: There was no evidence of it. My friend was saying can he take us to the evidence and my concession was--

45

HER HONOUR: There is no evidence of it.

ALKADAMANI: Your Honour, unfortunately--

50 HER HONOUR: How much longer do you think you will be?

SKB:CAT

ALKADAMANI: --because of how things are going, it's going to be more than half an hour. The reason is, I am going to cross-examine on the November deed, whether beneficial ownership is assigned.

5

HER HONOUR: So we can come back tomorrow morning?

ALKADAMANI: I'm happy to, your Honour.

10 HER HONOUR: I think if this is the only evidence and there might be some documentary tenders, but there are no other parties to be cross-examined, is there?

ALKADAMANI: No.

15

HER HONOUR: Well I am happy to start tomorrow morning early and we can get it finished if you are in court at 10 o'clock. Unless you prefer 10?

ALKADAMANI: Your Honour, I am happy with any course.

20

MCDONALD: I will fit in with the court tomorrow.

HER HONOUR: I am content for it to be at 9 o'clock or 10 o'clock, up to the parties. We just need to let transcript services know.

25

ALKADAMANI: Shall we say 9.30, your Honour, because it seems to be a hard decision.

30 HER HONOUR: Yes, 9.30 and are we going to just finish the evidence tomorrow or are you going to go straight on to submissions? Perhaps you can have a think about that.

35 ALKADAMANI: Yes. Your Honour, if your Honour has the time I think we would be content to go straight to submissions. I don't, though, want to not be in a position where I can't give the court the full assistance the court might require. I don't say that lightly, I mean if the court would prefer more fulsome submissions? Justice Hammerschlag said no more than three pages in relation to oral submissions.

40 HER HONOUR: I think we are going to need a few more submissions based on the things that have been raised in both of the pleadings, so if you prefer to have some time to write them up, and then address me orally we can do that at another time. Have a think about that overnight and then we can talk about that tomorrow, but I have the day tomorrow if you want it.

45

MCDONALD: I have the morning tomorrow available but not the afternoon.

50 HER HONOUR: Let's start at 9.30 and have a discussion between yourselves as to what you would prefer to do in relation to submissions. I'm content to do either.

SKB:CAT

Q. Thank you Mr Burke and don't forget you are in cross-examination so you can't talk to anybody about your evidence?

A. Yes.

5

HER HONOUR: And we will adjourn until 9.30 tomorrow.

<THE WITNESS WITHDREW

10 MCDONALD: My solicitor is inter-State. Can he be excused if it turns out we are only going to be--

HER HONOUR: Yes, of course, thank you.

15 ADJOURNED TO TUESDAY 03 DECEMBER 2019 AT 9.30AM