

IN THE SUPREME COURT
OF NEW SOUTH WALES
EQUITY DIVISION

5 HENRY J

SECOND DAY: TUESDAY 3 DECEMBER 2019

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

15 HER HONOUR: Yes Mr McDonald.

ALKADAMANI: We are in the cross-examination of Mr Burke. The only housekeeping matter that has arisen is yesterday I made a call during the cross-examination of Mr Sattout for any other bank statements that recorded patent payment. My friend answered that call that there were no documents to produce. They have not made further enquiries about the matter which I don't complain about but if they want an opportunity to produce such documents--

HER HONOUR: They are going to have to produce them.

25 ALKADAMANI: Yes. Otherwise I will have to make a submission that they could not produce them.

HER HONOUR: Yes.

30 ALKADAMANI: And I just want to be clear on where I am going with that. I am not criticising them but that would be my position. So that deals with the only housekeeping matter I wanted to raise. I believe my friend has an issue.

35 HER HONOUR: Yes Mr McDonald.

McDONALD: On the issue that my friend has just addressed we would like the opportunity, there was a misunderstanding when I answered yesterday and said we had nothing to produce. I thought that ended the matter. However within 24-hours we will find whatever we will be capable of finding. It is a matter of how we could produce that in the circumstances of the proceedings, whatever is convenient to my friend and the Court should we find something. I would like that opportunity.

45 HER HONOUR: The 24-hours?

ALKADAMANI: No problem your Honour.

McDONALD: And produce it to my friend?

50 HER HONOUR: If you produce it to Mr Alkadamani, if you could do that and
.03/12/19

then obviously it will need to - if there is anything produced or not produced it may impact the submissions that will be made by the parties.

5 McDONALD: Second, your Honour, in cross-examination of Mr Cole I showed some documents to him. I now have the three pages. I have shown my friend. There was a bundle. I only referred to a couple of pages. Mr Cole took us to another. I have those pages which I tender.

10 EXHIBIT #1 E-MAIL DATED 26 SEPTEMBER 2016 FROM STEVE COLE TO MICROLATCH WHICH ATTACHES AN E-MAIL CHAIN, THE TOP E-MAIL OF WHICH IS AN E-MAIL DATED 26 September to 2016 from STEVE COLE TO MICROLATCH TENDERED, ADMITTED WITHOUT OBJECTION

<CHRISTOPHER BURKE, RECALLED ON FORMER OATH(9.36AM)

<CROSS-EXAMINATION BY MR ALKADAMANI CONTINUED

5

HER HONOUR

Q. Yes Mr Burke you realise that you are still under oath?

A. Yes.

10

HER HONOUR: Yes?

ALKADAMANI: Thank you your Honour.

15

Q. Could you please look at volume 3 of the Court book and turn to page 1220? Do you see that document?

A. Yes.

20

Q. You will recognise that document as the financial statements of the Super fund?

A. Yes.

25

Q. Can you turn to page 1229? You will see that is where the trustee makes the declaration?

A. Yes.

30

Q. Did you make - did you sign the declaration?

A. If I had to I would have signed it.

Q. Okay. So if anyone had to sign the Super fund financial reports, it would have been you?

A. Yes, it would have had to have been me, yes.

35

Q. And when was that you signed it?

A. Whatever year it was.

40

Q. Well it wasn't 2014. They weren't prepared in the year 2014 at all, were they?

A. Oh no they were prepared in 2016, yes.

Q. But they weren't lodged in 2016, were they?

A. I don't believe so.

45

Q. So do you know when they were lodged?

A. I believe they were lodged in 2017.

Q. Is that because you heard Mr Sattout's evidence yesterday?

A. Yes.

50

Q. Can you are turn over to page 1231? That's the electronic lodgement

declaration form. Were you the person that signed that on behalf of the Superannuation fund?

A. Yes I believe I would have been the person who signed it.

5 Q. You don't know anyone else that signed it on behalf of the Super fund?

A. I don't.

Q. Do you have a recollection of signing?

A. I don't have a direct recollection but I would accept that I signed it.

10

Q. Okay. Has the return, the electronic - has the - can you turn over the page, 1232? You will see that the electronic declaration on 1231 is in respect of the return that starts at 1232. Do you agree with me?

A. It looks like it, yes.

15

Q. Do you recall when that was lodged, the electronic lodgement declaration?

A. I believe they were lodged in, as per Mr Sattout's evidence, April 2017.

Q. Okay.

20

A. Or before.

Q. You don't have a recollection of that happening before, do you?

A. I believe as per Mr Sattout's evidence, I think he said no later than April 2017.

25

Q. You don't have a recollection of it happening in 2017?

A. No I don't have a recollection, no.

30 Q. Thank you. Now at that time , April 2017, the notice that you had received from the ATO that disqualified or barred you from being a responsible officer of the superannuation trustee had not been revoked, had it?

A. Mr Sattout said it was probably okay once we sorted it out, that it was probably okay to sign.

35 Q. At the time you signed and lodged the ATO notice saying that you could not be a responsible officer of a superannuation trustee or the director had not been withdrawn or revoked--

40 McDONALD: Objection. In fact it is not an objection. I might just wonder whether--

ALKADAMANI: Is it 128?

45 McDONALD: Yeah, the certificate.

HER HONOUR: Do you want a minute to have a discussion with your client subject to Mr Alkadamani's consent to discuss the issue?

50 ALKADAMANI: I object your Honour.

5 HER HONOUR: Yes, yes. I will adjourn. Mr Burke I am going to adjourn for a minute because Mr Alkadamani is asking you some questions which may raise questions of you giving rise to self-incrimination in respect of a possible offence. So I am going to adjourn the Court for a short time so you can speak to your counsel so he can give you some advice as to whether or not he might want to object to some questions.

WITNESS: Okay. Thank you your Honour.

10 HER HONOUR: That is the only issue obviously that you can talk to your counsel about.

WITNESS: Okay.

15 HER HONOUR: And then when I come back in I will probably give you a warning so that it is on the record in relation to these issues.

WITNESS: Okay. Thank you.

20 HER HONOUR: How long do you want Mr McDonald, ten minutes?

McDONALD: Ten.

25 HER HONOUR: Yes. Why don't I adjourn to ten to ten. If you need longer please just contact my associate. Thank you.

SHORT ADJOURNMENT

30 McDONALD: Thank-you your Honour for that time. I won't need to press the objection on the basis of raising the section 128 certificate issue.

HER HONOUR: Yes.

35 McDONALD: I don't need to take your Honour to that.

HER HONOUR: Yes.

40 McDONALD: But I raise the objection on the basis of relevance. What is the relevance of whether or not the notice or the suspension by the ATO had been revoked?

45 ALKADAMANI: Your Honour I am enquiring with the witness as to whether he had any capacity to sign the declarations and the financial statements that are relied on.

McDONALD: Your Honour that calls for a legal interpretation.

ALKADAMANI: But I'm asking for the--

50 HER HONOUR: Ask him whether or not he has signed at a particular time and

then the submission I think is going to be made based on that.

5 McDONALD: The last question was whether he had some notice or understanding that the taxation office ruling had been revoked rather than the timing issue. The timing issue I think has been addressed.

HER HONOUR: But isn't it rather as to whether or not he knows what that position is?

10 McDONALD: I didn't think that was the basis of the questioning.

ALKADAMANI: Well I will ask the question

15 HIS HONOUR: Ask the question but before you do, let me just speak to Mr Burke. Mr Burke, Mr Alkadamani is going to ask you some questions regarding the time at which you signed some of these documents which were referred to as financial statements and questions relating to, I think, the time at which you may or may not have been disqualified by the ATO.

20 They are matters that are potentially self-incriminating as your counsel might have explained to you. You have the right to object to answering those questions on the grounds that it may tend to prove that you have committed an offence or may be liable to a penalty.

25 If you do not object to answering the questions, the case will just proceed. If you do object it will become necessary for me to decide whether or not that objection is reasonable.

30 If I decide that there are no reasonable grounds, you will have to answer the question. But if I decide that there are reasonable grounds because it may incriminate you, I will uphold your objection and then will you have to choose whether to answer and if you answer I can issue you with a certificate under the Evidence Act which will mean that your evidence in response to those questions cannot be used against you in any other proceedings, unless of
35 course you give false evidence here today.

40 Even if you say that you do not wish to answer, I have the power to order you to answer if I believe it is in the interest of justice but if I do so I will hear from you and I will also issue a certificate if I find that you should answer.

WITNESS: Thank you.

HER HONOUR: Do you understand that?

45 WITNESS: Yes.

HER HONOUR: Thank you Mr Alkadamani.

50 ALKADAMANI

Q. Can I ask you to turn to page 1174 of volume 3? I ask you to read paragraph 18 of page 1174 of volume 3 to yourself and let me know when you have done so?

A. Yes.

5

Q. Do you see the sentence: "This caused the ATO to advise Burke that he was disqualified as a trustee of the SMSF"? A. Yes.

Q. That's correct, isn't it?

10 A. Yes.

Q. Can I ask you to turn to page 1209? You received that notice, the notice of disqualification?

A. Yes.

15

Q. Can I ask you to turn to page 1210? Under the heading "What you need to do", do you see the second paragraph under section 126K? I am going to ask you to read that to yourself?

A. Yes.

20

Q. Now at the time - and you received that document as well, didn't you?

A. Yes.

Q. You received it in late 2013, correct?

25 A. Yes.

Q. At the time that you signed the declaration at page 1231 the disqualifications by the ATO had not been revoked or rescinded, correct?

30 McDONALD: Objection. The witness' evidence was that he was unsure whether he had signed it. He was sure that if anyone was to sign it, it would be him but he--

HER HONOUR: He said he accepted that he signed it.

35

McDONALD: He accepted that he would be the person to sign it.

HER HONOUR: Well I've got "he believed that I would have been a person that signed, I accept that I signed", we can check the transcript. Sorry, I am just going on my note but if you want to clarify it in re-examination. I mean perhaps we can read back the transcript if possible.

40

COURT REPORTER: I will have to search for it because it was back a bit.

45 HER HONOUR: It was before the break.

COURT REPORTER: Okay.

HIS HONOUR: There was a question I think from Mr Alkadamani as to whether or not he had signed the document at Court book 1231.

50

ALKADAMANI: I may be of assistance your Honour, but I also subsequently asked a similar question to a similar effect there would be no-one else that would sign it.

5

McDONALD: That evidence is accepted but the witness identified the issue that if it was going to be anyone it would be him.

HER HONOUR: So you still uphold the objection to the question?

10

McDONALD: Yes. The question was put to him that he did as a matter of fact sign it.

HER HONOUR: Yes. Mr Alkadamani perhaps you could just rephrase the question slightly.

15

ALKADAMANI: Yes. In case this is going to be an issue I am going to clarify a couple of other things.

20 Q. Your evidence is that the electronic declaration at 1231 was lodged, correct?

A. Yes.

25 Q. Do you accept that it could not be lodged without the signature of the person that is required to make the declaration where it says signature of partner, trustee director public officer?

A. I expect.

Q. Do you accept?

30

A. I expect so. I expect so.

Q. Okay, so do you have a recollection of signing it?

A. No I don't have a direct recollection of signing it.

35 Q. Had the document been lodged?

A. Yes.

Q. How do you know?

A. I believe, well, Sam.

40

Q. How do you know it had been lodged?

A. My accountant told me that it had.

Q. So your accountant told you that it has been lodged

45

A. Yes.

Q. There is no-one other than you that would have been the person that would have signed the declaration?

A. There shouldn't have been anybody else to sign unless they signed on my behalf, I'm not sure. I'm not sure. I'm not sure.

50

Q. Did you authorise anyone to sign on your behalf?

A. I don't remember doing so.

5 Q. So, the sum of your evidence is this, you don't remember authorising anyone to sign on your behalf, correct?

A. I don't remember so.

10 Q. You accept that the person that would be the person that signed that document would be you?

A. Yes.

Q. You don't recollect signing it?

A. No direct recollection.

15

Q. You say it was lodged because Mr Sattout told you?

A. Yes.

Q. Did you receive any confirmation from the ATO that it has been lodged?

20 A. Not that I sighted. At this time I was in hospital with five percent kidney function so I almost died in April, June, July 2017. So my capacity to do a lot of things in the normal way wasn't, I wasn't capable. Five percent kidney function is quite an incapable, you know, state of mind and ability.

25 Q. I don't know. Mr Burke, you're changing your evidence now from what your evidence was earlier in the morning, aren't you?

A. I don't believe so.

30 Q. You think your evidence now is consistent with what you told the Court before the brief adjournment where you discussed with your counsel the issue of section 128 certificate?

A. I don't have a direct recollection. That hasn't changed.

35 Q. You did say in the morning that there was no-one else that would be the person that would sign the electronic lodgement of declaration?

A. I don't believe anyone else could sign it for myself but if Sam had a power of attorney. I'm not saying--

Q. Did Sam have a power of attorney?

40 A. Um--

Q. Did Sam have a power of attorney?

A. I don't recall.

45 Q. You don't recall?

A. I don't think so.

Q. Do you remember if you gave the man, Mr Sattout, a power of attorney or not?

50 A. I have given powers of attorney before.

Q. Did you give Mr Sattout one?

A. Especially in that state of health.

5 Q. Did you give Mr Sattout a power of attorney?

A. I don't remember doing so.

Q. Did your Super fund do so?

A. I don't remember.

10

Q. You are just making up possibilities to try and avoid your earlier evidence, isn't that the case?

A. I was incapacitated at the time.

15 Q. You are not incapacitated now, are you?

A. No.

Q. You are now making up evidence of new possibilities to try to get away from the evidence that you earlier gave this Court in relation to the signing of a document at 1231, correct?

20

A. Absolutely not, but there may be possibilities, that's all I'm raising. That's all I'm raising.

Q. Can I ask you to turn to page 1225? Do you see that?

25

A. Yes.

Q. Who was the administrator?

A. I suppose I am the administrator or my accountant is.

30 Q. Why were those details left blank?

A. I'm not sure.

Q. The trustee of Securicom (NSW) Superannuation Fund up until 2019 or - sorry I withdraw that.

35

QUESTION WITHDRAWN

Q. The trustee of the Securicom (NSW) Superannuation Fund at least until 2018 was Securicom (NSW) Pty Ltd, correct?

40

A. If you say so, I would accept it.

Q. Do you dispute it?

A. I don't dispute it.

45 Q. At all times until the liquidation, sorry, I withdraw that

QUESTION WITHDRAWN

Q. At all times since 2013 you have been a director of Securicom (NSW) Pty Ltd until its liquidation, correct?

50

A. I don't believe so. My son was a director at one stage.

Q. A sole director at one stage?

A. A sole director or a co-director, I'm not sure but my son was.

5

Q. But you have been a director of Securicom (NSW) Pty Ltd at all times from 2013 until its liquidation, correct?

A. I'm just saying I think my son was a director at some stage.

10 Q. Were you ever not a director of Securicom (NSW) Pty Ltd prior to its liquidation?

A. I believe at one stage I was not the director, my son was in place or in combination.

15 Q. If you were a director of Securicom (NSW) Pty Ltd after the disqualification notice from the ATO you know that you were breaching that disqualification notice, correct?

A. I don't believe I breached any, I don't believe I breached any notice.

20 Q. Do you accept Mr Burke that in relation to the declaration at page 131, if you been under the disqualification notice you were not entitled to sign that on behalf of the trustee of the Super fund?

A. I don't believe I was under disqualification at that time.

25 Q. Well the ATO disqualification has not been revoked, has it?

A. Sam said it's okay and they still haven't revoked it all this time so I just don't think they come back to revoke ever. They just leave it.

Q. Oh that's fanciful, isn't it Mr Burke?

30 A. That's the case today.

Q. You think the ATO does not tell you that a disqualification notice has been revoked?

A. I assumed that, yes. I did believe that, that they just leave--

35

Q. Do you seriously tell her Honour that the ATO does not inform you when they've revoked or rescinded a disqualification notice?

A. Well as Sam said they still haven't to this day so I am just assuming it is business as normal.

40

Q. Why wouldn't you assume that it means you're disqualified as per the notice?

A. I just assumed that that was all fixed.

45 Q. Is that your truthful evidence in this Court?

A. That's my honest evidence.

Q. That is fanciful Mr Burke and you know it?

A. No, I don't.

50

Q. That is a lie Mr Burke and you know it?

A. That is my honest belief.

Q. In - sorry did your Honour want to say something?

5

HER HONOUR: Yes, can I just verify something?

Q. Mr Burke when did you think that the ATO had revoked your disqualification if you hadn't heard from them?

10

A. When my accountant Sam Sattout told me.

Q. When was that?

A. Before all these things were signed, it would have been it's okay. That was the statement that Sam Sattout told me at the time your Honour.

15

Q. Didn't you have to sign the financial statements and advise the ATO of the error?

A. I believe that Sam Sattout had done that your Honour. Again I took Sam Sattout's advice and professional, you know, professional advice at that time and that's what he told me to do. That's what he told me was correct to do and legally okay to do. That's the truth your Honour. That's the truth and remember I was extremely sick, not to bring that up again, but I took the advice of my accountant at that time . I had no ability to look around that.

20

25

HER HONOUR: Yes. Thank you.

ALKADAMANI

30

Q. Mr Burke you have - can you turn to page 1220? That document ends at 1228, is that correct - no, it ends at 1230. Can you see at the top page 11 of 11?

A. Yes.

Q. Was there an independent audit report?

35

A. I'm not sure. I would have to ask my accountant.

ALKADAMANI: I call for any independent audit report in respect of the 30 June 2014 financial reports your Honour.

40

HER HONOUR: Yes Mr McDonald, can you take some instructions?

McDONALD: If that is called upon right now I have nothing to produce. I know that. I don't need to take instructions on that.

45

HER HONOUR: Yes, but shall we put it into the same category as the other material within 24-hours.

McDONALD: Yes your Honour.

50

HER HONOUR: So that is the audit report that is referred to on 1230

Mr Alkadamani?

ALKADAMANI: Yes your Honour.

5 HER HONOUR

Q. Mr Burke just so you understand Mr Alkadamani is calling for a copy of any independent audit report that is referred to on that page.

A. Yes your Honour.

10

Q. And you have 24-hours to produce it if you can find it. A. Thank you.

ALKADAMANI: I also call for a signed copy of the document at page 1231.

15 HER HONOUR: Yes.

ALKADAMANI: And a signed copy of the document at 1242 which is where the taxation makes a declaration your Honour.

20 HER HONOUR: Yes.

ALKADAMANI: And a signed copy of the document at 1241.

HER HONOUR: Yes.

25

ALKADAMANI: Thank you your Honour. I assume they go to the same categories as the earlier arrangements your Honour?

HER HONOUR: Yes.

30

McDONALD: Can I just clarify the one before, 1241?

ALKADAMANI: Yes, the one that I identified before I identified the page 1241 was the one at page 1242.

35

HER HONOUR: So there are four pages. 1230, 1231, 1241 and 1242, one of which is an independent audit report and the other is just signed pages.

McDONALD: Yes. Thank you.

40

ALKADAMANI

Q. Now in relation to the document that commences at page 1220 and finishes at page 1230 you have no e-mail whereby you attach that document and send it to Mr Cole or anyone at CPC, correct?

45

A. I didn't find it but I believe I did send it.

Q. While you were in hospital?

A. Um, yes, because Sam would have sent it to me and I would have forwarded it. I was still doing some work but very limited.

50

Q. You were doing things like power of attorney and sending things to--

A. Yes, if someone comes along with a document to sign, I would pick up a pen and sign it.

5

Q. So one of the things you would do when you were ill was to forward this to Mr Cole or CPC?

A. I am very diligent with e-mails. Normally I would open my e-mail every day.

10 Q. All right but you say you haven't found much in e-mail. That's correct too, isn't it. You just said that now.

A. I hadn't found an e-mail since Mr Cole.

15 Q. You hadn't found an e-mail sending the documents at 1220 to 1230 to anyone at CPC, that's correct, isn't it?

A. I haven't found that but I believe I sent it.

Q. Yes and when you say you haven't found it is because you have searched, correct?

20 A. I didn't search. When I'm in hospital I have this computer. When I am out of hospital I have that computer and it is seems very difficult to determine what day I had what computer or what device.

25 Q. When you say you have not found an e-mail, when you have said that earlier in response to my questions you meant you looked for such an e-mail and you had not found it, correct?

A. I had looked for it because I thought that he must have had it and it must have been me and I looked for it and I couldn't find it.

30 Q. When did you look for it?

A. Throughout the preceding days to Court.

Q. Yes, because you knew that would be important for this Court hearing, correct?

35 A. I just wanted to get - my accountant said I need to get all evidence of any interaction prior to Court so I looked for everything in total.

HER HONOUR: Can I just clarify something please?

40 Q. Mr Burke you said that you had different computers in hospital and out of hospital. Why would that determine whether you could find an e-mail or not?

A. You see it goes into my out box your Honour and--

45 Q. Yes, but that depends on the account, it doesn't depend on the computer, does it?

A. It depends on the computer your Honour because each computer has its own separate out box and unless you install that in the cloud, it's not on another computer.

50 Q. It's not on the cloud.

A. Yes.

ALKADAMANI

5 Q. Mr Burke you also have no e-mail sent to Mr Cole or anyone at CPC which attaches the documents at 1231 to 1242, correct?

10 A. I believe I sent them again. I haven't found them but again as I said also the computer is a mobile device, you know, it could be many different devices.

Q. Mr Burke you don't have an e-mail whereby you send the documents at 1231 to 1242 to Mr Cole or anyone at CPC, correct?

A. I couldn't find the e-mails that I believed I sent, correct.

15 Q. Right and your evidence that you believed that you had sent these documents to Mr Cole or CPC is not in your affidavit, correct?

A. Sorry, just say again sorry?

20 Q. Your evidence that you believe that you sent the documents at 1231 to 1242 is not in your affidavit?

A. Exactly, that's right I didn't write that down.

Q. Yes and similarly your evidence that you believe you sent the document at 1220 to 1230 is not in your affidavit, correct?

25 A. I didn't write that down, correct.

Q. And yet you know that part of your case is that CPC knew that the patents were owned by your Super fund, correct?

30 A. I believe they knew, yes.

Q. You know that that is part of your case, correct?

A. Yes, but I couldn't find it, so what can I do?

35 Q. Well, you could tell us in your affidavit that you looked and you believed that you sent it and you searched it on your computer but you cannot at the moment find it. You could have done that, correct?

A. Again I'm unsure, you know, I'm unsure. It was a - it was a period of time where, you know, it was over a year and I'm not sure. I can only say I'm not sure.

40

HER HONOUR

Q. Sorry, you're not sure that you sent anything or you're not sure--

45 A. I believe I sent it your Honour but I'm not sure where it is and I'm just not, you know, totally convinced. If I couldn't find it, whether I did or didn't, I just believe that I did.

Q. You believe that you did but you're not sure that you did?

50 A. Yes.

Q. Thank-you.

A. Exactly.

ALKADAMANI

5

Q. And you don't have a recollection, a specific recollection of doing so, that's true, isn't it?

A. I sent everything through that I think is pertinent.

10 Q. You have no specific recollection of having sent the document at 1220 to 1230 to Mr Cole or to CPC?

A. Correct.

15 Q. You have no independent recollection of sending the document at 1231 to 1242 to Mr Cole or CPC, correct?

A. Correct, but it is my belief that I did.

20 Q. I would like you to turn to volume 1 and we are looking at the share purchase agreement commencing at 170?

HER HONOUR: Volume 1?

ALKADAMANI: Why do I always say volume 1. It's volume 2 your Honour.

25 HER HONOUR: That's all right.

WITNESS: Sorry, volume 1?

30 HER HONOUR: Volume 2.

ALKADAMANI: Sorry.

35 Q. Mr Burke, when you signed the SPA, I am referring to the share purchase agreement - sorry, just for record, you understand I am referring to the share purchase agreement when I say SPA?

A. Yes.

40 Q. Thank you. When you signed the SPA you knew full well you were entering a transaction which involved CPC acquiring the shares of Securicom and Microlatch because those companies owned the business intellectual property, correct?

A. Legally, yes.

45 Q. When you signed the SPA do you say you knew full well that you were entering a transaction which involve CPC not acquiring the shares of - sorry, I will withdraw that because then there will be confusion.

QUESTION WITHDRAWN

50 Q. When you signed the SPA do you say you knew that you were entering a

transaction which involved CPC acquiring the shares of Securicom and Microlatch but that those companies did not beneficially own the business intellectual property?

5 A. Now I understand that, I understand beneficial, but at that time I thought that was legal. I thought that was - and at my state of mind I scanned the document. The only page I read was the page on the \$21-million so that was my interest, that was my interest.

10 Q. So is it the case that when you signed the SPA you believed that CPC was acquiring the shares of the companies that owned the entirety of the rights in respect of patents?

15 A. I believed I had the right to sign legally, yes, and that required a company, not a superannuation fund, and that was prepared by Charter Pacific and that was correct because they had all the details. I believed that that was the correct way to sign that document.

Q. You signed a document where you said the shares in the company that CPC are buying - sorry I withdraw that.

20 QUESTION WITHDRAWN

Q. You signed a document, namely the SPA which said that the companies Securicom and Microlatch owned beneficially and legally the assets of the companies, correct?

25 A. I understand the differentiation now, I understand it, but at that time I didn't.

HER HONOUR

Q. What did you understand at that time?

30 A. That the legal company name had to be in the document, it couldn't be the--

Q. No, what did you understand about who owned the business intellectual property at the time you signed the document?

35 A. So all I can say in layman's terms my superannuation fund owned the patents but it was represented by the trustee and in all representations, and Sam Sattout also told me I remember that ASIC only put the trustee down as a name.

40 Q. At the time you signed this document are you saying it is your evidence that you believed that your superannuation fund owned all of the business intellectual property?

A. I believe so, yes.

45 Q. All of the Microlatch ones as well?

A. I believe, I had to, you know, we purchased all but I think in hindsight we could say it's just Securicom but--

Q. What--

50 A. It's difficult your Honour.

Q. Well, I'm not sure I agree with that. Why is it difficult for you to say at the time you signed it what you were signing?

5 A. I believed it owned all the patents because that was the, you know that was it.

Q. What's "it"?

A. The superannuation fund your Honour.

10 ALKADAMANI

Q. Now Mr Burke you say you believed that the superannuation funds owned the patents, correct?

15 A. Yes.

Q. And under the share purchase agreement do you believe that CPC was acquiring the shares in the companies that beneficially owned the patents?

20 A. At the time I believed that's the way it's represented and if they succeeded they would have got the patents and we wouldn't in Court today.

Q. So you believed at the time you signed the SPA, CPC was acquiring the shares in the companies that beneficially owned the patents and business intellectual property, is that correct?

25 A. It is not exactly correct. It's because it was always in the superannuation fund. Those companies represented the superannuation fund so that the patents would come upon completion.

HER HONOUR: Sorry, can I--

30 ALKADAMANI:

Q. Microlatch - sorry.

HER HONOUR:

35

Q. Can I clarify? Did Microlatch represent the superannuation fund?

A. No your Honour.

ALKADAMANI

40

Q. So, did Microlatch have any patents that were part of the business intellectual property?

A. Microlatch had some patents, yes.

45 Q. That were part of the business intellectual property?

A. They would have been part of the patent portfolio, yes.

Q. Do you say the Super fund was the beneficial owner of those patents or not?

50 A. At the time I thought yes, but in hindsight now I am not sure.

Q. You mean now as in this witness box you are not sure that Microlatch--

A. Because of the legal, you know, the legal surroundings to that I'm not sure.

5 Q. Keep volume 1 open please. Turn to page 1223 of Court book volume 3?

A. Yes.

Q. There is an item referable to patents and trademarks in the assets column, do you see that?

10 A. Yes.

Q. Your evidence to her Honour is you are not sure whether or not that included the patents that were registered to my client, is that correct?

A. That is correct.

15

Q. So you don't know if that item included those or didn't?

A. I'm not sure because it's conjecture now.

20 Q. It's conjecture now? Is it conjecture now because you don't have any primary documents that record what it is that the Super fund supposedly purchased by way of patents?

A. The Super fund purchased patents in my view at the time was all patents. Now, there's conjecture.

25 Q. Because the Super fund - sorry I will withdraw that.

QUESTION WITHDRAWN

30 Q. How could you sign the financial statements or adopt them in these proceedings if you don't know what the asset that is referable to patents trademarks represents?

A. I believed all, I believed all. Your Honour, Securicom and Microlatch at the time I believe all.

35 Q. And sitting here in this witness box do you now say to her Honour that is wrong because it could not have included Microlatch, correct?

A. Because there is legal conjecture now and my solicitor disagrees with, you know, he has got another view point on that, so, it's legal conjecture your Honour. I don't know.

40

Q. Did you have the view in September 2018 that your Super fund owned the beneficial ownership of the Microlatch patents?

A. In 2018, yes, I believed it owned them all.

45 Q. In September 2018?

A. I believe so. I'm not sure when that changed, you know, when all the issues started to arise.

Q. So in September 2018--

50 A. It hasn't changed. It's just there's conjecture on it.

Q. In September 2018 you signed some documents prepared by Corrs, correct?

A. Yes.

5

Q. In relation to the Microlatch patents, correct?

A. Yes.

10 Q. And you signed documents which assigned the beneficial ownership of the patents to Microlatch, correct?

A. Yes.

Q. How could you have signed those documents if the Super fund owned it, owned the patents?

15 A. That's the legal conjecture I suppose that is arising.

Q. How could the Super fund have assigned the beneficial - sorry, how could you have assigned the beneficial ownership of the patents in September 2018 to Microlatch if the beneficial ownership was owned by the Super fund?

20 A. Because that's the legal argument I suppose that we're talking about now.

ALKADAMANI

5 Q. The truth is, you signed it in September 2018, the deeds, because the super fund didn't own the beneficial title to the patents, the Microlatch patents; that is correct, isn't it?

A. I believed it did. I believed it did.

Q. And yet you signed a deed on 24 September 2018; is that true? Is that your evidence?

10 A. I signed it, yes. But I believed the super fund bought all patents.

HER HONOUR

15 Q. Why did you sign a deed assigning the legal and beneficial ownership in five patents?

A. Because I believed, you know, that I still had the authority to do that, your Honour. Again, it might be my mistake; it might be my mistake.

20 Q. No, when you signed that deed, you signed it thinking that you had authority to assign?

A. But because, you know, the super fund was, you know, holding, so I--

Q. When you signed the deed, did you believe that you had authority to sign over the beneficial and legal ownership of the patents?

25 A. Your Honour, I don't think I read the deed very well. I just signed what they told me to sign and that's what I--

Q. And when you signed it, what did you believe you were signing?

30 A. I'm not sure, I don't recall. I honestly don't recall. If they gave me a document to sign, I signed it, your Honour, in good faith.

ALKADAMANI: The document is at page 479 - sorry, it isn't, I apologise.

35 HER HONOUR: I think it is in your opening bundle.

ALKADAMANI: Yes. I knew that opening bundle would be useful for me.

HER HONOUR: I'm not sure the witness has a copy.

40 ALKADAMANI: No, but it has the court book page number, so I will be able to ask the witness to turn to it. It will be in volume 4 I imagine of the court book, page 581.

Q. Could you turn to volume 4, page 581, please?

45 A. (No verbal reply).

ALKADAMANI: My friend tells me that they haven't included it, your Honour.

50 HER HONOUR: Yes, I did know somewhere--

ALKADAMANI: I wasn't told that things had been excluded. I thought it was the whole second half of the exhibit.

McDONALD: Whether I told--

5

HER HONOUR: I must say I did notice that there were some pages missing when I was going through some of the materials yesterday.

10 ALKADAMANI: There were pages notified to us that were said to not be relevant to the patent ownership issue and we agreed they would all be taken out, because they went to the misleading and deceptive conduct issues, so they weren't introduced. My friend says he told me. In any event, I will tender the opening bundle, your Honour, even though it mainly reproduces the documents.

15

HER HONOUR: Yes.

ALKADAMANI: Did I give your Honour two copies of the opening bundle?

20 HER HONOUR: No, we have only got one and I have marked mine up. Mr McDonald, is there any objection to the opening bundle?

McDONALD: No, your Honour.

25 EXHIBIT #C PLAINTIFF'S OPENING BUNDLE, CONTAINING DOCUMENTS
NUMBERED 1 TO 10, TENDERED, ADMITTED WITHOUT OBJECTION

30 ALKADAMANI: Your Honour, I will hand up to the witness a copy of pages 581 to 592 and I will just check that they correspond to tab 5. Tab 5 ends at 590, so I will hand it up.

Q. Now Mr Burke, page 581 records your signature, correct?

A. Yes.

35 Q. And at this time you were legally represented by Mr McCartney?

HER HONOUR: Sorry, page 581--

ALKADAMANI: 581 is the commencement.

40

HER HONOUR: You said 581 has a signature, no, 589.

ALKADAMANI: I was pointing to 589. Sorry, I meant to say 589 and I just--

45 HER HONOUR: I have got 587 with the signature of the witness.

ALKADAMANI: I misread that, I apologise.

HER HONOUR: That's all right.

50

ALKADAMANI: So I may have made two mistakes there.

Q. 587 contains your signature?

A. Yes.

5

Q. This is dated September 2018; you can see that from page 582. Do you agree with that?

A. Yes.

10 Q. At this point in time, the hearing before Justice Stevenson had been heard, correct?

A. Yes.

Q. And you signed that deed as part of order 7, correct?

15 A. This was prior to - this was in November 18, September 18, was it?

Q. Yes.

A. Prior to Justice Stevenson, I think.

20 Q. Well, I'm just going to show the witness - could you look at page 44 of volume 1?

A. Oh, okay yeah. Sorry, okay, sorry.

25 Q. You signed the deed at page 581 in part, to partly comply with order 7 of Justice Stevenson - of this Court's orders, correct?

A. Sorry, to comply? I'm not sure that I signed this one to comply.

Q. At the time that you signed this deed in September 2018, you were represented by Mr McCartney, correct?

30 A. Not on all matters. So--

Q. Well, Corrs didn't send you this proposed deed directly. They sent it to Mr McCartney; correct?

A. I'm not sure. If you say so, I will accept it.

35

Q. Did you receive anything from Corrs directly after the hearing?

A. Yes, I signed some documents from Corrs.

Q. Did you receive them directly from Corrs?

40 A. No, I believe my accountant - I believe Mr McCartney received those.

Q. And you received them, including this deed, correct?

A. I'm not sure about this deed.

45 Q. In September 2018, Mr McCartney was representing you?

A. Yes.

Q. And Mr McCartney - and you were - sorry, this deed was sent by - you received a copy of this deed from Mr McCartney, correct?

50 A. I don't remember. I don't remember receiving this deed from Mr McCartney

at that time. I signed some documents from Corrs. I remember signing that.

Q. Do you remember why you signed it?

A. The document?

5

Q. Why did you sign this deed?

A. I'm not sure. I'm not sure why I signed it.

Q. Well, the patents are described at page 588. Do you see that?

10 A. Right, yes.

Q. Microlatch patents and Securicom patents?

A. Yes.

15 Q. They are very valuable--

HER HONOUR: Sorry, what page was it?

ALKADAMANI: 588.

20

Q. They are of commercial value, those patents, aren't they?

A. I'm not sure.

25 Q. You are not sure. And so your evidence to this Court is you are not sure if these patents are of any value; is that right?

A. They, they, they are deemed to be, if they are litigated or enacted upon, yes, there's potential. There's potential.

30 Q. And you were just giving up this potential for no consideration. What were you getting for signing this deed Mr--

A. I believe I'm just complying with orders at this time.

Q. You are just complying with order 7, that's correct isn't it, Mr Burke?

A. That's what I was told to do. That's what I did.

35

Q. Who were you told that by?

A. Well, by the judge at the time to--

Q. Well, the judge didn't say, "Mr Burke, please sign this deed"?

40 A. No, but that was the order, so we enacted the order.

Q. Who is "we"?

A. Well, Corrs, McCartney and myself.

45 Q. Right. So it is correct that you signed this deed in part compliance with order 7, correct?

A. Well, in compliance.

Q. Okay. You say in compliance, full compliance with order 7; is that right?

50 A. Yes. I believe that was, that was all done correctly.

Q. Now, those patents you say were beneficially owned by the super fund, the patents the subject of the September 2018 deed; your case is that they were owned by the super fund?

5 A. Yes.

Q. Isn't that correct?

A. Yes.

10 Q. They are part of the assets that are listed at page 1223 of the court book in the financial reports of the super fund, correct?

A. Yes.

15 Q. And yet you say you assigned them the legal and beneficial ownership to Microlatch Pty Limited and Securicom New South Wales Pty Limited, correct?

A. I signed what they gave me to sign.

Q. Well, you were legally represented at that time, correct?

20 A. I signed what I was told to sign.

Q. You were legally represented at that time, weren't you, Mr Burke?

A. I received no, no, no, no other information than to do what I had to do and that was to sign that document from Corrs.

25 Q. And you didn't say to Corrs, "I can't assign the beneficial ownership in these patents, because they belong to the super fund", did you?

A. I didn't understand "beneficial" or "legal" at that time. I didn't know the difference.

30 HER HONOUR

Q. Sorry, can I just clarify that answer? I think you are saying that you didn't understand the difference between the beneficial and legal ownership of patents at the time you signed this deed?

35 A. At the time, yes, your Honour.

Q. When you signed the SPA, did you understand the difference between a beneficial and legal ownership?

40 A. No I didn't, your Honour. I didn't understand the difference.

Q. But who do you believe owned the patents at the time?

A. Always the superannuation fund, your Honour, always, always, because that was, that was--

45 Q. The legal and beneficial ownership?

A. Now I can understand "legal" and "beneficial".

Q. At the time? I'm asking you, at the time?

50 A. No, sorry your Honour, at the time I didn't, I didn't know the difference.

Q. So at the time--

A. I just thought it was the legal - sorry, I just thought it was the legal owner that was capable to sign, not, not, not the beneficial wasn't--

5 Q. But you just said that you understood that the owner of patents was the super fund?

A. Yes.

Q. At the time?

10 A. Yes. So now I'm saying the legal owner is capable to sign and - but the beneficial owner, you know, is still--

Q. No, no, I'm just trying to understand your evidence, Mr Burke. I think you have said that at the time you signed the SPA, and the time you signed this deed, you believed that the super fund was the owner of the patents?

15

A. Absolutely, yes.

Q. Is that right?

A. Yes.

20

Q. And it is your evidence that at that time you did not understand any difference between a legal and beneficial ownership?

25

A. I didn't think the owner of patents, being the super fund, had to sign. I just believed that the company represented that fund and it's not - I know it's incorrect now, but I believe that company would always sign on behalf of representing the superannuation fund, if that makes sense now. It probably doesn't.

Q. So you believed that when you were signing these, you were signing on behalf of the superannuation fund?

30

A. Exactly, signing for the company that, you know, represented, or was--

Q. So you believed that you were assigning, from the superannuation fund, to the extent they owned it, these patents?

35

A. I believed that I had the rights to do that, at least from the superannuation fund yes, your Honour.

Q. So you believed that the superannuation fund was effectively assigning the rights to these patents to Microlatch and Securicom?

40

A. Via the trustees, yes. I believed that.

Q. So sitting here today, do you believe that the patents are still with the superannuation fund?

45

A. Absolutely, but now I understand it is the beneficial owner. I understand that the terminology of that must be, it must be stated in those documents correctly. I understand that now, but at the time, I didn't.

HER HONOUR: Yes.

50 ALKADAMANI

Q. Mr Burke, you signed some deeds in November 2017, correct?

A. Yes.

5 Q. Who drafted those?

A. I'm not sure who drafted them. It might have been a draft of, from patent attorneys or something. It might have been a template, sorry.

Q. You don't know where you got those documents from?

10 A. No.

Q. Did you pay for them?

A. No.

15 Q. Now you signed those deeds. When did you show those deeds to Mr McCartney?

A. I'm not sure.

ALKADAMANI: I will have to come back to the September deed, your Honour.

20

Q. Go to page 954, please of the court book. It is in volume 3.

Just a housekeeping matter, your Honour, I tender that September deed.

25 HER HONOUR: It is part of exhibit B--

ALKADAMANI: I forgot that.

HER HONOUR: So page 954?

30

ALKADAMANI: Yes, your Honour.

Q. So 956 and 957 there are some signatures. Are they your signature?

A. Yes.

35

Q. Can you turn to page 960? Do you see that's another deed?

A. Yes.

Q. And at 962 and 963 there are some signatures. Are they your signatures?

40

A. Yes.

Q. And at 959, we have a schedule of patents in respect of the first assignment?

A. Yes.

45

Q. And at 965, 966 we have another schedule in respect of the second patent that I showed you?

A. Yes.

50 Q. Who put the schedules together?

A. It would have been myself.

Q. And you don't know where you got this deed from?

A. Template. No, I'm not sure.

5

Q. Did you read it?

A. Yes.

Q. What did you think the document was doing?

10 A. It was assigning the registered owner of the patents.

Q. And were you careful to make sure it was assigning the registered owner and not the beneficial ownership of the patents?

A. Yes, no, always.

15

Q. You were careful to make sure that you were not assigning the beneficial ownership?

A. Because the superannuation fund held the beneficial ownership.

20 Q. So you were aware that you couldn't assign the beneficial ownership; is that correct?

A. I believed that that company represented the legal ownership - the beneficial ownership.

25 Q. When you signed the November deeds, were you careful to ensure that the beneficial ownership was not being assigned to CJ Burke Nominees Pty Limited?

A. That's right, just you know, it was just the registered owner, the legal owner in this case.

30

Q. By that do you mean just the legal owner, the legal title and not the beneficial ownership?

A. Yes, I do.

35 Q. Is that what you mean?

A. Yes.

Q. But what care did you take - sorry, and is that because the

40 superannuation - you would be in breach of your duty to the superannuation fund if you were moving the beneficial ownership of the patents from the super fund to CJ Burke Nominees Pty Limited?

A. Never wanted to move the beneficial ownership. I never wanted to move it. It always stayed with the superannuation fund.

45 HER HONOUR

Q. Mr Burke, can I just please interrupt here, Mr Elkadamani. I thought you gave evidence earlier that at the time that you signed the SPA, which was in 2017--

50

ALKADAMANI: Sorry, that was 2016, your Honour.

HER HONOUR

5 Q. 2016 - sorry, at the time you signed the September 2018 deed, you didn't understand the difference between a beneficial and legal ownership?

A. It was only recently, your Honour.

10 Q. Yes, then how could you have been concerned to ensure, at the time you signed the 2017 deed, that you weren't assigning the beneficial ownership?

A. Because it never changed. You know, Justice Stevenson wanted everything back to, to before or--

15 Q. I'm asking a question as to why you say that the 2017 deeds that we are just talking about now, the assignments, you were concerned to ensure that the beneficial ownership was not transferred, when you did not know at that time the difference between legal and beneficial ownership?

20 A. So, it was always sitting there in the superannuation fund and I never, never believed that it was necessary to bring that out as an entity. So I signed on behalf of those companies, your Honour. That's absolutely true. You know, that's - that's how I, that's how I - that's how I believed it was to be done and Charter put together the SPA. It was all their work.

25 Q. I'm not talking about the SPA, Mr Burke. I'm talking about--

A. Yes, I know, your Honour.

Q. --the assignment of patents?

A. That's what I believed.

30 Q. In November 2017, you believed that you were assigning all of the ownership of the patents, were you, to CJ Burke Nominees Pty Limited?

A. Yes, but the beneficial, in my mind, the beneficial ownership always was with the superannuation fund, just sat there.

35 Q. Sorry, Mr Burke, you have told the Court that you didn't understand the difference?

A. No. When I - when I use the term "beneficial" now, it is, it is from present day.

40 Q. At the time that you signed these deeds, did you understand, or did you believe that you were assigning the entirety of the ownership of the patents to CJ Burke Nominees Pty Limited?

A. I believed that I wasn't moving them out of the super fund and that I was just--

45

Q. Well, what were you actually doing?

A. The legal ownership, or the registration ownership was going to be back to, put back to what it was before, so what it was before--

50 Q. No, no, Mr Burke, I'm asking you what you believed you were doing when

you assigned the patents from Microlatch to CJ Burke Pty Limited on 18 November 2017?

A. Your Honour, I was moving the registered ownership to those companies, the registered ownership to those companies.

5

HER HONOUR: Thank you, Mr Elkadamani.

ALKADAMANI

10 Q. And when you signed that document in November 2017, those deeds, your case is - I withdraw that - when you signed the document in November 2017, you could not move the beneficial ownership of the patents to CJ Burke Nominees Pty Limited for a mere \$1, correct?

A. I couldn't move it. It was in the super fund, so.

15

Q. And the super fund would be very much at the receiving end of an improvident bargain if it received \$1 for the beneficial ownership in return for giving up the beneficial ownership of the patents, correct?

A. It never did give up the beneficial ownership. Never.

20

Q. Well, have a look at clause 2 on page 954.

A. Yes.

Q. Have a look at clause 8(1)(c) at page 955?

25

A. Yes.

Q. Now, do you seriously tell the Court that by reason of the 18 November 2017 deed, the super fund still retained the beneficial ownership of the patents in the schedules to the November deeds?

30

A. Absolutely. The super fund was never nominated in these agreements. It was never giving up the beneficial ownership. Never. At those days I wouldn't have used the word "beneficial", but it would never give up the patents. It would never assign them anywhere. Never wanted to move them out of there.

35

Q. Look at page 960. You will see that the assignor is Securicom New South Wales Pty Limited?

A. Yes.

Q. The assignee is CJ Burke Pty Limited?

40

A. Yes.

Q. In 2017 CJ Burke Nominees Pty Limited was not the trustee of the super fund, correct?

A. Correct.

45

Q. Nor was it the trustee in 2018, correct?

A. Correct.

50

Q. Now, look at clause 2 again and look at clause 8 on page 961, including 8(c)?

A. Yes.

5 Q. By that deed, commencing at page 960 of the court book, Securicom was indeed recording an assignment of the beneficial ownership of the patents in clause 2, isn't that correct?

A. I used templates and I, I absolutely tell you that I believed those companies only represented Securicom superannuation fund and the superannuation fund never let go of those patents.

10 Q. Notwithstanding whatever is in the documentation?

A. Notwithstanding whatever is in these templates, exactly.

Q. That you signed?

A. That I signed, yes.

15

Q. As at August 2019 you and Mr McCartney were saying that those assignments in the 18 November 2017 deed were valid assignments, correct?

A. There was conjecture about that as well.

20 Q. Can I ask you to turn to page 754 of the court book, volume 2. It is also tab 9 of the opening bundle.

A. Yes.

25 Q. Now, 756, you will see Mr McCartney asserting in August 2019 that the assignments executed in November 2017 are predominant and enforceable?

A. Yes.

Q. This email chain includes emails in which you either write an email or are a recipient of an email?

30 A. Yes.

Q. At page 758 you write an email?

A. Yes.

35 Q. The deeds to which you refer in that email in the first sentence are the November deeds?

A. November 17 deeds?

Q. Yes.

40 A. Yes.

Q. You are asserting again that those deeds are valid deeds in respect of the patent rights; correct?

A. In that email, yes.

45

Q. Mr McCartney's email at page 756 refers to those deeds. Do you see that?

A. Yes.

50 Q. That is because he had a copy of them when he wrote the email. You provided him with copies, hadn't you?

A. Yes.

Q. And the assertion in August 2019 was that the beneficial and legal title had been assigned to CJ Burke Nominees Pty Limited, correct?

5 A. Never. It never left, the beneficial ownership never left the superannuation fund. There is no document assigning anything out of superannuation fund. Never.

Q. Mr Burke--

10 A. Never.

Q. --how can you say that, in the face of clause 2 of the November 2017 deeds?

15 A. As I've explained, tried to explain, I believed the process was done by those companies, but the beneficial ownership, the patents always remained in my superannuation fund. Otherwise I would have signed the document from the superannuation fund. I never did, and so I always believed that.

HER HONOUR

20

Q. When you say "the process", what do you mean by "the process"?

A. The process, or the representation, so any documents was always signed by those companies as representing the superannuation fund. You know, that's just what I believed, your Honour.

25

Q. But if they were representing the superannuation fund and they were signing a document that says, "We assign all of the rights in the patents", was it your understanding that they were assigning the rights in the patents on behalf of the superannuation fund?

30 A. No.

Q. Well then, what were they doing?

A. They were registering the ownership, changing the registered ownership, so that's all. You know, just what was in those registration documents around the world was the name of the companies. That was representing the patents. And I just didn't believe the superannuation fund could act in those agreements, you know. That was, that was my belief that the superannuation fund was always locked away, it wasn't a real company, you know, it's a fund. So I just didn't think that it was capable--

40

Q. When you signed the SPA, you did not think that the superannuation fund patents were actually owned by the companies that the shares were being acquired in?

45 A. No, absolutely. It was always in the superannuation fund and Steve Cole knew that and he drafted the SPA.

Q. I'm not asking about what Mr Cole knew. I'm asking about what you believed the position was when you signed the SPA?

50 A. And I trusted Steve Cole's opinion that those companies--

Q. No, no, I'm not asking you about Mr Cole's opinion. I'm asking you about what you believed the ownership of the patents, where the ownership of the patents resided at the time you signed the SPA?

5 A. Always with the superannuation fund, your Honour. Always, always. It was just a given fact. We had tax documents. We had all the facts of this superannuation fund owning the patents and I never signed the document to move them out of that. So that was my mindset. Otherwise I would've put the superannuation fund in a document. I never did. That was my mindset.

10 Q. So you are selling shares in a company that owned no patents?

A. That was representing the patents, absolutely. That represented the patents.

Q. That represented the patents, but didn't own them?

15 A. Yes, exactly. Beneficially didn't own them, but legally.

Q. But you didn't understand the difference between--

A. I didn't understand the difference at the time, your Honour.

20 Q. So at the time you were signing the SPA, you were selling shares in a company that had no ownership rights to those patents?

A. No beneficial ownership rights.

Q. No, no.

25 A. Sorry.

Q. I'm asking you at the time you signed the patents - the SPA, you say that they were owned by the superannuation fund?

A. Yes.

30

Q. So at the time you signed the SPA, you say that you were selling shares in a company that did not own the patents, is that what you are saying?

35 A. Yes, but I didn't realise at the time, your Honour, yes. In hindsight now yes, that's right, that is correct. But at the time I believed that was the process or the way the - legally portrayed, the companies had to be actual companies and I believed that SPA Steve Cole wanted those companies in there for the listing. So I took his expert, you know, document, you know. I believed that that's the way it was to be portrayed, or to be legally represented or, you know, I just believed that was the way it was to be done. I did believe that.

40

ALKADAMANI

45 Q. Mr Burke, you also believed that CPC was not getting the companies that owned the beneficial title to the patents until such time as your superannuation fund took a further step of transferring the patents to the companies that CPC was buying the shares in?

A. I never signed anything out of the superannuation fund. It always remained there.

50 Q. Please, can you answer my question?

A. Sorry, yeah. Say again.

5 Q. You believed that under the SPA, CPC would not get the beneficial ownership of the patents until your super fund decided to transfer the beneficial ownership of the patents to Securicom New South Wales Pty Limited and Microlatch; correct?

A. I believe that once they complete, they get the patents, yes.

10 Q. Is that a "yes" or a "no"?

A. No, I don't think the words that you said are correct.

Q. You disagree with me?

A. Yes.

15 Q. Okay, thank you. Can you turn to volume 1 at page 5. You should start at page 3. You can see that that's the commercial list statement filed on your behalf. You will see that the legal representative is Mr McCartney "filed for Christopher Burke" and responded to, page 3. Do you see?

A. Yes.

20

Q. This is your cross-claim?

A. Yes.

25 Q. Okay. Can you turn to page 5?

A. Yes.

Q. Look at paragraph 9 and 10.

A. Yes.

30 Q. What those paragraphs are saying is as follows: "The beneficial ownership in the patents"--

HER HONOUR: Sorry, 9 and 10 of the commercial?

35 ALKADAMANI: Sorry your Honour, it is page 5. "Nature of the dispute". The assertions there, the paragraph.

HER HONOUR: Yes, thank you.

40 ALKADAMANI: I apologise.

HER HONOUR: No, that's all right.

ALKADAMANI

45

Q. Your case is that for the companies whose shares you were selling under the SPA to receive the beneficial ownership of the patents, required a further agreement to be implemented and performed whereby the SMSF transferred the beneficial ownership of the patents to Securicom, correct?

50 A. I didn't believe that was another agreement. I just believed that I had to

perform that role.

Q. Well, it had to be another agreement, because it wasn't part of the SPA?

A. If they succeed, they get the patents. Simple.

5

Q. It wasn't part of the SPA, was it?

A. It was simple in my mind.

Q. Is the agreement pleaded at paragraph 9 on page 5, part of the SPA?

10 A. I'm just giving you my mindset, what I believed.

Q. I'm asking you a question. Do you say that the agreement at paragraph 9 is part of the SPA, or is it a separate agreement?

15 A. "Would be transferred upon completion", I read that as exactly what I have said.

Q. That paragraph 9 is not part of the SPA, is it?

A. Oh sorry, no, no it's not part of the SPA.

20 Q. It is an agreement outside of the SPA, correct?

A. Sorry yes, you are correct, yeah. But in my mind it was a, it was a, you know, a process that was going to be done upon completion.

Q. CPC is not part of the agreement pleaded at paragraph 9, correct?

25 A. CPC is not part of that clause?

Q. The agreement that your case propounds, insofar as the movement of the beneficial ownership of the patents from the super fund to Securicom requires the Court to find there was an agreement to which CPC was not a party, correct?

30 A. I would have had to do that, yes.

Q. But CPC was not a party to the agreement that you say existed in paragraph 9, correct?

35 A. They must have known, because they knew about the superannuation fund.

Q. Mr Burke, I don't want you to tell me any more about what someone else must have known, because you don't know what is in their mind, Mr Burke.

40 Just tell me what is the answer to my question?

A. Sorry, I believe they knew.

Q. Mr Burke, thank you. I want to ask you about your views as to the agreements, yours. I don't want to ask you about is Mr Cole's or Mr McCartney's. I will make that clear, okay?

45 A. Yes.

Q. I want to know what your views are and your evidence is.

A. Yes.

50

Q. Thank you. Now, CPC was not a party to the agreement at paragraph 9, correct?

A. Correct.

5 Q. On your case the only way that the beneficial ownership in the patents gets to Securicom, is if the agreement in paragraph 9 is implemented, correct?

A. Yes, correct.

10 Q. So under the SPA, on your case, CPC does not acquire the shares in companies that own the patents, correct?

A. Yes. They were represented by companies.

Q. But the companies that were doing the representing?

A. Yes.

15

Q. That you say did not beneficially own the patents?

A. Correct.

20 Q. So CPC's agreement with Securicom and Microlatch involved, on your understanding and belief, that they would get no beneficial ownership of the patents under the SPA, is that correct?

A. I didn't believe so at the time. There was a - in my mind it was, you know, asserted that that's what would happen.

25 Q. CPC was acquiring assets, namely, the shares in your companies under the SPA; correct?

A. Correct.

30 Q. And the SPA, you understand, contained the rights of CPC in respect of Mr Burke, Microlatch and Securicom; correct?

A. Correct.

Q. CPC is not part of the agreement in paragraph 9; correct?

A. Paragraph 9? Correct.

35

Q. So under the SPA, it inevitably follows on your case that CPC was not acquiring the beneficial ownership of the patents; isn't that right?

A. I wanted to give CPC the patents for 21 million.

40 Q. Is the answer "yes" or "no"?

A. It is not right, because I wanted to give the patents up.

Q. Under the agreement, on your case, under the SPA, on your case--

45 A. You look at it now, yes, yes. But at the time I thought it was the representation, correct representation and I wanted to sell those patents. Absolutely wanted to sell.

50 Q. Mr Burke, you are saying you wanted to sell, but what you are actually telling the Court is you wanted to sell, but didn't do so under the SPA; is that right?

A. I didn't understand the manner of presenting that in the document. I didn't understand. I believed that was correct.

5 Q. You didn't understand that you had to tell CPC there is another agreement that is required which you have to perform, which involves a super fund transferring the beneficial ownership to the companies that you, CPC, are buying under the SPA?

10 A. I don't believe it is another agreement. I just believe it's a process that I would do--

Q. Paragraph 9 pleads another agreement, doesn't it?

A. In my mind, if it is an agreement, it's just a process, whatever it is. I wanted to sell the patents. Absolutely wanted to sell.

15 Q. Well, did you sell them under the SPA or not?

A. (No verbal reply).

Q. Did you sell them for the shares in--

20 A. If the SPA had completed, yes. If it had completed, absolutely yes.

Q. Including the beneficial ownership?

A. If they did what they said they were going to do, yes, they had everything.

Q. Irrespective of paragraph 9?

25 A. Irrespective of the documentation. I'm in hospital, I wanted to sell the patents.

Q. Mr Burke, this pleading was filed in November 2019, the pleading that I'm taking you to at page 5?

30 A. Yes, I understand.

Q. Do you say that that agreement in 9 was a necessary agreement to be implemented for CPC to acquire - sorry - I withdraw that. Do you say the agreement in paragraph 9 was necessary, if the companies that CPC was buying the shares in, were to have the beneficial ownership of the patents?

35 A. Yes, I believe that. To me at that time it was just a process, okay, it's an agreement, but it's, it's just a step that I wanted to take upon completion.

40 Q. So your evidence is that under the SPA, CPC did not get the shares in companies that beneficially owned the patents?

A. I believed it was a legal representation at the time. I believed that.

HER HONOUR

45 Q. When you say you believed a legal representation at the time, what do you mean by that?

A. Because I thought the superannuation fund couldn't be put into a document. It always had to be represented by the trustee and Sam Sattout told me that ASIC always uses a trustee as the name, not the beneficial owner.

50

Q. So is it your evidence that when Securicom Pty Limited was actually a party to the SPA, it was there as trustee for the superannuation fund and it was selling the shares?

5 A. The superannuation fund patents, yeah, it was representing the superannuation fund patents portfolio. That was my belief, your Honour. Absolutely.

Q. So that CPC would acquire shares in the companies and would obtain the ownership of the patents entirely?

10 A. Once the SPA was completed, absolutely.

Q. No, at the time you signed the SPA?

15 A. At the time I signed, I believed they were representing the ownership, that they, they were the legal representation of the ownership of the patents. So you couldn't put the superannuation fund into that agreement, your Honour. I believed that. Right or wrong. Obviously it's wrong, but that's what I believed.

HER HONOUR: Yes, thank you.

20 ALKADAMANI

Q. A number of times you have said that you signed the SPA and you had no legal advice. Do you know a Mr David Baker?

25 A. Yes.

Q. You asked him to look at the SPA, didn't you?

A. Yes, but I had no money to pay and I wasn't--

Q. He is a barrister, isn't he?

30 A. I'm not sure.

Q. Or a solicitor?

A. Solicitor. Just a friend.

35 Q. And another friend that you asked to look at it and speak about the SPA with is Clinton Smith and his wife?

A. Yes.

Q. That's correct, isn't it?

40 A. Yes, yes I tried. I just had no money.

Q. Mr Burke, is it the case that - was Banque Tech a company that was listed in the UK on the AIN?

45 A. Yes.

Q. Could you spell that for the court?

A. B-A-N-Q-U-E.

50 Q. And did you have some involvement with gaining some control over that company?

A. Yes, I sold some technology into that company.

Q. And was that company then listed on the Australian ASX?

A. Yes.

5

Q. What was your involvement in the listing on the Australian ASX of that company?

A. It was zero.

10 Q. Zero involvement?

A. Yes.

Q. Have you not told people and made statements that you were involved in its listing on the ASX?

15 A. I was party to it. I wasn't involved in the listing process.

Q. You were so, weren't you?

A. I was not.

20 Q. Not at all?

A. Not at all.

Q. Haven't you put out statements that you have?

25 A. If I had, it was misconstrued. I wasn't involved in the listing process absolutely. It is not my expertise.

Q. What did the listing process involve?

McDONALD: Objection.

30

ALKADAMANI: I won't press it, your Honour. I want to get on with this.

35 Q. Now, if going back to the SPA, if your - I withdraw that - if your super fund was the beneficial owner of the patents, you were lying to CPC in giving the warranties as to the companies owning the business and the business intellectual property, isn't that right?

A. I didn't believe at the time that was right, no, and they had access to my accountant. They had full, total access to every accountant.

40 HER HONOUR

Q. Sorry, did you say you didn't believe it was right at the time?

A. The words that were used, I say, were not correct. At the time I believed everything was correct.

45

Q. At the time you believed it was correct?

A. Yes.

ALKADAMANI

50

Q. So at the time you believed, at the time of signing the SPA, you believed that the warranties were correct?

A. I believed everything was correct. I believed it.

5 Q. You signed warranties making promises as to the correctness of a certain state of affairs; do you accept that?

A. From a hospital bed, yes. Yes, I do. Look, I scanned the document. I scanned the document and my belief is my belief.

10 Q. You were not in hospital when you signed this?

A. I was really sick, on my way to hospital, on my way down to the, you know, to--

Q. Were you travelling to the hospital?

15 A. Sorry, no, that was wrong. I say "on my way into hospital", because of my illness and I scanned documents and I do scan documents.

HER HONOUR

20 Q. Sorry, you were in hospital, were you--

A. Sorry, not at that time, your Honour.

Q. --in September 2016?

25 A. No, it was in 17, yes. It was in 17, sorry. When I say I was in hospital, your Honour, I meant that, you know, that I was at that stage, I should have been in hospital.

ALKADAMANI

30 Q. So you sign a document. Can we go to page 470 of the court book, please? It's volume 2. We had a look at these warranties briefly yesterday. Page 516 you will see a warranty as to undisclosed liabilities. You want the Court to believe that you didn't really read that, is that the case?

A. That's correct.

35

Q. And the warranties at page 520, that all the assets of the company are fully paid for and are legally and beneficially owned by the company?

A. Correct.

40 Q. You didn't read that?

A. I only read the page with \$21,000,000 on it.

Q. That's the only page you read?

A. Pretty much.

45

Q. Did you read schedule 5?

A. I scanned the document.

Q. Did you provide schedule 5?

50 A. My patent attorneys did.

Q. Now, you are making up your evidence that you only scanned the document, because you don't want the Court to find that you knew that the beneficial ownership of the patents was owned by the companies that you were selling to CPC. That's the truth, isn't it?

5 A. I'm telling you the truth when I say I scanned the document.

Q. So if you scanned the document, why is it that your cross claim says there was a need for the implementation of a further agreement to which CPC was not a party, for the beneficial ownership of the patents to go from the super fund to the companies that you were selling under the SPA?

10 A. That's a process that was needed. I just--

Q. How do you know that that was a process that was needed?

15 A. Well, at the time of the SPA I just thought that would just be done upon completion. I didn't think through an agreement and what needed to be documented. I just thought patents go in, money comes to me. In my mind it was a very simple transaction.

Q. And the shares, you were going to get shares rather than money? Shares in CPC, correct?

20 A. Sorry, \$21,000,000 worth of shares, yes.

Q. A number of shares that would equate to more than half of CPC; correct?

25 A. Yes.

Q. And under the SPA they were going to go to you; correct?

A. Yes.

Q. Not to your super fund; correct?

30 A. Yes.

Q. And your super fund would have to be at some point willing to transfer the patents to the companies that CPC were buying; that's your case, is it?

35 A. That's right. There was a process would be--

Q. And if the super fund decided 21 million shares in CPC was not enough and it sought 50 million shares in CPC, then it could decide it did not want to transfer the beneficial ownership of the patents to the companies that you were selling; is that your case?

40 A. My case is that they were going to CPC upon completion. No doubt about it. There was nothing else.

Q. How do we have no doubt about it?

45 A. There was nothing else.

Q. Was there a document that recorded the obligations?

A. I believed it was correct at the time. I believed it. I believed that's why--

50 Q. Sorry, is that an answer to my question?

A. Sorry?

Q. How do we know that there was no doubt? Was there a document that recorded the obligations of the super fund to transfer the beneficial ownership?

5 A. There was no document.

Q. No, because the super fund never owned the beneficial ownership of the patents, Mr Burke?

10 A. The super fund owned it all the way through and I never signed it out.

Q. That's a lie that you are making up in this case?

A. There is no document that I ever signed it out of the super fund.

15 Q. The only documents that is in the super fund are the ones that are the financial reports that Mr Sattout has annexed to his affidavit and the bank statements, correct?

A. Agreed by ASIC, ATO.

20 Q. Mr Burke, there is no document saying that the ATO and ASIC agree to the contents of those documents, is there?

A. I believe that's just, that is what it is, they just let it go. If it's correct, they let it go.

Q. You have no evidence whatsoever that they even check it. That's correct?

25 A. They must have accepted it, otherwise they would have said something.

Q. Can the witness be shown exhibit B. (Shown). I think it is exhibit B. Is that the email chain, ignoring the Steve Cole part at the top. It starts "From Linda(as aid) Candy".

30 Q. Mr Burke, I will just - I will let you read that email chain for a moment.

A. Yes.

Q. And it is referring to the bank transfers that are on the second page?

35 A. Yes.

Q. Just for the purposes of completed confirmation, can you confirm that they are the bank transfers at volume 3 page 1202?

40 A. Yes.

Q. The 50,000, 50,000 and 10,000?

A. Yes.

45 Q. Mr Burke, when you were asked about this by Ms Candy, the easiest thing to say, if it was the case that the super fund had purchased the patents, would be "These were for the purchase of the patents from the super fund - by the super fund", correct?

A. Yes.

50 Q. But if the payments on the second page of exhibit B were the super fund

purchasing the patents from Microlatch or Securicom, that is all you had to tell Linda, isn't it?

5 A. I think that I was worried about Hong Kong taxation laws. What was the money coming in for? But what it was, I wanted to say, it come from me, not from sales or product sales. I wanted to just differentiate the category.

Q. Mr Burke, were you trying to cover up that the super fund was buying the patents?

10 A. Certainly not. No cover up.

Q. Why didn't you just tell Linda those payments were for the purchase of patents?

15 A. Again I'm looking at a category, where did the money come from? Product sales? What I'm saying is it had come from me.

Q. Of course it came from you. They were withdrawals from the super fund, the bank statements made that clear; correct? There is no ambiguity about where they came from?

20 A. I just wanted to be clear that it was not a product sale.

Q. The question Linda was asking about is what were they for?

A. They were absolutely for the patents, even though they went through Microlatch Hong Kong.

25 Q. Okay - I withdraw that. Go ahead.

A. Even though they went through there, they were for the patents.

HER HONOUR

30 Q. What do you mean "even though they went through there"?

A. Even though they went through the Microlatch Limited Hong Kong, they were for payment acquisition.

ALKADAMANI

35

Q. And what you mean by "even though they went through Microlatch Limited Hong Kong" is, even though Microlatch Hong Kong does not and did not own any patents, the money that went to Microlatch Hong Kong was for patents not owned by Microlatch Hong Kong; correct?

40 A. Yes, transfer of funds.

Q. And there is no document of course recording that the super fund purchased any specific assets with those funds; correct?

45 A. If there was, it's--

Q. You have no record, Mr Burke, do you?

A. I have no evidence.

50 Q. You have no document recording the purchase of patents by the super fund, other than the bank statements?

A. Well, I believe the Hong Kong accountant and certainly with Sam Sattout, you know, that was absolutely understood and those payments from there went straight to the patent attorneys, Spruson & Ferguson.

5 Q. Went straight to the patent attorneys, Spruson & Ferguson? And what were the services that they had rendered for those payments?

A. No, these were for renewals of the patents.

Q. Renewals of the patents?

10 A. But it was for - it was the acquisition and then you can't acquire something and then not maintain it.

Q. That's true. There is constant patent expenses; correct?

A. Yes, correct.

15

Q. And the utilisation of the funds that went from your super fund, was to pay Spruson because they had been doing work maintaining the registration of the patents; correct?

20 A. Firstly, it was to acquire and then pay, yes. Otherwise it wouldn't pay. The super fund had to acquire, in order to release the funds into that.

Q. What you are saying there is it would not be legal for the Super Fund to just pay exclusive fees so we have to acquire something for the funds, correct?

5 A. It is the only money I had at the time. It was the only way I could get money and the Super Fund had money so I sold it to the Super Fund.

Q. When the money went out of the account in August 2013 Mr Sattout was not on the scene giving you advice, was he?

10 A. No.

Q. It was not until 2016, correct?

A. Yes but I had representation in 2013.

15 Q. Perhaps you had more honest representation Mr Burke?

A. Well I had bad representation I will argue.

Q. You can argue with the tax office perhaps.

20 Mr Burke in August 2016 you say to Ms Candy that the payments of August 2013 are what the ATO use as salary, see that on Exhibit B?

A. Sorry?

Q. In August 2016?

25 A. Yes, the ones the ATO subsequently used as salary.

Q. Yes?

A. That was again because one of the accountants, the previous accountant had obviously not given me good advice, not conducted the accounts properly.

30 Q. You had not given your previous accountant a document that said these were for the purchase of a patent by the Super Fund had you?

A. I don't believe I told him anything at that time. He was in Australia I was in Hong Kong

35 Q. The truth of the matter is those funds that left the Superannuation Fund in August 2013, the \$110,000 referred to on the second page of the email were to pay Sprusons legal fees, correct?

A. To acquire the patents. Acquire the patents first, otherwise the Super Fund is not going to pay any renewal fees without ownership.

40

HER HONOUR: Can I just ask a question.

Q. Mr Burke is it your evidence the \$110,000 paid for all of the patents?

45 A. No there was other funds as well your Honour, a total of about \$335,000 so that was part.

Q. So the \$110,000 was it to pay for the patents to acquire them on your evidence or was it to pay for legal fees and other fees relating to the maintenance?

50 A. I always thought the total amount \$335,000 was payment for the patents,

\$335,000 I believed was an appropriate amount for the value of the patents at that time. That was my belief your Honour.

ALKADAMANI

5

Q. Mr Burke which patent did the \$110,000 relate to?

A. I can't split it. All the money in the Superannuation account was spent, all of it.

10 Q. You were acting in 2013 as the Trustee of the Superannuation account, correct, you were the responsible officer for the Trustee of the Superannuation Fund, correct?

A. Yes.

15 Q. You were the person who is supposed to know what the payments of the Superannuation Fund make, correct?

A. Yes.

20 Q. What were the patents that are the subject of the \$110,000 transfers in August 2013 referable to?

A. I can't split it up.

Q. Why not?

A. I don't know how to split it up.

25

Q. Before August 2013 what were the patents that the Super Fund bought, which ones?

A. The entirety. I believed I was buying the entirety of the patents.

30 HER HONOUR

Q. With the \$110,000?

A. With the 335,000.

35 Q. What ones were bought prior to the \$110,000 being--

A. It was all the money available in the Superannuation Fund which was \$335,000 for all the patents.

40 Q. But at the time on your evidence that you made payments of \$110,000 on 23 August 2013 what were the patents that you were acquiring?

A. All of them your Honour.

Q. You said in your own evidence you spent other money; what were the patents you were acquiring when you spent the \$110,00

45 A. That was part payment only, not full payment. So it was part payment of the entirety of the patents.

Q. So at the time of 23rd August you did not acquire all of the payments?

A. Not until all the money was paid your Honour.

50

ALKADAMANI

5 Q. Now weren't the patents valued at about \$10 million some time prior to 2013?

A. No.

10 Q. Had you had any valuation of them in 2013?

A. No they were valueless and less litigated.

15 Q. Mr Burke the truth of the matter is that the notation on page 1202 Patent Payment is referable to the payments that were required for the up-keep of the patents or to Sprusons and not for the purchase of the patents by the Super Fund, correct?

A. After acquisition they were paid, that's right.

HER HONOUR

20 Q. How much was paid for the acquisition Mr Burke?

A. \$335,000.

25 Q. On these amounts how much was paid for the maintenance and up-keep and fees as opposed to--

A. Possibly half of that, around about half or less.

30 Q. So was the \$110,000 just for up-keep?

A. I am not sure exactly what the \$110,000 was for but I would say possibly your Honour.

30 ALKADAMANI

35 Q. You said earlier that most of that went to Spruson didn't you?

A. Most of it, yes. I was also putting in new patents and there is a lot of costs around patents.

40 Q. You were putting in new patents?

A. I'm always thinking of new patents, yes.

45 Q. What does "I was putting in new patents" mean?

A. I was trying to develop the patents and the way to do that is to create what they call divisional patents. They are new but they are related to the existing.

50 ALKADAMANI: Is that a convenient time your Honour? Unfortunately it is going more slowly than I thought.

HER HONOUR: Yes. I will adjourn until 5 to 12. Before I do that Mr McDonald I understand you have something after lunch. Will we finish by 1 o'clock?

ALKADAMANI: I am going to endeavour to your Honour as much as I can. It is unfortunately going more slowly than I anticipated.

HER HONOUR: Yes I understand.

SHORT ADJOURNMENT

5

RESUMPTION

McDONALD: Your Honour I don't have a strict 2 pm commitment but I have certain obligations that must be done by tomorrow so I have some flexibility.

10

HER HONOUR: Thank you, we will see how we go.

ALKADAMANI

15 Q. Mr Burke the reason your Superannuation Fund had funds in cash in 2013 was because it had sold a unit at Hurstville and that had been in the name of the SMSF, is that correct?

A. Yes.

20 Q. That was because of a Family Law settlement issue, correct?

A. Yes.

Q. If you would turn to volume three page 1201 of the Court Book?

A. Yes.

25

Q. Credit of \$129,169 on 3rd June was a receipt of a portion of the proceeds of sale?

A. Possibly. We had the cash there as well. Yes, possibly.

30 Q. Well you didn't have substantial cash in that fund, that is true isn't it?

A. It depends how it was split. There was a lot of cash there as well.

ALKADAMANI: Maybe this can help you a little bit. Your Honour I am going to hand up identical documents but in different formats. This is a barely legible version in the sense it is very very tiny just because of the way it prints out and my junior, who is not here today, was able to enlarge it but just so the providence of the document is known I am giving the smaller version as well.

35

(Document handed to her Honour)

40

ALKADAMANI: Did I give your Honour two copies of the enlarged version?

HER HONOUR: Yes but I think my associate can hand that back if you need it.

45 ALKADAMANI: No I want to give one of each to the witness your Honour. (Handed to witness).

Q. Could you read the enlarged version?

A. (Complied)

50

Q. You will see on page two of the enlarged version that there is a query from Lina about the \$129,165 deposit?

A. Yes.

5 Q. And you then informed Lina on the first page of the enlarged version that was a settlement cheque?

A. Yes.

10 Q. And by settlement cheque you mean in respect of the settlement or completion of the - sorry, what do you mean by settlement cheque?

A. I'm not sure.

Q. Not sure? Well it relates to the reason you were getting \$129,000 deposited into your Super account--

15 A. It might have been a settlement with my wife.

Q. Or the settlement of the property?

A. Yes could have been anything, I'm not sure.

20 Q. The settlement with your wife involved, as a necessary element, selling the property at Hurstville and dividing the proceeds didn't it?

A. One of. There was many.

Q. Okay but it involved realising the property that was in the Super Fund?

25 A. And cash.

Q. And the cheque of \$129,000 is proceeds from one of the property settlements?

30 A. No it was the settlement of the divorce. It was a payment from the settlement of the divorce.

Q. Is that right?

A. I am pretty sure that is right, yes.

35 Q. Okay. In any event what the court can be sure of--

A. It could have been cash or anything.

Q. What?

40 A. It could have been cash or anything. The settlement of the divorce was split.

Q. Okay but it was \$129,000 cheque that was deposited into your account?

A. Yes I would have received that through the settlement of the divorce.

45 Q. Sorry?

A. I would have received the cheque through the settlement of the divorce.

Q. Was it the case that the money had to be deposited into your Super Fund because a property had been sold?

50 A. I am not sure it related to the property. I think the Burke Property Trust

owned the property in fact.

5 Q. All right. In any event the bank account of 1201, the bank statement at 1201 has approximately \$129,000 credit and that is certainly funds going into the Superannuation account, correct?

A. Yes.

10 Q. And so therefore that is not for the purchase of patents, correct?

A. That is just an income to the Superannuation Fund.

15 Q. \$129,000 is not for the purchase of patents by the Super Fund, correct?

A. Not at this stage.

15 Q. Now we saw that in paragraph nine of your Commercial List Statement your claim involved the need for the performance of an agreement to which CPC was not a party whereby the Super Fund transferred the beneficial ownership of the patents to Securicom, remember that?

A. A process that I would fulfil, yes.

20 Q. It is said to be an agreement; you say there was no such agreement?

A. I believe there was a process.

25 Q. Do you say there was no such agreement?

A. We have not done it yet, obviously.

25 Q. Do you say no such agreement came into existence?

A. There was no agreement of any movement out of the Super Fund.

30 Q. No, no, do you say there was no agreement as pleaded in paragraph nine of the Commercial List Statement at page five Court Book, volume one?

A. Yes I saw that.

35 Q. Do you say there was no such agreement as pleaded in paragraph nine?

A. Well we haven't done it yet.

40 Q. I am not asking has it been performed. I am asking you do you say that no such agreement existed as pleaded in paragraph nine?

A. It existed in my mind as a process and in the statement as an agreement, yes.

40 Q. Simply entirely in your mind?

A. In my mind it was a process, a simple process they performed. I gave whatever I had I would give them at that point. Whatever they wanted I would have given them.

45 Q. So you say there was an agreement as pleaded in paragraph nine?

A. That is what we were intending if they'd succeeded.

50 Q. Did the agreement in paragraph nine exist?

A. There was no agreement written. In my mind it was a process that I would

fulfil.

5 Q. If the process that you speak about was fulfilled the beneficial ownership of the patents goes to the companies that CPC is acquiring and in return you get 21 million shares in CPC correct, sorry 21 billion?

A. Sorry, one billion shares, yes.

10 Q. Yes, so you get one billion shares in CPC and in return Super Fund transfers the beneficial ownership of the patents to the companies that secured - that CPC is buying?

A. They get everything I had, every patent out of the Super Fund.

Q. And you get the shares, correct?

15 A. That is right.

Q. And you would be transferred the beneficial and legal title in the shares in CPC under the SPA correct?

A. Yes once they were completed, yes.

20 Q. That means that you have the beneficial ownership of the shares in CPC, correct?

A. I don't believe so because they had to complete and they never could.

25 Q. If they did complete your Super Fund is not getting the beneficial ownership of the shares in CPC under the SPA, isn't that correct?

A. The Super Fund already has the patents. The process would be the Super Fund would have to deploy those patents it owned to the new entity and that was a process I would fulfil upon completion as their process would be to give me those shares.

30 Q. It is not a new entity the Super Fund would deploy the patents into it's--

A. Well a new named entity or new business structured entity.

Q. Well there was no Newco was there?

35 A. Same company but a change in business structure.

Q. By Newco you understand me to mean a newly created entity that is sometimes used when there is a restructuring being undertaken isn't that right as you understood?

40 A. No, like a back door entry so would have been the same company but maybe renamed or something. A new business structure.

Q. So wouldn't have been a Newco?

45 A. Would not have been a new company off the shelf because they already had the listing and they had to change their base structure in order to accommodate the patents.

Q. We'll see about that but in any event you under the SPA received the beneficial and legal title to the shares in CPC, correct?

50 A. Upon completion.

Q. Yes upon completion you under the SPA received the beneficial and legal title to the shares in CPC, correct?

A. Could have been a company name, yes.

5

Q. Under the SPA is there a dispute Mr Burke that you would receive the shares in CPC if the SPA agreement completed?

A. If completed, yes.

10 Q. You would?

A. Yes.

Q. You would receive the beneficial and legal title in the shares in CPC pursuant to SPA if it completed, correct?

15 A. Perhaps on behalf of the Super Fund as well.

Q. Where is that documentation?

A. That again is my process.

20 Q. That is your process again?

A. Yes.

Q. Is that process in your claim?

A. It is not in evidence.

25

Q. Is it part of your claim that that process in the SPA involved you then giving the Super Fund the beneficial ownership of the shares?

A. Well that is in evidence, yes. The Super Fund has the ownership of the patents. Oh, the shares sorry?

30

Q. Yes the shares?

A. No I have not. That is a process I've discussed that I had to perform.

Q. Discussed with who?

35 A. Just discussed.

Q. Just now?

A. The process I have discussed with everyone.

40 Q. With who?

A. My legal counsel.

Q. You told your legal counsel that you would receive the CPC shares on--

A. It is was assumed.

45

Q. Are you saying you discussed it with your legal counsel?

A. Everyone knew it.

Q. Did you discuss it with your legal counsel, is that your evidence?

50 A. Not directly, no. It is just what I believed was assumed and known by

everyone.

Q. It is just a lie Mr Burke isn't it?

A. It is not a lie, I wanted to give the patents up.

5 Q. We are talking about the CPC shares at the moment Mr Burke, that you would receive under the SPA?

A. Upon completion.

10 Q. Upon completion. Nowhere have you said you would receive them on behalf of the Super Fund, correct?

A. It is a process I had to fulfil. I knew that the obligation was there. I didn't know exactly what was required, that would have been with my lawyers at the time. Grant McCartney what do I need to do now to get these papers into this Newco and I would have loved to have given them up.

15

Q. Mr Burke when did you know that you would be required to give the beneficial ownership of the CPC shares to the Super Fund, when did you know that?

A. As soon as it completed we would draw up the relevant process.

20

Q. When did you know that would be needed to be done?

A. As soon as they completed.

25

Q. When did you know that that would be a step that would be needed to be done when it completed?

A. Well in the process that they issued me shares is a process of me issuing them the patents, so shares for patents.

30

Q. Did you know in 2016 that when you received the shares in CPC--

A. They must have a process.

35

Q. --you would have to transfer the beneficial ownership to the Super Fund?

A. From the Super Fund into the Newco. They would have to go through a process for me.

40

Q. That is the patent, isn't it, from the Super Fund into Newco is a patent, correct?

A. Sorry?

45

Q. From the Super Fund into Newco is a reference to the movement of the ownership of the patents, correct?

A. Yes that is right, the patents would have had to come from Super Fund into Newco.

50

Q. Put the patents to one side. The shares that were issued under SPA if completed the shares in CPC that were to be issued under the SPA to you if the SPA completed would be issued beneficially and legally to you?

A. Through a process. There must be documents there too I suppose, agreements.

50

Q. Then did you know in 2016 that you would have to assign the beneficial ownership of the shares in CPC the SPA completed to the Super Fund?

5 A. Everything would have been done, everything would have been done that was necessary to be done. I would have needed legal opinion at that time how it was to be done but I just--

Q. Did you know or did you not know?

A. I just expected it would be done through a process.

10 Q. Did you know or did you not know at that time the beneficial ownership in CPC shares if you received them under the SPA would have to be assigned to the Super Fund?

A. I knew the Super Fund owned the patents so I knew I had to bring those into the Newco through a process, I knew that.

15

Q. The had to bring the shares into the Newco?

A. Sorry I had to bring the patents into the Newco through a process.

20 Q. Put the patents to one side, we are talking about the shares you would receive on the SPA?

A. I would need legal advice on that, how I was going to that with the Super Fund. I am not a lawyer. I am waiting until the time they complete. That would have been done with absolute happiness.

25 Q. Now yesterday you said you believed that Securicom and Microlatch were an agent in respect of the patents, correct?

A. I didn't use the term agent myself. I believe a legal representative, a legal entity that was to be used in documents and in agreements and 'agent' is not my term.

30

Q. Okay Mr Burke we'll look at the transcript and see if you used the term agent but is it your evidence you do not recall using the word agent yesterday to describe the role of Securicom and Microlatch in respect of the patents, is that your evidence?

35 A. I think your Honour brought up the term agent and I sort of went with it but it was not the term I would have used.

Q. What is the term you want to use?

A. Representative.

40

Q. Okay the representative being Securicom and Microlatch hold the beneficial ownership of the patents that were registered in their names at the time you assigned the SPA?

45 A. I believe they legally had the ownership and that they were the companies that would sign the document, in any document, that referred to the patents owned by the Super Fund.

Q. In 2016 you did know the difference between the beneficial ownership of the patent and legal ownership of the patent, correct?

50 A. No. That was a representative association.

Q. It must follow Mr Burke?

A. It doesn't follow.

5 Q. What doesn't follow?

A. That the Super Fund can't be put into a legal document. It has got to be the company that is the Trustee that represents that Super Fund and that is the way ASIC apply it and my accountant told me that, you do not use the Super Fund in the document.

10

Q. When you signed the warranties that are in the SPA you told CPC that the company as defined in the SPA owned the beneficial and legal title to the business intellectual property, remember that?

15

A. I told them the Super Fund owned it and I said talk to my accountant and you will get all the the information you need.

Q. In the SPA you didn't say that did you?

A. In the SPA? They created the SPA, it is their document.

20

Q. You signed it notifying to them that you were agreeing to it?

A. I signed it because that is what they wanted, that is what they gave me to sign and I signed it.

25

Q. You didn't care what was in it, you just signed it because they wanted it, is that your evidence?

A. They were a legal representative company and I thought that was correct and the Super Fund could not go in there because it was not correct for a Super Fund to sign or be part of any agreement.

30

Q. So were you indifferent to the accuracy and representations?

A. I believe it was correct in that terminology that I just used.

Q. What was correct?

35

A. That the representative companies are the only companies that bind the Super Fund in an agreement. The Super Fund is not a company as such, it is a fund.

Q. Did you believe that the assets of that Fund could be bound by the companies representing it, namely Securicom and/or Microlatch?

40

A. I believe I had to bind it eventually but I was absolutely--

Q. Under the SPA was it your view that the assets of the Super Fund were being bound?

45

A. At completion, they would be transferred at completion.

Q. Oh, on signing the SPA the Super Fund assets are not being bound by SPA is that your evidence?

A. They are being legally performed, legally - is bound a term? You know, they were legally--

50

Q. Do you know what the term--

A. Legally obliged.

Q. Who was legally obliged?

5 A. The Super Fund through me to hand over those patents.

Q. When was it legally obliged?

A. At completion.

10 Q. Only at completion?

A. Absolutely because that is when the shares were issued.

Q. All right and when were your companies, Securicom and Microlatch and yourself obliged to give accurate warranties?

15 A. I believe it was accurate representation because they had all the information in the Super Fund from my accountants.

Q. When were you obliged under the SPA to give accurate warranties? It was assigning the SPA, right?

20 A. I believed it was a legal representation, I believed it was legal and that was the way it was done.

Q. Mr Burke I would like to show you this.

25 HER HONOUR: Do you want me to mark this Mr Alkadamani

ALKADAMANI: Yes your Honour.

30 EXHIBIT #D EMAIL FROM STEVE COX DATED 30 NOVEMBER 2019
CONTAINING EMAIL EXCHANGE BETWEEN LINA CANDY AND CHRIS
BURKE WHICH IS DATED 13 SEPTEMBER 2016 IN BOTH SMALL PRINT
AND LARGE PRINT TENDERED ADMITTED WITHOUT OBJECTION

35 Q. Mr Burke I show you a document headed Microlatch Limited Hong Kong
Exclusive Licence Deed December 2019?

A. Yes.

Q. Were you responsible for putting that content or authorising that content to be put up on a website?

40 A. Yes.

Q. You did that maybe the day before the hearing?

A. Yes.

45 Q. And it says "Patent Exclusive Licence Deed" see that?

A. Yes.

Q. And you say the content says:

50 "Confirmed legally enforceable at termination of SPA Statement by

CPC"?

A. Yes.

5 Q. CPC made no such statement, correct?

A. Mr Dart did, upon completion he asked me to terminate that Deed because he could not get the listing done unless I terminated. I terminated on the condition that if it did not complete they would be enforceable, re-enforceable.

10 Q. What is the statement by SPC?

A. SPC?

Q. Sorry, what is the statement by CPC you put up?

15 A. By Mr Dart's statement to that effect. He wanted me to terminate the licence Deeds so he could get the listing.

Q. Mr Burke you are telling the world that there has been a confirmed legally enforceable at termination of SPA acceptance or statement by CPC correct?

20 A. Yes statement by Mr Dart, a representative of CPC.

Q. This purports to be something that CPC has authorised?

A. Accepted.

Q. You are asserting that CPC is making the statement in this document?

25 A. Absolutely they did because they asked me to terminate only through the SPA.

Q. Mr Burke you've put this up on the website haven't you, this document?

30 A. Yes.

Q. CPC did not ask you to put this document on the website?

A. No.

35 Q. CPC has confirmed nothing in respect of this that you've put up on the website?

A. Mr Dart confirmed.

Q. That's a lie?

40 A. It is not a lie.

ALKADAMANI: I tender that document.

45 EXHIBIT #E PRINT OUT FROM THE MICROLATCH HONG KONG WEBSITE
DATED DECEMBER 2019 REFERENCE MICROLATCH LIMITED HONG
KONG EXCLUSIVE LICENCE DEED TENDERED ADMITTED WITHOUT
OBJECTION

Q. Mr Burke you know that you putting this up on the Internet is in effect a statement to all readers of your website?

50 A. I believe that is a valid Licence Deed.

Q. A valid Licence Deed?
A. On termination of SPA.

5 Q. Let us get this sequence of events correct; you enter into the SPA and then Mr Dart or somebody asks you to terminate the licence that is embodied or printed out in exhibit E, correct?
A. He asked me to terminate it, yes, once he saw it.

10 Q. And you did?
A. Yes again pending completion of the SPA.

Q. You did terminate it didn't you?
A. No I didn't terminate it. I said I would.

15 Q. Sure about that?
A. Yes I said I would terminate but I never terminated.

20 HER HONOUR: Can I understand, this is a Licence Deed between Securicom New South Wales Pty Limited and Microlatch?

ALKADAMANI: I'm going to get to that but I am trying to get the sequence before we get to the liquidation but I am having some difficulties along the way.

25 WITNESS: Again it is a legal representation.

ALKADAMANI

30 Q. I show you that email (shown). See the email from you to Mr Dart at the top of the page?
A. Yes.

35 Q. The licence arrangement referred to therein is this licence arrangement that is printed out on Exhibit E?
A. I am not saying that licence arrangement. I said I would terminate, you know, I would terminate but as of today it won't be effective. That is not a termination.

40 Q. Did you say you were going to terminate "as of today"?
A. That is a, that is a, that is what I accepted, that I would terminate through the SPA.

45 Q. No, no, you said as of today?
A. Yes that would be terminated through the SPA so I had not written a termination notice. That is not termination.

Q. "And therefore it will be terminated as of today"?
A. Yes I would agree to terminate as of today.

50 Q. Oh, you would agree to terminate?

A. Absolutely, there is no termination notice.

Q. Did you terminate as of today?

A. I didn't terminate, no.

5

Q. The SPA wasn't going to complete on that day was it?

A. I gave him that because he needed that for ASX because they would not let him list with that document, that is what he told me, they wouldn't let him list with that document being --

10

Q. He told you they would not let him list, the existence of a licence--

A. Could affect his list, could detrimentally affect his listing.

Q. So you said it will be terminated today?

15

A. Yes, mentally I agreed to terminate, throughout the SPA that would be terminated. Mr Dart wrote an email to that effect in response, until completion.

Q. What you are saying is when you say "therefore will be terminated as of today" all you have done is--

20

A. As of today is out. So he doesn't have to worry about it for the ASX reasons.

HER HONOUR

25

Q. Can I clarify what your evidence is. Are you saying this email is confirmation by you that this licence agreement that is referred to here is no longer required and will be terminated today?

A. It will be terminated as far as his requirements were, what he said he needed for the ASX, so for me that is the period of the SPA.

30

Q. Sorry, no. I am asking does this email say you are terminating that licence agreement today, as in 31 March 2017?

A. It says I will terminate for the purpose that he requested but I had not, I didn't actually terminate your Honour. I just said I would but I did not.

35

Q. Sorry, you are saying this email is an advice to Mr Dart from you that you would terminate the licence agreement today because it is no longer required but that you did not terminate it?

A. In the context of that he needed it for the ASX, he needed me to sign something like that.

40

Q. No, the question I am asking you is it your evidence this email says you will terminate this Licence Deed today because it is no longer required but that you did not terminate it?

45

A. Exactly I didn't terminate your Honour and it was for the period that I gave him that promise, a promise that he wanted in written form.

Q. All I am asking you Mr Burke is did you terminate it that day?

A. No, I never terminated the Deed.

50

Q. You never terminated the Deed?

A. No.

Q. So why did you tell Mr Dart you would do so that day?

5 A. He needed it for the ASX and if the SPA had completed it then I would have terminated.

Q. So you told him you would terminate that day but you did not?

A. Yes and he came back later and said "that's fine" in an email.

10

ALKADAMANI: I call for that email. It is in the same category I am sure.

WITNESS: We have that email.

15

ALKADAMANI: I tender the email..

EXHIBIT F# EMAIL DATED 31 MARCH 2017 FROM MR BURKE TO MR DART TENDERED ADMITTED WITHOUT OBJECTION

20

Q. Did you tell the liquidator of Securicom New South Wales Pty Limited that this licence agreement was on foot prior to causing the publication of Exhibit E on the Internet?

A. It was never taken off. The liquidator had notice of that all the way through.

25

Q. What was never taken off?

A. It was never terminated, the licence was never terminated.

Q. Does the liquidator agree that the licence is still on foot?

30

McDONALD: Objection.

QUESTION WITHDRAWN

ALKADAMANI

35

Q. Has the liquidator told you that the liquidator agrees to the licence being on foot and subsisting?

A. I believe he said in his disclaimers he said that "all my notifications there" mean that he does not have title to the patents. His disclaimer was that he

40

does not know whether he has title to the patents.

Q. Is that how you read the disclaimer?

A. That is how I read it.

45

Q. You are lying aren't you Mr Burke?

A. I'm not lying. I have not lied once.

Q. You have lied many times, that is the truth isn't it?

A. That is not the truth at all. The truth is I have not lied. I am under oath and I

50

have not lied.

Q. Turn to page 662 in volume 2 Mr Burke?
A. (Complied).

- 5 Q. Under the heading Intellectual Property Patent can I ask you to look at the second dash point commencing with the words "Based on the information available to me today". Sorry, you will see that is a report to creditors. I will show you page 655, see that?
A. Yes.

10

Q. Now, do you continue to say that the liquidators are of the view that you hold the patents?

A. The liquidator is making an opinion for him, his own interests and those for Charter Pacific.

5

Q. Is your evidence, prior to me showing you this earlier - sorry, I withdraw that. Can I ask you to turn to page 732? You will see that's a deed. You have seen that deed before, haven't you?

A. Well, I don't know. I don't know. I don't, I don't, I don't respect that deed.

10

Q. You don't. Okay. Putting your lack of respect to one side, Mr Burke, have you seen it before?

A. I believe so.

15 Q. Page 737, can I ask you to turn to that? Is clause 4.2 the disclaimer to which you wanted to talk about to which you were referring in your earlier evidence?

A. That's, that's the disclaimer. Yes.

20 Q. That's what you say is the acknowledgment by the liquidator as to your super fund ownership of the patent?

A. That's, that's where he acknowledges it. Yes.

Q. Is that the acknowledgment that you want her Honour to have in mind?

25 A. I'm not sure that's the only one. But that's one.

Q. What are the other terms that are? Do you have in mind anything?

A. I think in addition to that, yeah, where he specifically says a little bit more than that. I mean, that's the same. I think there's something else as well.

30

Q. Have you seen the recital at page 733 in (n)?

HER HONOUR: Sorry, what page?

35 ALKADAMANI: 733.

A. Yes. Yes.

Q. Is that what you were referring to?

40 A. I think there's another one again. I think there's a little bit more detail somewhere else. But the same, the situation.

Q. You say the liquidator has made an admission that the super fund owns the patents, is that right?

45 A. He's given himself a disclaimer so that he's not--

Q. He has never acknowledged the super fund. You have seen a document where he has acknowledged the super fund is the owner of the patents, is that correct?

50 A. Because he's making money. It was commissioned by Charter Pacific.

You know, it's in his interests to do that.

Q. Sorry, what does that mean?

A. Sorry, I take that back.

5

Q. Mr Burke, what's the answer to my question?

A. Sorry, could you ask the question again?

Q. You have never seen a document from the liquidator--

10 A. No.

Q. --where the liquidator acknowledges--

A. No.

15 Q. --the super fund--

A. No.

Q. --is the owner of the patents, correct?

A. Correct.

20

Q. There is something I want to - volume 1. Can I ask you to turn to volume 1 page 72? I ask you to turn to page 71. Now, that's a proposed deed which has not been signed by you. But I just want to ask you a couple of questions about some of the things that are said in it. Can I ask you to turn in that proposed deed to the relevant assignor which is CJ Burke Nominees Pty Limited and the proposed assignee is Securicom (NSW) Pty Limited, do you see that from page 71?

25

A. Yes.

30 Q. Burke is a reference to Christopher John Burke, yourself?

A. Yes.

Q. At page 72, there is a recital in (j). Can I ask you to read that to yourself? Is there anything in recital (j) that you disagree with?

35

A. There was, yeah. Yes.

Q. What do you disagree with?

A. Yeah. There was an updated assignment.

40

Q. Sorry?

A. But it was not, it was not, not used and not - you know, that was a mistake, to use that document.

Q. No. No. Sorry, is there anything in recital (j) that you say that is not accurate?

45

A. I don't believe - I believe that's accurate.

Q. Yes. It's an accurate narration of the facts, correct?

A. Yes.

50

Q. What you now say, of course, is that the 18 November 2017 deed of assignment was not effective as any source of right or entitlement for the registration of any patents, correct?

A. I believe that's the case now. It's not effective. It's not, not to be--

5

Q. You believe that's the case now subsequent to 5 August 2019, correct?

A. I always had concerns about the document, because we're in the - I terminated the SPA. But I'm not sure that - as Mr Dart said, the SPA was still on foot. There was conjecture about that assignment.

10

Q. That assignment was the assignment in November 2017 which you say you made because you validly terminated the SPA, correct?

A. I thought I had.

15

Q. Yes. Correct?

A. Yes.

Q. The issue that you say now arises is not whether or not the SPA was validly terminated but, that even if the SPA had been validly terminated by you, the November 2017 deeds were still not an effective assignment of the beneficial ownership of the patents because they were owned by the super fund, isn't that right?

20

A. All I was doing was changing the register, you know, registered ownership. That's all that assignment really did. And I, I--

25

Q. Mr Burke, do you accept that the assignment records an assignment of the legal and beneficial title, all title, to the assignor?

A. No. It was recording--

30

Q. What do you say it says?

A. It's a recording. It's not ownership.

Q. Is that what you truly tell the Court?

A. Yes.

35

Q. It's recorded on the November 2017 deeds?

A. It's just the recording name. Yes.

HER HONOUR

40

Q. You're just saying it records a change in the name?

A. Yes. Exactly, your Honour.

Q. On the entitlement?

45

A. Exactly. In the relevant, in the Global Patent Offices, it changes the name. I just wanted to keep that name consistent. And to remove the Securicom and Microlatch names because they were tarnished by CPC. I, I just wanted to move on.

50

ALKADAMANI

Q. Mr Burke, if you look at, for example, page 954 - sorry. If you look at page 960 of volume 3, the assignment is under the heading Consideration. You will see that in 2?

5 A. Yes.

Q. The recital (b); the assignor has agreed to assign to the assignee its rights, title and interest, and to the patents, including the right to apply for or obtain correspondent patents. Do you see that?

10 A. Yes.

Q. Go to 8(1)(c) on page 961; the assignor warrants to the assignee that the assignor has full right and title to the patents?

15 A. Yes.

Q. Irrespective of what was in your mind, do you say seriously to the Court that the deeds of November 2017 did not purport to say; assign all rights, title and interest including beneficial ownership of the patents?

20 A. The patents were always in the super fund. I always believed that to be the company signing on behalf of. Representing. That was my firm belief always. Super fund wasn't--

Q. You are giving that answer irrespective of the question, Mr Burke?

25 A. No. It's my belief. I can only tell you what I believed.

Q. Reconcile to me, and to the Court, how your belief is consistent with the documents/that November 2017 deed?

30 A. To me, it's always consistent. I never signed anything out of the superannuation fund.

HER HONOUR

Q. Mr Burke, what were you assigning here?

35 A. The legal, legal ownership, your Honour. The legal representation of the super fund which had to be done through the company.

Q. What do you understand clause 8(1)(i) to mean?

40 A. That that deed, that is bound from the super fund. That, that the super fund is bound by that company signing.

Q. No. But what it does is provides, doesn't it, that CJ Burke Nominees has quiet enjoyment uninterrupted by anybody else?

45 A. Yes. Because the super fund would be bound by it, your Honour. You know, it represented the super fund. So, what it did bounds the super fund.

Q. Do you say the super fund was actually bound by this and bound by the assignment to CJ Burke Nominees?

A. Which held the patents.

50 Q. CJC got the entirety of the ownership?

A. Representation of the ownership, your Honour. Representation of it. It never, they never left the super fund, your Honour. Never. Never signed anything out of the super fund. And that's - never wanted to. Never needed to. I was quite willing to, if they completed the SPA.

5

Q. But this isn't the SPA, Mr Burke.

A. No. Sorry. I never signed anything out or intended--

Q. Then why did you even need to do that?

10 A. I just wanted to move the name to CJ Burke away to get rid - there's two different patents companies. I wanted to have one, your Honour. And because of the names of Securicom and Microlatch being caught up with CPC--

15 Q. Why didn't you change the name of the companies to SPA?

A. Because - when was this dated? I could have done that, your Honour. I could have done that. There wouldn't have been a difference, in my mind, to doing that. It was the same, same end result.

20 ALKADAMANI

Q. Mr Burke, can I ask you to go to volume 1, page 106? This affidavit was - sorry, can you look at page 105? This affidavit was affirmed by you for proceedings, interlocutory proceedings, brought to stop any disposition of the assets of Securicom or Microlatch, correct?

25

A. Yes.

Q. And if you look at paragraph 3, you refer to deeds of assignment dated November 2018?

30

A. Sorry, what page is it?

Q. Paragraph 3 on page 106. And they are the deeds found at court book volume 3 between pages 954 and 966, correct?

35

A. 954 and 966. Oh, correct. Yeah. At least, the pages. The patent portfolio.

Q. The deeds of assignment that you refer to in paragraph 3 of your affidavit of 8 March 2018 are the deeds to be found at page 954 to 966 of the court book?

40

A. Patents. The document is there. And the patents are on nine - schedule 2, 958.

Q. The deeds. All I want you to confirm is that the deeds that you refer to in paragraph 3 at 106 are the deeds at 954 to 966.

45

A. I'm not sure.

Q. Oh. There are no other November 18, 2017 deeds, are there, Mr Burke?

A. November 17.

Q. I withdraw that. There are no other deeds of 18 November 2017?

50

A. No. No.

Q. Are there?

A. No.

5 Q. Why aren't you sure?

A. I just, I'm - okay.

Q. Sorry, why aren't you so sure?

10 A. I just wonder if there is or there isn't. That's probably not. That's probably it. Yes.

Q. Why would you wonder about that, Mr Burke; whether or not there is other deeds of 18 November 2017?

15 A. Not for any specific purpose.

Q. It's just to be evasive in the witness box, isn't it?

A. Just for certainty.

Q. Mr Burke, it's just to be evasive in the box, isn't it?

20 A. Just for certainty.

Q. Really?

A. Really.

25 Q. Mr Burke, while I am on the topic, are there any deeds that are not in this court book whereby you have assigned the ownership or purported to assign the ownership--

A. No. No. No.

30 Q. --of the patents including the beneficial ownership to any other party?

A. There's, there's never been a movement out of the super fund. There is no other deeds I'm aware outside of these deeds that we have.

Q. In the court book?

35 A. In the court book.

Q. No other deeds?

A. Not that - no.

40 Q. Did you say--

A. For certainty, no. You know.

Q. Including no other deeds of 18 November 2017, I take it?

45 A. No. There shouldn't be any other deeds.

Q. All right. Now, it's clear, Mr Burke, that what you were doing in your affidavit at 105 of volume 1 of the court book is confirming that the business' intellectual property the subject of the SPA had been transferred to CJ Burke Nominees Pty Limited, correct?

50 A. Representation. The representative. I can only tell you what I believe.

Q. Tell me what you have said in the affidavit at paragraph 3?

A. Yes. As a representative of the superannuation fund, I changed the representative, company name representative, and later changed the trustee.

5

Q. When you were signing your affidavit, I imagine you told your solicitors that that was the nature of the transaction and that's what you wanted to record in your affidavit?

A. Because that's always the way I always portrayed it. I always. I'd written it down on any documents it was always those companies, it was always as trustee or, in my mind, the representative of the super fund.

10

Q. The only reason you have been doing that was to change the association with Securicom or Microlatch because that had been tainted by its association with CPC, is that right?

15

A. Consolidated under all the one name as well.

Q. Not for the purpose at all of actually moving the ownership of the patents to a different entity?

20

A. Never moved, never wanted to move the patents out of the super fund.

Q. Spruson are patent attorneys retained by one of your entities, correct?

A. Yes.

25

Q. Microlatch Hong Kong?

A. Yes.

Q. And they then, as at August 2019, rely on the November deeds to make some/cause some interest to be made in respect of the patents in the name CJ Burke Nominees Pty Limited, correct?

30

A. Yes.

Q. They had no right to do that, you now say, correct?

A. I believe that was incorrect. Yes.

35

Q. When did you come to the belief that that was incorrect?

A. I'm not sure.

Q. It's between 5 August 2019--

40

A. Now.

Q. --and now?

A. Yeah.

45

Q. Right. When?

A. Oh. I don't know a specific day or a specific meeting.

Q. Give me a specific week?

A. Or a specific week. You know.

50

Q. There are only about 12 weeks in a quarter?

A. I'm talking to people all the time, and they give me viewpoints. I don't know which one on which day.

5 Q. It must have been by 14 November, because you got your cross-claim on by then?

A. Probably work up to that, you know. I mean, there's probably, you know, a process there again.

10 Q. One of the processes, no doubt. Correct? One of your processes where you don't discuss with anyone, and you don't have a document, but it's there in your mind, correct?

A. Nothing is clear. You don't have clarity in one day.

15 Q. How many days does that take to have clarity?

A. Takes different people different times. May be it takes me a long time.

Q. Yes. Have you now told Spruson we need to withdraw that registration because that 18 November 2017 deeds were not effective to transfer any title to CJ Burke Nominees Pty Limited?

20 A. I would. But they stopped acting for me because--

Q. Have you told anyone to withdraw the patent registrations that rely on the 18 November 2017 deeds?

25 A. I just believe they, they'd become non-effective.

Q. Even though they remain on the register?

A. Well, because there's, you know, the issues with it. So, I--

30 Q. No. I don't. Explain?

A. I just believe it's non-effective.

Q. You just believe it's non-effective even though it's on the register in the US?

35 A. Because of the issues with termination at the time.

Q. We are talking about now August 2019?

A. Yes. But at the time, I don't know whether that document was effective because of--

40 Q. I'm talking about now. The registrations in the US subsist, don't they, under the name CJ Burke Nominees Pty Limited?

A. Some, now, Patent Technologies. They changed them themselves.

45 Q. Right. Are all Patent Technologies or are still some CJ Burke Nominees?

A. May be some still are CJ Burke Nominees. Yes. Correct.

Q. You know that they are?

50 A. I don't know how many they have changed to Patent Technologies. It's the only reason I say that.

Q. You know some are CJ Burke Nominees?

A. I'm not sure which hundred - he didn't notify me.

5 Q. You know some still are CJ Burke Nominees?

A. I assume some still are. Again, I don't know how many they have changed.

Q. You have taken no steps to take CJ Burke Nominees off any patent registers, have you?

10 A. I didn't think there was, well, I didn't think there was a requirement to do that. But I will do that.

Q. Now, Mr Burke, the reason you, since August 2019, and your legal representatives, since August 2019, have stopped relying on the
15 November 2017 deeds is because those deeds are inconsistent with the cross-claim that you bring before the Court that her Honour is hearing now, correct?

A. Look, I'm not sure. I'm not sure.

20 Q. You don't deny it, do you?

A. I'm not sure. I just - say it again please.

Q. The reason that, since August 2019 - sorry, I withdraw that. Would you accept that prior to August 2019 you and your legal advisors were relying on
25 the November 2017 deeds in respect of the title and entitlements of CJ Burke Nominees, correct?

A. I had concerns about it since sometime before that.

Q. You put those concerns out of the way and relied on the November 2017
30 deeds, didn't you?

A. I believe that was a mistake.

Q. But you did rely on the November 2017 deeds up until August 2019, correct?

35 A. I don't know that I relied on. I obtained some registration. I might have changed some registration names, but.

Q. In reliance on the rights that arose from the November 2017 deeds, correct?

40 A. This didn't change anything. Correct. I changed it in reliance. I changed it in reliance. Yes.

Q. Thank you. Now, from August 2019, reliance on the November 2017 deeds was disclaimed from about sometime after August, 5 August 2019. CJ
45 Burke Nominees and/or yourself ceased to rely on the November 2017 deeds as a source of any rights for CJ Burke Nominees, correct?

A. Yeah. I mean, you put it bluntly. But yes.

Q. And the reason they ceased to do so in about after 5 August 2019 is
50 because, now they bring this, you and CJ Burke Nominees bring this

cross-claim and that cross-claim is inconsistent with the validity - with the November 2017 deeds because the November 2017 deeds purported to be an assignment of the beneficial ownership of the patents, correct?

5 A. I thought it was just a termination of the SPA that was argued. That was my reason.

Q. Mr Burke, the termination of the SPA occurred sometime before 2018, correct?

10 A. I around the 2017 time.

Q. Before November 2017, correct?

A. Yes.

15 Q. Justice Stevenson decided the termination of the SPA was invalid in September 20?

A. Yes.

Q. August 2018?

20 A. Yes. Correct.

Q. In 20 September 2018, Justice Stevenson ordered specific performance of the SPA, correct?

A. Correct.

25 Q. Up to 5 August 2019, CJ Burke Nominees and yourself were relying on the November 2017 deed as an entitlement or a right to register patents including in the US, correct?

A. It sat there. I didn't, I didn't move on it and didn't use it.

30 Q. Can I ask you to turn to volume 2, page 756 and 758?

A. Yes.

35 Q. Mr Burke, there is an email from your solicitor at 756. There is an email from you at 758. Would you agree with me that each of them - sorry, I withdraw that. Your email at 758 refers to an assignment of patents that pre-date the liquidator's appointment, correct?

A. Pre-date liquidator. Yeah.

Q. Refers to the November 2017 deeds?

40 A. Yes. A reference to that document.

Q. Yes. Mr McCartney does the same thing at page 756, correct, at the bottom of the page?

45 A. Correct. We reference the document.

Q. You reference because that's--

A. We didn't rely upon it. Because Charter Pacific tried to change all the names and we wanted to stop.

50 Q. You reference a document in that email to tell some patent attorneys--

A. Just to stop.

Q. --that you were the rightful parties to deal with those patents, correct?

5 A. At least, to give him an indication he can't act unilaterally for CPC. That's what I wanted to do. To stop that process that they were undertaking.

Q. Sorry, why would you have any right to say stop acting CPC?

A. I reference that document. But I didn't rely on it.

10 Q. What you did is reference that document to say, by reason of that document, I am the person who is entitled to deal with these patents, correct?

A. I wanted to give him pause.

Q. Oh, you just wanted to give him uncertainty--

15 A. I wanted to stop--

Q. --even though you didn't really rely?

A. --having effort at the time.

20 Q. Why?

A. Because they were changing the name of the patents into their own name.

Q. Isn't it the case that, under the November 2017 deeds that you reference in those emails, you didn't actually believe that you had any rights?

25 A. I would say I didn't--

Q. Is that right?

A. --100 percent rely on, but I reference the document.

30 Q. How much of a percent were you relying?

A. I'm not sure how much.

Q. Did you have any rights under the November 2017 deed in your mind when you sent emails or Mr McCartney sent emails in August 2019? I'm only asking about your mind.

35 A. My mind. I was concerned about it.

Q. Did you have any rights in your mind under the November 2017 deeds in respect of the patents; yes or no?

40 A. Any, any rights in respect of them. No. No.

Q. You didn't. Yet, that's what you were relying on to tell other parties they could not deal with such patents?

A. That's, that's what I referenced. Yes.

45

Q. You were misleading them, weren't you?

A. I was trying to take, take them to pause.

50 Q. Well, but if you wanted to be frank and candid, you would be saying, I don't have any rights under any deed, pause, please don't do what you're doing?

A. I could have. Should have been done that way. Yes.

Q. You were misleading, because you were asserting. You did not have rights?

5 A. As I say, not to the degree you are trying to say.

Q. You don't think that conduct is in any way misleading and deceptive?

A. It was defensive.

10 Q. I just want to know what you think is misleading and deceptive. You don't think your conduct is misleading and deceptive?

A. No. Because I still have a concern about--

15 Q. You don't think this was misleading or deceptive, is that what you tell her Honour; the conduct in those emails at page 756 and 758 of the court book?

A. I had concerns about it.

HER HONOUR

20 Q. When you say you had concerns about it, what do you mean?

A. By intentionally misleading or do anything, you know, the wrong way.

25 Q. When you said in an email, this email attaches assignments of patents that pre-date the liquidator's appointment and, therefore, make his management of my patents illegal, what did you mean by that?

A. That's Charter Pacific management, was it? Sorry, can you read that again?

30 Q. It's on page 758. Court book 758.

A. Yeah.

Q. The first sentence, what were you trying to convey in that sentence?

35 A. Yeah. Just the liquidator wasn't, you know, in, in charge, you know. I think that's what Charter Pacific were relying on with this patent attorney in the UK.

Q. But when you say this email attaches assignments of patents that pre-date the liquidator - I am assuming this is the November 2017 patents?

A. Yes.

40 Q. And, therefore, makes his management of my patents illegal, are you relying on those assignments as evidence that makes the patent management by the liquidator illegal?

A. No. No, your Honour. I'm not, not saying that.

45 Q. What are you saying by that? What were you intending to say by that sentence and reference to the assignments?

50 A. Well, there's, there's a book - there is a document that exists. I just wanted pause, your Honour. I didn't want anything, I didn't want Charter Pacific to continue to change everything. So, I just wanted pause. Whether I believed that document was legal or not, I was concerned about it. But it existed. So, I

used the document for that purpose. But I was concerned about it.

HER HONOUR: Yes. Thank you. I notice the time.

5 ALKADAMANI: I apologise. I am trying to go--

HER HONOUR: Yes. How much longer? Are we going to finish?

10 ALKADAMANI: Yes. Yes. We will definitely finish today.

HER HONOUR: Yes. So, we will resume at 2 o'clock.

I understand your position, Mr McDonald, but we will resume at 2 lock.

15 Mr Burke, we are going to adjourn now till 2 o'clock. As usual, because you are in cross-examination, you won't be able to talk to anybody about your evidence.

20 WITNESS: Yes. Yes, your Honour.

LUNCHEON ADJOURNMENT

ALKADAMANI

25 Q. Mr Burke, can I ask you to go to tab 10 of volume 1?

A. Yes.

30 Q. Now, your evidence yesterday to her Honour was that in 2016 when you signed the SPA, am I correct that your evidence was that, you did not consider or understand the notion of beneficial ownership?

A. That's correct.

35 Q. And the idea that the beneficial ownership was something separate to the legal ownership was something, in 2016 when you were signing the SPA, you did not know about?

A. I didn't put it altogether. No.

40 Q. Well, you didn't think about the beneficial ownership of the patents being separate to the legal ownership, is that right, when you signed the SPA?

A. I didn't understand the term beneficial.

45 Q. If you didn't understand the term beneficial, does that mean you did not have any awareness of a distinction between beneficial ownership and legal ownership when you signed the SPA?

A. Correct.

50 Q. When did you become aware that there was a difference between the beneficial ownership and the legal ownership?

A. Through and up until this Court proceeding.

Q. Up to this Court proceeding is up to December 2019. So, when did you become aware?

A. Again, I don't know a specific day or a reference. But, you know, it was explained to me in various meetings.

5

Q. When?

A. Eventually. Through that, through that period. Chris. Which difference--

Q. Which year?

10 A. Between, perhaps, this year or last year. There is a difference between legal ownership and beneficial ownership, in a legal sense.

Q. Well, is there a difference between legal ownership and beneficial ownership in a non-legal sense?

15 A. Yeah. Yeah. It could be beneficiary(as said). I mean, yes. It could be a term specifically used in a legal association.

Q. Okay. Is it your evidence that throughout at least 2016 and 17 you did not have any awareness that there was a difference between legal ownership to

20 patents and the beneficial ownership of patents?

A. Not as I do today. I scanned the document. I wouldn't have paid much attention other than the page in the--

Q. What document are you talking about that you scanned?

25 A. SPA.

Q. I want to ask you about your understanding in 2016 and 17. Is it your evidence to the Court that in those years you did not have an understanding of the difference of there being a difference between legal ownership and

30 beneficial ownership?

A. I didn't understand beneficial in its legal context as I do today.

Q. Well, did you have any understanding or awareness of a difference between the beneficial ownership and the legal ownership in the years 2016

35 and 17?

A. I don't think I would have been able to differentiate the two.

Q. Did you talk in terms of beneficial ownership or legal ownership?

40 A. No. I didn't talk in those terms. No. I talked in terms of superannuation fund owned, has, contains the patents, bought the patents and owns the patents. Not beneficial.

Q. Can I ask you to turn to page 271 of the court book? What you have recorded in paragraph 156 is not true, correct?

45 A. It's true in my understanding today. So, when was, when was it signed? It's November.

Q. Look at paragraphs 154 and 155?

50 A. Yes. It's true in my terminology of today. So, super fund. The super fund, I had the patents, in the words of the day. Now, in my legal understanding, is

exactly that.

Q. You know that in paragraph 156 you meant to be telling the Court the effect of the words spoken in November 2016, correct?

5 A. As my understanding is, that's written today and that's my understanding today.

Q. But even though you're writing it today, you knew and you were telling the Court on oath that this is the conversation that you had in November 2016, correct?

10 A. To the words of that effect. To the words of that effect, and that's the effect.

Q. When you use the non-beneficial or beneficial--

15 A. I would - at that time, no.

Q. --you didn't use the word beneficial or non-beneficial in November 2016?

A. I wouldn't. No.

20 Q. That conversation you put in 156 is not true?

A. It's to the effect of. Same effect. It's true.

Q. You didn't use those words or words to that effect in November 2016?

A. To that effect.

25

Q. To Mr Cole?

A. Same. Same end result. Same, you know, explanation. Used in beneficially terms today, in ownership terms of the day.

30 Q. You're lying to her Honour because you've been caught with an inconsistent statement as to what your evidence is today?

A. I'm not lying to anyone from this box.

Q. The conversation that you have recorded at 156 - I withdraw that. I put to you that the conversation you have recorded in your affidavit between 154 and 161 of your affidavit did not happen, Mr Burke, do you agree with me?

35

A. Oh, sorry, where are you? Sorry, back to my affidavit.

Q. Yes. The conversation that you refer to at paragraphs 154 to 161 I put to you did not occur?

40

A. To the effect of they did occur.

Q. Mr Cole says there was no such conversation. He denies it, and he's telling the truth and you know it?

45

A. I'm telling you the truth. There was no reason for me to not disclose all the information about the super. He had direct access to my account. It was all known to him.

Q. Mr Burke, you didn't disclose that the superannuation fund open the patents because the superannuation fund did not own the patents, that's the

50

truth isn't it?

A. It owned the patents. It bought the patents correctly. Did a tax file appropriately.

5 Q. You tell the Court - oh?

A. It owns the patents.

Q. Can I show you this email (shown)? It's an email from you to Mr Dart of 24 March 2017?

10 A. Yes.

Q. The person that is referred to there as Clinton is a lawyer. That's a colleague or a friend of yours?

A. Yes.

15

Q. And he's the person, is he not, that also helped in reviewing the SPA?

A. Not really. I tried to get him to do it, but he had no time and I had no money.

20 ALKADAMANI: I am not going to tender that, your Honour.

Q. Can I ask you to turn to court book pages, in volume 3, we will start at 865 - so, it's not 865. It is 869. Could you turn to 868? Actually, you can see Microlatch's financial report for the year ended 30 June 2014?

25 A. Yes.

Q. You can see at page 887 that these were reports prepared by Sattout Accounting Services?

A. Yes.

30

Q. Sorry, in fairness, I should have directed you to 877 for the same information in relation to the report starting at 868?

A. Yes.

35 Q. If you go to 872, you will see that Microlatch Pty Limited's intangible assets including patents and trademarks is recorded as having \$298,221, do you see that?

A. Yes.

40 Q. What were the other intangible assets, the 378,499?

A. I'm not sure.

Q. Could they be the capitalisation of R&D costs?

A. It could be any. It could be, and any intangible. I'm not sure.

45

Q. The patents recorded there being owned by Microlatch Pty Limited include the patents that you now say the super fund owned, correct?

A. I'm not sure they are the same ones. But yes.

50 Q. You said earlier before lunch the super fund owned all patents, correct?

A. Yes, I did.

Q. The patent recorded in Microlatch Pty Limited's balance sheet must be the subset of all the patents, correct?

5 A. There were some patents dropped at some point. But I will say, correct. Yeah.

Q. Well, were they dropped as at 30 June 2014, the ones you have in mind?

10 A. Yes. They would have been dropped early.

Q. If they were dropped as at 30 June 2014, would they still be listed as assets of Microlatch Pty Limited?

A. Sorry, they were dropped early. Yes. The patents and trademarks, I'm not sure. I'm not sure.

15

Q. You have no explanation to her Honour as to whether or not the patents that are listed as part of the patents and trademarks--

A. I dropped - sorry.

20 Q. --includes the patents you now say were owned by the super fund, is that correct?

A. I dropped some patents because I couldn't afford to maintain them.

Q. If you dropped some and they don't appear in the balance sheet--

25 A. I dropped many at different periods. There was many I dropped.

Q. When they dropped, they don't get recorded as an asset of the company, do they?

30 A. Unless they're still existing. I could have dropped after, or prior to or--

Q. But I'm talking - I see. Well, let's go to 30 June 2000 - sorry, 882. Would you look at page 882? You will see that is a balance sheet as at 30 June 2015. Intangible assets; same assets, same numbers. Do you see that?

35 A. Yes.

Q. Does that give you any better understanding of what those patents were?

A. No. I'm not sure. It's the same numbers.

40 Q. Page 892, intangible assets again?

A. Yes.

Q. 298,221?

45 A. Same number again. Which is good, to be consistent. It's appreciating, or depreciating, or being dropped. So, I'm not sure.

Q. All right. So, you have no idea whether all those three numbers in each financial year refer to the same patents, is that right, or do you know they would refer to the same patents?

50 A. No. I do not.

Q. You wouldn't even know that?

A. No. I don't know that.

5 Q. You say some were dropped but it still added to 298,221?

A. That would make sense. The same number. So, I'm thinking it's just being left on the books.

Q. If the patent dropped off, it would no longer be an asset, is that correct?

10 A. Absolutely. If it's dropped, it's dropped.

Q. It's not left on the books because it would not be an asset to be put on the books, correct?

15 McDONALD: Objection. He's not an accountant. It calls for expertise; left on the books or not.

ALKADAMANI

20 Q. Did you sign the Microlatch's reports?

HER HONOUR: I will allow the question in the context where Mr Burke has given evidence he has signed or was asked about this question.

25 ALKADAMANI

Q. Did you sign the Microlatch balance sheet? Did you see the Microlatch financial report and give the directors declaration in a form which is at page 896? Sorry--

30 A. I believe so. Yes. I would have.

Q. So, you declared that the contents of the financial statements give a true and fair view of the company's assets, liabilities and other financial matters, correct?

35 A. To the best of my knowledge. I'm not an accountant. But yes.

Q. So, in a sense, are you trying to tell the Court that you don't really know what's on this document, you might, and you just signed it?

A. Yes.

40

Q. And is it the case, Mr Burke, that you will often sign things without really knowing what you are signing?

A. I scan things. Yes.

45 Q. I put to you that when you swore your affidavit it fitted into a similar category in respect of many things that you assert to the Court today?

A. My lawyer said, "Take great effort with the affidavit". He was very specific. Because he knows me.

50 Q. And you took great effort to record the conversation at paragraph 156 in

the terms in which it occurred in November 2016?

A. Yes. In the effect of.

5 Q. I want be to absolutely clear. Because you were in Court when I opened this case, weren't you?

A. Yes.

10 Q. Are the Australian patents that were assigned under the 24 September 2018 deeds the subject of any claim by your super fund?

A. The claim is that the super fund owns them. Yes.

15 Q. But after 24 September 2018 when they were assigned, do you still say the super fund owned them?

A. Yes. Absolutely. The super fund owns them today.

20 Q. So, notwithstanding the deeds to 14 September 2018 which you signed to give effect to order 7, you say the beneficial ownership of the patents has still not been taken out of the super fund, is that right?

A. Justice said, restore. And I restored. That was in the super fund all the way through. So, there was no need to change that.

HER HONOUR

25 Q. Can I clarify something? Mr Burke, is it your position that both - that the patents that are in the name of Securicom (NSW) Pty Limited and Microlatch are all owned by the super fund?

A. Yes. As I said, there was a conjecture about Microlatch, your Honour. But that was my original position.

30 Q. No. What is your position today?

A. I believe the super fund bought all the patents.

35 Q. All the patents referred in that deed of assignment in September 2018 you say are owned by the super fund?

A. Yes, your Honour.

40 Q. And do you say the same in respect of all of the patents that were in the name of Securicom (NSW) Pty Limited and Microlatch, I think either UK or Microlatch--

A. Limited. UK. Yes.

45 Q. --Limited UK, that was the subject of what I call the international patents?

A. Yes.

50 Q. That was subject to the November 2017 deed. All of those patents are also owned by the super fund?

A. In my view, the super fund owns all the patents, your Honour.

ALKADAMANI

50

Q. Could I ask you to turn to page 901 of the court book? You know that this document is a general security deed. You are familiar with it, aren't you?

A. Yes.

5 Q. Can I ask you to turn to page 932? That's your signature, isn't it?

A. Yes.

Q. And can I ask you to turn to page 904 and 905? There's a definition of asset/assets?

10 A. Yes.

Q. And that includes the patents?

A. Yes.

15 Q. Correct?

A. Yes.

Q. And 909 at 2.1; Securicom has granted a security interest to CPC in all its present and after acquired assets?

20 A. Yes.

Q. We will just look at the assets as including the patents?

A. Yes. A sufficient right or interest. Yes.

25 HER HONOUR: Just to clarify, that is the Securicom patents only, not what I describe as being referred to as the Microlatch patents, is that right?

ALKADAMANI: I think that's right, your Honour. But I would have to double check.

30

HER HONOUR: Yes.

ALKADAMANI: The one that gives me a little bit of (indicated) is the Australian one at the top. I would have to check, your Honour.

35

Q. But if Securicom wasn't the beneficial owner of the patents, then entering into this general security deed would be causing Securicom, as trustee of the super fund, to breach its obligations to the beneficiaries of the super fund, wouldn't it?

40 A. I don't believe so. It says, at any time, a sufficient right or interest. To me, that means, trustee to the owner, a sufficient right. Which I believe always it had.

Q. So, you took careful note of that, did you?

45

HER HONOUR: I didn't see the words.

ALKADAMANI: 2.1 at 909.

50 A. I am just reading now, as you show me, that was my belief.

Q. Your belief, when you signed, because of those words--

A. Not because of those words. No. Sorry. I'm sorry. Sorry to butt in.

5 Q. When you signed it, if you look at 2.1, you're saying Securicom is granting a security interest to CPC in all its present and after acquired assets. So, it's pledging the assets, would you agree with that?

A. A sufficient right to the assets. Yes.

10 Q. Can I ask you to turn to page 933?

A. Yes.

Q. Now, that deed was an assignment from Microlatch to Securicom?

A. Yes.

15

Q. Recital (b), or background B; the assignor has agreed to assign its rights in the patent to the assignee on the terms set out in this assignment, do you see that?

A. Yes.

20

Q. The relevant patent is defined in 1.1?

A. Yes. Again, assign its rights, I still, I still read that.

Q. 2.1?

25 A. Asset, as it had the right to.

Q. Can I ask you this? What if the SMSF owned the beneficial title to the patents? It could. Microlatch could not assign it, could it?

30 A. It had the right to. I had the legal ownership right to do it. And it was the company that would sign on behalf of the superannuation fund.

Q. We will take it step by step. 2.1 records the assignment. That's at page 934. 934?

35 A. Yes. I still believe 2.1 had guaranteed the right. I'm not a lawyer. But that, to me, it had the right.

Q. You signed this document?

A. Yes.

40 HER HONOUR

Q. That's, at 939, your signature?

A. Yes.

45 Q. Microlatch, on your case, did not have the full title which includes the beneficial title to assign to Securicom, isn't that right?

A. It had the right to. It had the right to.

Q. It had the right to the beneficial ownership?

50 A. It had the right to the super fund.

Q. Who had the right to the super fund?

A. The trustee.

5 Q. Microlatch Limited--

A. Oh, sorry. Microlatch.

Q. --is the assignor?

A. Yes.

10

Q. Was Microlatch Limited the beneficial owner of the patent that was being assigned?

A. I still believe the patents are all patents in the super fund.

15 Q. Under this deed, what did you believe?

A. I've always believed that. I said there is some recent conjecture about Microlatch and Securicom. But it's my belief that--

Q. This is dated 31 October 2016. What is Microlatch Limited assigning to Securicom?

20

A. Legal ownership.

Q. Well, why in that case does 2.1 talk about the full title?

A. Well, I read that as guarantee its rights. It's right to assign.

25

Q. Assign absolutely with full title. Guarantee its right, title and interest in and to the patent?

A. I honestly believe that was the company's right. Because it was the trustee of the super fund.

30

Q. Sorry, Mr Burke, was Microlatch the trustee of the super fund?

A. No. No, your Honour. It wasn't the trustee. But the patents were, in my view, the patents were in--

35 Q. Now, did Microlatch, if not the trustee, do anything with the super fund assets?

A. It can't do anything with the super fund.

Q. What right does Microlatch, if it's not the trustee, have to do anything with the super fund assets?

40

A. Well, Securicom was the--

Q. No. I'm asking about Microlatch.

A. Securicom was a shareholder, your Honour, of Microlatch.

45

Q. But Microlatch is the party on the deed that says it's the proprietor of the patent?

A. Yes.

50 Q. Isn't that the owner of the patent?

A. Well, the legal owner. But in my view, again, Securicom was the shareholder of Microlatch. And to me, they were one and the same entity.

5 Q. Well, if they were one and the same entity, why do you need any assignment?

A. By, by shareholding. I treated them as the same on that basis. Securicom was--

10 Q. Why did you have to need an assignment and the same entity?

A. Registered names. And I wanted everything to be accurate, as far as the registered names were concerned. And that was a request of Charter Pacific at the time, your Honour. I didn't, I didn't read that assignment. That was Charter Pacific's requirement of me, and I agreed to do that.

15 ALKADAMANI

Q. If Microlatch did own the patents, then there would be a very good reason for Microlatch Limited assigning to Securicom (NSW) Pty Limited so that, under the SPA, Securicom (NSW) Pty Limited did own the patents, correct?

20 A. The super fund own the patents.

Q. So, in short, your evidence is, you had no reason to sign this document. You signed because the SPA asked you to. And it had no effect whatsoever on who owned the patents, in your view?

25 A. Legal ownership, registration ownership, lining everything up for CPC to list, was all. They wanted me to make sure we can do this, do this, do this. And I did.

Q. They wanted you to make sure the beneficial ownership of the patents--

30 A. They wanted to list as quickly as they could.

Q. Mr Burke, are you seriously telling the Court CPC didn't want to make sure--

35 A. I don't care. They cared. They listed. I wanted my money. They wanted their money.

Q. Mr Burke, if CPC did not acquire the companies that had the beneficial ownership to the patents, then the CPC was acquiring paper and that's all, isn't that right?

40 A. They had the rights of the trustee which I believe were a legal commitment for the super fund to end the process; to hand over patents once it's got it shares. To me, that is simple. If this happened, we wouldn't be here. If they listed, we wouldn't be here.

45 Q. I put to you, Mr Burke, if you are doing - let's get to why we are here, Mr Burke. Can I ask you to turn to page 1045? That's an affidavit that you swore in Supreme Court proceedings - sorry, no. Proceedings in this Court. Okay. So, paragraph 14. Can you see that at the beginning of 2016 Securicom, Microlatch and Microlatch UK had obtained and registered a
50 number of items of IP?

A. Yes.

5 Q. And the last payment that your super fund made in respect of that, you say or show that your super fund made in relation to supposed purchases of patents, was about August 2013, correct?

A. Yes. 2013, 2014.

10 Q. No. It's August 2013. There's no payments after that, is there, Mr Burke?

A. Total 335. That's all I recollect. I don't remember which years.

10 Q. Were you here when Mr Fitz(?) said previously--

A. Previously, yes. I'm not sure whether previously or later. But the total is 335.

15 Q. And page 1067 is an affidavit of Mr McCartney of 18 July of this year. Look at paragraph 1. Mr McCartney says he is authorised by you to affirm this affidavit in these proceedings?

A. Yes. Yes.

20 Q. Do you remember giving that authorisation?

A. I don't remember specifically. But I accept that it was done.

Q. Paragraph 9--

A. Yes.

25

Q. --talks about the business of Securicom and Microlatch being a development of its IP and ownership of patents?

A. Yes.

30 Q. And nothing there about your super fund?

A. Nothing there about it.

Q. Because the truth is, your super fund never owned the patents, Mr Burke?

35 A. The super fund from the day tax returns were filed and has never been assigned out of the super fund.

HER HONOUR

40 Q. Is it your evidence it only owned from when the tax returns were filed?

A. Oh, from the dates that they were--

Q. Filed?

45 A. Well, well, what are the dates? That seems to be two, you know. The dates they acquired from the payment. Sorry, your Honour. When the moneys were paid.

Q. When were these patents acquired?

A. As soon as the money was paid. That was my--

50 Q. No. I'm not asking when the money was paid. When were these patents

that we are talking about acquired by companies or registered in the name of companies associated with you?

A. Right, right back at the beginning? They were bought by the super fund.

5 Q. I'm asking you because your affidavit at paragraph 14 on 148 says at the beginning of 2016 you had obtained a number of IP. Items of IP.

A. Sorry, can I go back there? 1048?

Q. 1048.

10 A. Yes. Paragraph?

Q. 14.

A. 14. I think that that's just an incorrect date, your Honour.

15 Q. So, that's not a right date?

A. No. So, no. That's not a correct date, your Honour.

ALKADAMANI

20 Q. You say it's not a correct date because it doesn't suit your cross-claim, isn't that the truth, Mr Burke?

A. Look. I just tell the truth.

25 Q. The truth is, you are now saying it's an incorrect date because that date doesn't suit your cross-claim?

A. I just tell the truth.

30 Q. Mr Burke, and the truth is that you are saying it's not the correct date because the date you recorded in your affidavit does not suit your cross-claim, correct?

A. I disagree.

35 Q. Now, you first saw Mr Sattout towards after June 2016 in respect of preparing financial reports and tax returns, correct?

A. Yes.

40 Q. Before you saw him you obviously did not provide him with any bank statements or financial - sorry, before July 2016 you had not provided Mr Sattout with any bank statements or financial documentation relating to the super fund for Securicom or Microlatch, correct?

A. All the historical information was presented to him. So, he had, he had information historically, but.

45 Q. Yes. But none of that was presented to him or given to him prior to July 2016, correct?

A. That's when I engaged for Charter Pacific. Yeah. It was for the purpose of the SPA.

50 Q. So, nothing before. You had not retained him or given him any information prior to July 2016, correct?

A. He was my accountant at a prior time. But before 2010 I think. Before 2000.

Q. Can I ask you to turn to volume 3 page 1212?

5 A. Yes.

Q. Item 8, what's recorded there, that you withdrew 123,211 from the fund's bank account, that's correct isn't it?

10 A. That's what that accountant, that's where he made his mistake. Yeah.

Q. That money was withdrawn from the company's bank account, wasn't it?

A. It was withdrawn or, or transferred. Yes.

Q. Transferred out?

15 A. Yes.

Q. In item 11, the amount loaned there was an amount loaned, at least vested in related parties, of \$164,900, correct?

20 A. That was what it says.

Q. But that's correct, isn't it?

A. I can't remember the numbers.

Q. Okay, do you dispute the numbers?

5 A. Oh no I don't dispute the numbers.

Q. Do you dispute that is what occurred?

10 A. Yes, I don't agree with the words because I don't agree with that accountant, the position. So I am just a little bit hesitant to say I agree with everything written from that accountant.

Q. Look at item 13. In about May to 2013, sorry, I withdraw. Then there was \$225,416 that was loaned, leased or invested to related parties?

15 A. Yes.

Q. The related parties are yourself, is that right?

A. I'm not sure. As I say I don't trust anything from the accountant that's written because I believe he was wrong, incorrect.

20 Q. Look at item 17?

A. Yes.

Q. The loan to you of 177,000?

25 A. Yes.

Q. That's correct, isn't it?

A. I'm not sure. As I say I don't take this accountant's position as my own.

30 Q. All right. When this accountant lodged the return of the documents, someone had to sign them on behalf of the SMSF, correct?

A. Yes.

Q. That would have been you, correct?

35 A. Yes.

Q. So whatever he put in, your accountant, the documents, you adopted by signing it, correct?

A. Yes.

40 Q. Now the in house asset rule, as you understand it, is that a Super fund cannot own more than its assets acquired from a related party cannot be more than five percent of its assets, correct?

A. I'm not sure.

45 Q. The patents would certainly be more than five percent of the Super fund assets, correct?

A. Post them paying the money for the patents.

Q. No just as recorded in the financial statements lodged?

50 A. At this time?

Q. In April 2017 by Mr - in the - sorry, I withdraw that.

5 ALKADAMANI: No further questions your Honour.

HER HONOUR: I have one question that I would like to ask to have clarified which is exhibit E.

10 Q. Do you have exhibit E there please Mr Burke (exhibit E shown)
A. Yes.

Q. This is the licence I think that, I can't recall now when it was. Yes, agreement made on 23 August 2013?

15 A. Yes.

Q. This is a licence whereby - did you prepare this licence?

A. Yes your Honour.

20 Q. Yes. When it says that the licensor owned intellectual property rights, what did you mean by that?

A. It was given the rights to exploit the patents owned by the superannuation funds through Securicom as the trustee. I always went through those steps.

25 Q. When you say you always went through those steps, what did you do to go through those steps?

A. Oh sorry, the steps mentally that, you know, that Securicom had the rights to the patents therefore he could make the licence deed as the trustee to the Super fund.

30

Q. But when you say it owns intellectual property rights it is not correct in your case, is it, that Securicom (NSW) Pty Ltd owned it?

A. Your Honour we say legally owned them--

35 Q. No, no, I'm asking you whether or not is it your case that Securicom (NSW) Pty Ltd owned the intellectual property rights to the patent?

A. Your Honour I can only say that in my opinion legally owned so it legally had rights as a trustee to the Super fund and the Super fund couldn't sign those documents. It had to be a company, a corporate entity to make an agreement legal, legally binding. That was my firm belief at the time.

40

Q. But when you said it owns, what at that time did you mean by "owns"?

A. Owns the rights to or owns the ability to assign or to the licence.

45 ALKADAMANI: Your Honour I just have one question. I'm sorry I just need leave.

HER HONOUR: Yes.

50 ALKADAMANI

Q. Can I ask you to turn to volume 3, page 1202?

A. Yes.

5 Q. You will see that in the description of the transaction there are words such as 1 July Super accounts, 11 August Super ATO. 23 August patent payment. 24 August patent payment?

A. Sorry?

10 Q. 1202, yes, or have I got the wrong page?

HER HONOUR

Q. It is a bank statement Court book 1202?

15 A. Yes.

ALKADAMANI

Q. Have you got a bank fund from the--

20 A. A bank statement, yes.

Q. Yes. Do you see the word "transaction" at the top of the ledger?

A. Yes.

25 Q. You see for 1 July the words Super accounts?

A. Yes.

Q. For example 23 August patent payment?

A. Yes.

30

Q. You are the person that enters those descriptions when you're causing a transfer to occur, correct?

A. Yes.

35 Q. Thank you and that is the case for 24 August and 26 August transfers as well?

A. Yes.

HER HONOUR: Thank you any re-examination?

40

<RE-EXAMINATION BY MR McDONALD

Q. Sir, can you go to page 1048? You were asked about paragraph 14?

A. Yes.

45

Q. Can you read that to yourself again?

A. Yes.

Q. I think your evidence was the date wasn't correct?

50

A. Yes.

Q. Can you tell the Court what date you think would be correct?

5 A. It was from 2004 forward that had their name registered and the patents in one, in one company or another had their name registered on the patents from the inception 2004.

HER HONOUR: Thank you Mr Burke, you may be excused.

10 THE WITNESS WITHDREW

10

ALKADAMANI: It went on longer than I anticipated your Honour and I apologise if that was done by me to cause that to occur.

My friend had a discussion with me this morning about a way forward.

15

McDONALD: Your Honour I would like to have the opportunity to file written submissions by Friday. I would like to go first. I would like the opportunity to seek instructions in making concessions. That is obviously something that counsel should always do but I want to seek instructions to meet as many
20 concessions as are reasonable and I think if I am given instructions to what I may well be putting might shorten the task that everyone else will left to deal with after Friday.

HER HONOUR: That would be useful at this time of year Mr McDonald.

25

McDONALD: Yes.

HER HONOUR: What I would be keen to understand is what really your case is, in terms of what patents, because I think I started the hearing on a certain
30 assumption and that may have changed based on what has come forward from the evidence.

McDONALD: My instructions were different to what was said so I need to make that clear. We have got a call which I said we would answer within
35 24-hours but that was about seven hours ago.

HER HONOUR: I am assuming by the end of tomorrow would that be sufficient?

40

McDONALD: Yes.

HER HONOUR: Before we adjourn I would like to go back to the pleading to see exactly and I understand that you are going to get some instructions on
45 this.

45

McDONALD: Yes.

HIS HONOUR: But I want to be clear when we adjourn or maybe when you get the instructions and you can speak to Mr Alkadamani about this but exactly
50 what issues are in dispute and the issues are that the parties consider the

5 Court will need to come to a determination on which I understand and I understand Mr Alkadamani you are going to be making an argument I expect in relation to an Anshun estoppel but leaving aside that issue, paragraph 1 of the issues likely to arise looks at whether the patents were owned beneficiary
10 by the superannuation fund and I think you will get instructions as to what those patents are, whether we are talking about all the patents in schedule 5 or a subset.

10 McDONALD: Yes.

HIS HONOUR: You say that paragraph 2 is something that the Court would need to determine. I would like to know that.

15 McDONALD: Yes.

HIS HONOUR: Do you say paragraph 3 is something that the Court needs to determine? I am leaving that as a question for you. You don't have to answer now.

20 Paragraph 4, I assume you will want the Court to determine that. It may flow from the answer to 1. So let me put it this way and this is what I want the parties to consider if the Court includes that the patents are owned beneficially by the superannuation fund does that mean that the parties accept that the non-beneficial interests were subject under that deed or is it still contended
25 that all of the interests were transferred. If the Court concludes that it is not satisfied that the patents were owned by the superannuation fund, do you accept that that deed is operative and all of the rights, beneficial, legal and otherwise have been transferred? I think they are the questions I think that need to be considered.

30 Is 5 different to 1 and, 4, if the Court concludes that the patents were not owned beneficially at the time of SPA is there anything additional that you rely on for 5? I don't know the answer to that. That is why I want to know precisely what the questions are. And 6, I'm not sure if that has not been raised. So
35 again is that an issue that you want the Court to determine 7 as I understand it, and as I read that there is no issue that the Court should be looking at in terms of the notice that was described as a notice of termination that apparently has been served recently. So that is no longer an issue. I know it was raised in your submissions Mr McDonald but as I understand it, that is not a relevant
40 issue in this case.

McDONALD: I think not because I think the dispute about the validity of that notice was met with a comment that the time for the SPA was extended further and that time has now passed. So I don't think that we are arguing that the
45 SPA is still on foot today. I would seek to clarify that.

HER HONOUR: I think you might need to clarify that because as I read your submissions it was to the fact that one of the factors that the Court should take into account in considering the issue is whether the contract can be specifically
50 performed.

McDONALD: Yes, that was a factor. So I will clarify that with my friend. That was more as an answer to his further amended notice of motion rather than in respect of the cross-claim but it is something I will clarify.

5 HER HONOUR: Yes and then obviously in the response to the cross-claim, Mr Alkadamani, there is the question of estoppel.

ALKADAMANI: Yes.

10 McDONALD: I can also say your Honour and I could have said this at the start, to the extent that the Court was minded to order number 2 in the further amended notice of motion which is that order 7 be performed to the extent that the Court is minded to do that, we would not mind the making of order 3 which is ability of the Registrar--

15

HER HONOUR: Yes, I think on the first day there was some debate about the actual terms of the deeds. If that is something that either party wants the Court to determine then you are going to have to make submissions to me as to you say it is or not.

20

McDONALD: I am also looking at trying to advance resolution of that aspect by Friday as well.

BEHMAN: Your Honour Behman for the liquidator.

25

HER HONOUR: Yes Mr Behman.

BEHMAN: If there is going to be an argument about the terms of the deed to be excused ultimately the liquidator--

30

HER HONOUR: Would like to have an interest, yes. I think what you need to do is speak to counsel for both parties and see if that can be resolved.

BEHMAN: Yes your Honour.

35

McDONALD: Yes.

HER HONOUR: Thank you. If you do your submissions by Friday do you want Mr Alkadamani a time to respond and by when.

40

ALKADAMANI: Let me put it this way, if your Honour has time on Monday, I am happy to work on the weekend, that is next Monday, but in a sense if your Honour is not going to bring us back before Wednesday I would like Monday to work on it.

45

HER HONOUR: I would prefer to read the parties' submissions before I hear any oral address because that will assist me. So if you want to have Monday--

50 ALKADAMANI: No, no, I am not saying I want Monday. I am really trying to say that it depends on what your Honour can do working backwards.

HER HONOUR: I'm trying to work out what I have got on. How long do you think submissions would take?

5 McDONALD: I am happy for us to be limited each to a certain time.

HER HONOUR: Two hours total?

McDONALD: Yes.

10

ALKADAMANI: Yes. How about 5pm Monday for me.

15 HER HONOUR: 5pm on Monday. Mr McDonald I will direct your client to file and serve any submissions, when I say file, to send them to my associate any written submissions by 5pm on Friday and Mr Alkadamani if you could serve, get your client to serve yours by 5pm on Monday and I will relist the matter for you.

(Discussion as to suitable dates.)

20

25 HER HONOUR: Next week Thursday at 10 o'clock. What I would also like by 5pm on Monday is list of issues that the parties consider that the Court needs to determine. So the questions that the Court should determine, if there is any disagreement as to that, what the disagreement is and when you are doing your submissions both parties, but Mr McDonald I will direct this to you, I would be very interested to know what you say or what evidence you say there is which supports the conclusion that there is a beneficial interest in the patents and for which patents held by the Super fund. Thank you.

30 ALKADAMANI: Your Honour, can I ask one indulgence since it is going to be heard on Thursday. Could I have until 2pm Tuesday?

35 HER HONOUR: Yes you may have 2pm on Tuesday. If I can have the issues it might be by 2pm on Tuesday as well so you have got the benefit of the submissions.

If you are going to refer to any authority if you give me pinpoint references as well. I don't need multiple authorities for the same proposition.

40 ALKADAMANI: Your Honour can I also just regularise some matters. One is our further amended notice of motion, my solicitor tried to file it but was unable to.

HER HONOUR: I thought I granted you leave to file in Court?

45

McDONALD: That was the notice of appearance.

HER HONOUR: The amended notice of motion.

50 ALKADAMANI: The short orders on Friday did provide for leave but my - I

don't know what has happened. I am just trying to make sure--

HER HONOUR: I will file it in Court, so hand it up.

5 ALKADAMANI: This is in tab 1 I think.

HER HONOUR: This is the amended notice of motion.

ALKADAMANI: Further amended notice of motion.

10

HER HONOUR: Yes further amended notice of motion which I granted leave to file on Friday.

ALKADAMANI: Correct.

15

HER HONOUR: Well we will file it in Court today. I am not sure if there are any filing fees but obviously if there are--

ALKADAMANI: We undertake to pay them.

20

HER HONOUR: Yes, thank you.

ALKADAMANI: The other thing is your Honour, your Honour has, I don't think your Honour has formally given leave for our amended response, the one that had the additional estoppel by representation claim. Your Honour will--

25

HER HONOUR: That is the amended commercial list cross-claim response.

ALKADAMANI: Yes, the last two paragraphs of that. Your Honour on Friday last week deferred the question to the hearing. That then related to issues of whether or not the evidence of Mr Sattout was--

30

HER HONOUR: I have assumed that it's happening because Mr Sattout's evidence went in as did Mr Coles.

35

McDONALD: I think I indicated that we consented.

HER HONOUR: Yes. So I will grant leave and we will file it in Court now to the plaintiffs to file the amended commercial list cross-claim response.

40

ALAKADAMANI: Thank you. That's all.

HER HONOUR: Do you have a copy, a signed copy, and we will file it in Court now.

45

McDONALD: While we are here that would be the authorities I was going to rely upon. Is there any benefit to hand this up now.

HER HONOUR: You can give it to me now, yes, thank you (authorities handed up). Are these the ones referred to in your submissions originally?

50

McDONALD: Yes. Thank. These have got the pinpoint references?

McDONALD: Those will be the extent to which I refer.

5

HER HONOUR: I have a copy of those two so I will hand them back to you.

ALAKADAMANI: My solicitor is just signing the Court book copy of the amended commercial list response. So I might hand those up (handed up).

10

Your Honour thank you for allowing us to run into the second day.

HER HONOUR: I must say when I read the papers I thought we were a bit optimistic for one day and Mr McDonald your advice was noted.

15

I will adjourn until 10 o'clock on Thursday and if there are any concerns in the meantime, if there is any movement between any of the parties about anything obviously contact my associate.

COURT ADJOURNED

20

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