CITATION:	*Alecia and Conrado Segovia v Commonwealth of Australia* [2002] NTMC 048
PARTIES:	ALECIA SERGOVIA & CONRADO SERGOVIA v COMMONWEALTH OF AUSTRALIA
TITLE OF COURT:	Local Court
JURISDICTION:	Civil
FILE NO(s):	20010861
DELIVERED ON:	16 December 2002
DELIVERED AT:	Darwin
HEARING DATE(s):	11-26 June 2002, 1-5 July 2002, 8,9 11,12,and 17 July, 12 August 2002, 9,10,16 and 17 September 2002.
DECISION OF:	Mr Gillies SM

CATCHWORDS:

Contract – implied term –
Restitution – money paid pursuant to a mistake.

REPRESENTATION:

Counsel:

Plaintiff:	J. Kelly
Defendant:	D. Francis

Solicitors:

Plaintiff:	David Francis & Associates
Defendant:	Clayton Utz

Judgment category classification:	B
Judgment ID number:	[2002] NTMC 048

IN THE LOCAL COURT
AT DARWIN IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. 20010861

BETWEEN:

Alicia Segovia and Conrado Segovia

Plaintiffs

AND:

Commonwealth of Australia

Defendant

REASONS FOR DECISION

(Delivered 16 December 2002)

Mr ANTHONY GILLIES SM:

INTRODUCTION

Customs House at 21 Lindsay St, Darwin is a six storey building. Five of those storeys are occupied by the Australian Customs Service. The other storey is occupied by the Australian Federal Police. The plaintiffs and the defendant had a relationship that endured for part of 1997, all of 1998 and 1999 and part of 2000. That relationship consisted of:

1. The defendant permitting the plaintiffs entry to Customs House for the purposes of cleaning the fixtures, furniture and some of the structure of Customs House and removing rubbish. The plaintiffs cleaned the areas occupied by both the Australian Customs Service and the Australian Federal Police.

2. So far as the provision of cleaning services to the areas occupied by the Australian Customs Service is concerned, the plaintiffs submitted invoices to the defendant seeking payment for cleaning services and rubbish removal they claimed they had performed.

3. The defendant paid most, but not all, of the invoices submitted by the plaintiffs for cleaning the areas used or occupied by the Australian Customs Service and for rubbish removal.

4. So far as the provision of cleaning services to the area occupied by the Australian Federal Police is concerned, the plaintiffs submitted invoices and were paid. There appears to be no dispute between the parties concerning cleaning for the Australian Federal Police.

The dispute between the parties involves:

1. the plaintiffs suing the defendant for invoices submitted for payment but not paid by the defendant,

2. the plaintiffs suing for an amount of $3300, whereby it seeks that the defendant pay as per their particulars, an "amount owing in respect of rise in the cleaners award", and

3. the defendant suing for the repayment of monies it has paid to the plaintiffs in relation to some of the invoices. The defendant says it paid money pursuant to a mistake as to its contractual liability to pay the invoices: see paragraph 31(c) NOTICE OF DEFENCE AND COUNTERCLAIM TO THE PLAINTIFF'S (sic) AMENDED STATEMENT OF CLAIM FILED 6 NOVEMBER 2000 (hereafter DCC) and it wants the money it says it paid pursuant to a mistake repaid.

FACTS

I am satisfied that it is more probable than not that:

1. The plaintiffs received in their National Australia Bank Limited bank account the amounts specified in Schedule 1 on the dates specified. Such amounts were paid by the defendant. The payment of the amounts was prompted by receipt of an invoice or invoices submitted by the plaintiffs to the defendant. Those invoices are identified in Schedule 1. Please refer to Schedule 1. Schedule 1 forms part of the facts I find in this matter. I am satisfied that the plaintiffs received the amounts by considering their bank statement records: Exhibits 42 and 43. I note the amount and the date the amount was received and look for an equivalent amount which the defendant says it paid considering Annexure PWI of the affidavit of Paul Edward Walters (Exhibit 32). Against the amount paid in Annexure PW1 appear invoice numbers. I have then considered the original invoices in Exhibit 38, the copy invoices in Exhibit 4 and the copy invoice numbered 99084 in the sum of $600.00 which appears as part of the Annexure A&CS23 of the affidavit of the plaintiffs (Exhibit 1). I have considered whether the invoice numbers and the amount of each invoice in Exhibits 38 and 4 and the copy invoice 99084 which is part of Annexure A&CS23 of Exhibit 1 bear a similarity to the invoice number and amounts referred to in Annexure PW1 of Exhibit 32. I am satisfied that the invoice numbers identified in Schedule 1 prompted or generated the payment of the amount against that invoice number.

   The method employed in the defendant's payment records of identifying invoice numbers does not precisely mirror the plaintiffs' method. The plaintiffs submitted invoices with the numbered prefaced ACS. The defendant's records generally contain this preface but sometimes a record does not. For work in the year 2000 the plaintiffs adopted an invoice numbering system which included dots which the defendant's record did not faithfully repeat. As an example the plaintiff submitted two invoices each numbered ACS…2000…008. One of these invoices, in the sum of $189, was

re-numbered ACS…2000…008 6 or b. This invoice was paid as ACS..2000.008 on 3 May 2000.

I have looked for similarities which consist of a similarity in invoice number and a similarity in amount claimed and paid to be satisfied that the amounts paid were paid in response to invoices emanating from the plaintiffs.

2. The relationship between the parties, at its most basic, consisted of:

(i) the defendant permitting the plaintiffs entry to Customs House to clean fixtures, fittings and part of the structure of Customs House in the areas occupied by the Australian Customs Service and the removal of rubbish from those areas,

(ii) the plaintiffs attending Customs House to undertake cleaning work,

(iii) the plaintiffs submitting invoices seeking payment for their cleaning work, and

(iv) the defendant making payment of some but not all of those invoices.

Their relationship commenced pursuant to a written contract between the plaintiffs and the Australian Property Group on behalf of the defendant. That written contract consists of the CLEANING TENDER AND CONTRACT (see Annexure A&CSI to Exhibit 1) and the letter of acceptance from Julie Crummy of the Australian Property Group (see Annexure A&CS2 to Exhibit 1).

The letter of acceptance specified that "ACS cleaning", ie, cleaning for the Australian Customs Service commence on 6 April 1997. The CLEANING TENDER AND CONTRACT at clause 3 specified, omitting the irrelevant first phrase, "the contract shall be in force for a period of two (2) years commencing 1 April 1997 with the Commonwealth reserving the right to extend the contract for a further twelve (12) months".

For those who require relationships to be categorised or nominated, the relationship of the parties from 6 April 1997 until midnight on 30 March 1999 was contractual.

It is clear that as 30 March 1999 approached the parties did not consider or negotiate an extension to the contract. The defendant did not from 1 April 1999 "extend the contract for a further twelve months".

The best indication is that the parties did not turn their minds to the issue. The plaintiffs continued to attend to clean at Customs House. The defendant continued to allow the plaintiffs entry to clean. The plaintiffs continued to submit invoices. The amounts charged on those invoices for regular, ie, periodic cleaning services did not change after 1 April 1999. As an example the plaintiffs continued to claim, as part of their regularly submitted invoices for the monthly clean, an amount of $1899.61. The amount specified in the CLEANING TENDER AND CONTRACT for "GENERAL CLEANING DUTIES" was $1899.61 per month. The amount was consistently claimed before and after 1 April 1999.

The best that can be said is that both parties assumed that the contract remained in force but they were each mistaken in that regard after 31 March 1999.

Their cleaning relationship appears to have finished on 5 May 2000: see the references to work ending "on the 5th of May, 2000" in invoice 2000..21(b).

3. From 1 July 1997 until sometime after 9 December 1999 but ending in December 1999 the invoices were processed for payment by Brett Anthony Stack. (See paragraph 9 of the affidavit of Anthony Parker (Exhibit 13) where Mr Parker affirms that after 1 July 1999 Customs "outsourced" the approval of accounts and payments to Jones Lang Lasalle (JLL), in Sydney, formerly known as Jones Lang Wootten. Mr Stark in his affidavit (Exhibit 29) does not clearly state when JLL commenced to provide the Australian

Customs Service with property management services. His paragraph 3 is ambiguous. He says "[f]rom April 1997 to December 1999, I was property manager at JLL in Sydney with responsibility for the Customs account", however he does not state when that responsibility commenced. I accept relying upon paragraph 9 of Mr Parker's affidavit (Exhibit 13) that the responsibility commenced with the "outsourcing" to JLL and accordingly that as property manager of JLL Mr Stack approved payments from 1 July 1997 onwards. He stopped approving payments sometime after 9 December 1999: see paragraph 4 of Mr Stack's affidavit sworn 30 July 2002 (Exhibit 30).

A perusal of Schedule 1 to Fact 1 shows that Mr Stack did not do a good job. That is immediately apparent by considering the duplicate payments for invoices 980032, 980033, 980034 and 980035 which were received 4 November 1998 and 20 January 1999.

The approval process consisted of the following. Invoices were received by JLL in Sydney. Details of an invoice would be entered by a data entry operator into a computer system. Mr Stack would look at the information entered on a computer screen and enter "yes" if it was to be approved for payment or "no" if it was not.

At paragraph 6 of his affidavit (Exhibit 29) Mr Stack says "[I]t was my practice to enter "yes" as approved for payment of all invoices which I believed were inside the terms of the relevant contract". Mr Stack does not say either in his affidavit or in evidence how he undertook this task. He does not say that he had the CLEANING TENDER AND CONTRACT open before him every time he processed invoices.

What motivated him to send his facsimile of 8 November 1999 to Mr Parker (Exhibit 14) I cannot say because he does not say. In Exhibit 14 appears the words "Tony, Seems like a lot of cleaning is being done here. Can you confirm if it is OK to pay. Regards, Brett Stack"

As to the payment approval process after December 1999 I am not told and I cannot find.

4. A perusal of Schedule 1 to Fact 1 together with the copy of the invoices in Exhibits 4 and 38 reveals:

(i) From on or about 4 February 1998 the plaintiffs regularly submitted invoices in the sum of $ 2349.61 for four services, namely, a specific monthly clean (in the sum of $ 1899.61), removal of cardboard boxes and shredder paper (in the sum of $150), cleaning front and rear areas or outer areas (in the sum of $140) and specific cleaning of the Customs warehouse (in the sum of $160) . I shall refer to these four services as a "monthly clean".

I do not propose to set out the number of each invoice pertaining to monthly clean that was submitted. The plaintiffs submitted the following invoices for a monthly clean in 1999 and early 2000, namely:

Month		Invoice
Jan	1999	980035 re-numbered 980037
Feb	1999	99001
March	1999	99004
April	1999	99008
May	1999	99009 re-numbered 99013
June	1999	99019
July	1999	99024
August	1999	99028
September	1999	99033
No month specified		99038
No month specified		99042
October	1999	99046
November	1999	99082
December	1999	99091
January	2000	2000…001
February	2000	2000…006 renumbered 6 or b

Each invoice was in the sum of $2349.61. Each was paid with the exception of the January 2000 monthly clean (Invoice 2000…001) and the February 2000 monthly clean (Invoice 2000…006 6 or b). The payment for each monthly clean in 1999 was made together with the payment of each of the two unspecified monthly cleans.

(ii) The plaintiffs received payment twice in the sum of $ 2349.61 for the October 1998 monthly clean. A perusal of Exhibits 4 and 38 discloses two invoices each originally numbered 980031. One invoice relating to the October 1998 monthly clean is re-numbered 980032. The sum of $2349.61 was received by the plaintiffs twice against invoice 980032, once on 4 November 1998 and then as part of a larger payment on 20 January 1999.

(iii) On 20 January 1999 the plaintiffs received payment twice for the following services, namely,

(a) quarterly clean between October and December 1998, in the sum of $1773.35. The original invoice for this service is numbered 980033. It was re-numbered 980034. Two payments each in the sum of $1773.35 were made, one against invoice 980033 and the other against invoice 980034.

(b) the monthly clean for December 1998 in the sum of $2349.61. The original invoice for this service is numbered 980034. It was re-numbered 980035. Two payments each in the sum of $2349.61 were made, one against Invoice 980034 and the other against 980035.

(c) cleaning of internal and external windows on the ground and first floors and glass doors in November in the sum of $ 400. The original invoice for this service is numbered 980035. It was re-numbered 980036. Two payments were made each in

the sum of $400, one against invoice 980035 and one against invoice 980036.

(iv) A perusal of the invoices seeking payment in the sum of $600 for monthly clean of the male and female change room showers discloses the following invoices were submitted and paid:

Month		Invoice
Not Specified		99002 dated 20/01/99– part thereof
March		99006
April		99007
May	1999	99010
June	1999	99021
July	1999	99026
August	1999	99030
September	1999	99034
Not specified		99039
Not specified		99043
October		99047

One final invoice was submitted, namely, 2000…003 re-numbered 2000…003 (a) or (q), in the sum of $120 for the cleaning of the female and male change room showers on (sic) the week ending 7/1/2000 which was not paid. The invoices that were paid include the two invoices for unspecified months (99039 and 99043) that fall between September and October 1999.

(v) The plaintiffs submitted two invoices for the quarterly clean for July – September 1999, namely invoices 99032 and 99055, each in the sum of $1773.35. Both were paid and the money received on 18 August 1999 and 15 October 1999.

(vi) The plaintiffs submitted seven invoices for six–monthly cleans, namely, 97009 (in the sum of $3623.35) and 98018, 980030, 99003, 99023, 99037 and 99092 (each in the sum of $4583.35). The cleaning relationship of the parties lasted three years and one month. There are six discrete six-monthly periods in three years and one month. The plaintiffs were paid and received money in relation to each

invoice in the amount claimed with the exception of 99023 for which they received $4586.35.

5. There is no dispute as to certain of the work to be performed by the plaintiffs. They were to undertake

   (a) monthly cleans for which the charge was $1899.61,

   (b) the removal of rubbish from Customs House for which the charge was $150.00 per month,

   (c) the cleaning of male and female showers and change rooms for the sum of $150.00 per week,

   (d) cleaning of the front and rear outer areas of Customs House for the sum of $35.00 per week, and

   (e) from on or about 9 December 1999, cleaning of, and rubbish removal from, a previously unoccupied area of Level 3 at Customs House at the rate of $80.00 per day.

   Invoice 97008 is a good example of an invoice which claims items (a) (b) and (d) above however note that the claim for cleaning the front and rear areas is rounded to $140.00. The plaintiffs submitted their claim for item (d) in monthly invoices and presumably accorded to a four week period the status of a month.

6. The plaintiffs by PLAINTIFFS FURTHER AND BETTER ANSWERS TO DEFENDANTS REQUEST FOR FURTHER AND BETTER PARTICULARS OF STATEMENT OF CLAIM (hereafter FBA) provided particulars in relation to certain of the invoices upon which they sue. Apart from themselves in relation to the following invoices they identified the people stated against each invoice as the name or names of the cleaners performing this work. Those cleaners are Cynthia Dicker (CD), Penni Samalga Elika (PE) and George Segovia (GS).

I pause here to say that the plaintiffs in their FBA misidentified the invoices upon which they sued. As an example their FBA referred to invoice number 1999 59 when it really should have referred to 99059. However the invoices upon which they sue can be readily identified by reference to the year, the last 2 or 3 digits and the amount claimed.

They particularised as follows:

Invoice	Cleaners performing work apart from the plaintiffs
99059	CD and PE
99063	CD and PE
99064	CD and PE
99074	CD and PE
99085	CD
99086	CD
99088	PE
99089	CD
99098	PE and GS
99099	PE
99100	CD
99101	CD
99102	PE
99103	CD
99108	CD
99109	CD and GS
2000…005	CD and PE
2000…009	CD and PE
2000…014	PE and GS
2000…015	CD
2000…018	CD and PE
2000…021hand-altered to 2000…021a	CD and PE

The invoice numbers set out above relate to claims for work over the period 8 October 1999 (see invoice 99059) to 6 April 2000 (see invoice 2000…018). I discount invoice 2000…021 dated 15/04/2000 for $4550 which relates to a specific yearly cleaning as the invoice does not identify the period of time over which the cleaning was performed.

7. Penni Samalga Elika did not work as a cleaner for the plaintiffs in 1999 and 2000. He suspects he worked for the plaintiffs for approximately five months in earlier 1997 or 1998 and during his period of employment he did not perform cleaning dates at Customs House.

8. Cynthia Dicker did not work as a cleaner for the plaintiffs in 1999 and 2000. She worked as a cleaner for the plaintiffs for about one month in 1997. For the period of about one month she performed cleaning duties at Customs House.

9. Robert George Bryan and Corinne Dorothy Bryan worked for the plaintiffs as employee cleaners for a period of approximately three months from about May to August 1999. During that time they cleaned Customs House from approximately 2.00pm until 4.00pm on Mondays to Fridays. Mr and Mrs Bryan did not work at Customs House with Cynthia Dicker or Penni Samalga Elika.

   Mr and Mrs Bryan had left Darwin before 4 September 1999 which is the date of Mrs Bryan's birthday. They did not work for the plaintiffs after this date.

10. On or about 8 October 1999 Mr James Sidney Smith, Regional Director for the Northern Territory of the Australian Customs Service had a conversation with Mr Segovia. That conversation was to this effect:

    Mr Smith said, "Con, I need this area cleaned by Monday. We want to put people in it ready for Monday morning. Can you do that?"

    Mr Segovia said, "Yes I can".

    Mr Smith said, "Go ahead and do it."

    Mr Segovia said, "There'll be a cost to it."

    Mr Smith said, "That's fine just do the job and we'll treat this as a one off "

The area referred to was an area on Level 3 of Customs House which had been subject to building work. There was some building debris, plaster off-cuts and plaster droppings and a fine layer of plaster dust on furniture and the carpet of an unspecified area of Level 3 whilst the preceding conversation was had.

What is clear is that no price was struck for the cleaning work.

11. Some time in December 1999 Janine Wilson who was then a Senior Resource Manager, Financial Managements Branch of the Australian Customs Service had a conversation, possibly in relation to a Christmas party, to the following affect with Mrs Segovia:

Mrs Segovia said, "There's a lot of stuff to take away."

Ms Wilson said, "I realise that."

Mrs Segovia said, "We're not supposed to take this much stuff. We'll have to take another trip to the dump. I'll have to charge for it."

Miss Wilson said, "It has to done. Just bill us and we'll work it out."

What is clear is that no price was struck for the extra rubbish removal.

12. Apart from

(a) the agreement between the parties constituted by the CLEANING TENDER AND CONTRACT and the letter of acceptance from Julie Crummy: see Fact 2.

(b) the agreements between the parties for the plaintiffs to undertake and the defendant to pay for the four tasks referred to in paragraphs (b), (c) (d) and (e) of Fact 5.

(c) the agreements referred to in Facts 10 and 11 whereby the plaintiffs were to undertake work for which no price was struck,

there were no other agreements between the parties to perform work. To use one example only the plaintiffs were not asked to undertake a clean of

the external windows on the ground and first floors and glass doors on Saturday 20/12/97 and internal windows on the ground and first floor and glass doors on Saturday 20/12/97; see invoice 97014 and a price was not struck that $400 be paid for this service. One wonders why such a contract would be struck because the CLEANING TENDER AND CONTRACT provides that glass doors were to be cleaned daily, front windows were to be spot cleaned daily, window frames, sills, ledges and blinds were to be cleaned weekly and the interior and exterior faces of all sills and windows were to be cleaned quarterly. The CLEANING TENDER AND CONTRACT provided the means for the remuneration for the claim in invoice 97014.

13. Mr Stark's facsimile to Mr Parker: Exhibit 14 (referred to in Fact 3) had attached to it 17 pages. Those pages are lost or were not put in evidence. The pages were copies of invoices that Mr Stark was querying. Their numbers were recorded on the facsimile. They are "99065 – 990080 Incl plus 99061".

The facsimile prompted action. Mr Parker was, to use Mr Francis' expression in written submission, the person " who had been appointed the supervising officer on behalf of Australian Customs for the performance of the cleaning contract by the plaintiffs". The action prompted was the holding of two meetings, one on 9 December 1999 and one on 11 January 2000. It is unnecessary for me to set out precisely who attended these meetings and precisely what was discussed. The important point is that Mr Parker attended each meeting and that the plaintiffs attended each meeting. The most important outcome of the meetings was that Mr Parker formed the view that the invoices the subject of the dispute should be paid. At the 9 December 1999 meeting the invoices the subject of dispute were 99061 and 99065-99080. At the 11 January 2000 meeting the invoices the subject of dispute could have been 99059, 99063-99066, 99068-99070, 99072, 99074, 99076, 99084 with $40 yet to be paid and 99085-99089 inclusive: see the

copy of the plaintiffs' facsimile to JLL dated 22/12/99 which is A&CS10 of Ex 1. I say could have been in the previous sentence because I am not told but it appears reasonable that at the very least what might have been raised were those invoices referred to in the plaintiffs' facsimile dated 22/12/99.

Mr Parker in evidence on 26 June 2000 stated that the two meetings were "almost one in [his] mind. It is unfair to say…that is attribute something to a particular meeting". He was asked his recollection of the second meeting. I noted his answer as

> "It was Janine Wilson and me under impression that only outstanding invoices were attached to fax, we knew of no other invoices because it was looking like we could not come to a rational agreement. I came to the conclusion we should pay invoices mainly on the ground that instructions be given to the Segovias by the Regional Director, by Janine Wilson, these directions could be deemed confusing by the cleaners, it was convincing that they thought they asked to do – I of opinion they should be given benefit of the doubt. I have fax – instructed payments to be made."

Although this evidence related to the second meeting I am satisfied the decision that "they should be given the benefit of the doubt" arose at the first meeting on 9 December 1999. This is because Mr Parker stated that he could not separate the two meetings in his mind and is confirmed by the receipt by the plaintiffs in their bank account on 15 December 1999 of amounts for invoices 99061, 99062, 99067, 99071, 99073, 99075 and 999077-99080 which are some of the invoices noted on Mr Starks facsimile of 8 November 1999 (Exhibit 14).

On 1 July 2002 Mr Parker was cross-examined by reference to a meeting on 6 January 2000 (which I take to be the meeting of 11 January 2000) in relation to invoices 99065, 99066, 99069, 99072, and 99076. His answer I

noted as, "Yes I believe I mentioned previously I have made suggestions we should pay. Negotiations not getting anywhere. We should move on from there".

He then gave the following evidence which I noted as,

Mr Francis, "At that meeting it was acknowledged that the work claimed in those invoices had in all likelihood had (sic) been performed ?

Mr Parker, "I came to the conclusion because English is second language of plaintiffs and a number of people had given requests – we should move on. Not that work had been done but we should move on and pay them."

Invoices 99065, 99066, 99069, 99072, and 99076 were paid and the money received by the plaintiffs on 19 January 2000.

What is clear is that certain invoices the subject of dispute were paid as a result of Mr Parker feeling that the plaintiffs "should be given the benefit of the doubt" and because "we should move on and pay them".

As to why invoices 99063, 99064, 99068, 99070 and 99074 were not paid on or after 15 December 1999 and as to why invoices 99085 – 99089 were not paid on or after 19 January 2000, I do not know but I suspect at least that other agents of the Commonwealth did not share Mr Parker's view that the invoices should be paid.

14. During the cleaning relationship the plaintiffs did not pile lift, rotary dry foam then jet stream extract all carpets within Customs House.

COMMENTS ON THE FACT FINDING PROCESS

Mr and Mrs Segovia lacked creditworthiness. They are not to be believed on their oath.

The plaintiffs are not creditworthy for the simple reason that they are not accountable. There is one overriding consideration that shows they are not

accountable. It is their failure to authorise the Australian Taxation Office to release copies of the group certificates for Penni Samalga Elika, Cynthia Dicker and Robert and Corrine Bryan.

By way of a preliminary observation it has to be borne in mind that the plaintiffs have a difficult task. As part of their claim they have to prove that they undertook the work for which they seek payment. Given the rote repetitive nature of cleaning a cleaner cannot be expected to remember every task undertaken and every area cleaned day after day. Unless there is a special reason to remember a day the best a cleaner could probably say, sometime after the event of cleaning, is "I did the work". In this situation a cleaner is expected to be accountable. If an employee cleaner cannot work due to say for example illness it is expected that the employee cleaner would advise that he or she is ill and cause a record to be kept of the time that he or she was ill. In the case of a cleaner who employs somebody it is expected the employer will keep records of the time worked and the place worked by that employee.

The plaintiffs endeavour to prove their case by particularising for certain tasks that employee cleaners performed those tasks. The employee cleaners have been called to give evidence by the defendant. They say they could not have done the particularised tasks because they then did not work for the plaintiffs when those tasks were allegedly undertaken. Now human nature being what it is a person might not wish to admit to employment if there is a disadvantage to doing so such as revealing that income tax has been underdeclared or that a person has worked while receiving a social security benefit to which that person would not be entitled if employed. The plaintiffs were confronted with former employees who do not support their case. They could have endeavoured to show that the former employers were not telling the truth by seeking the production from the Australian Taxation Office of the group certificates that they the plaintiffs would have prepared for those employees had they truthfully been employed at the relevant times. The plaintiffs did not. Their failure to do so shows that they are

not to be believed when asserting the identity of their employee cleaners or on any other issue in dispute including the issue of performance of the work.

I have considered the scenario that the alleged employee cleaners might have been paid in a situation where their income was not reported by the plaintiffs to the Australian Taxation Office. In other words the alleged employee cleaners told lies about the time the they were employed by the plaintiffs because they were paid cash and the plaintiffs wish to cover up a failure to declare a deduction of tax they should have made from their employees pay. If this is the case then the plaintiffs are not to be believed as they cannot be trusted. However I do not believe this to be the case. I believed Mr Penni Samalga Elika, Miss Cynthia Dicker and Mr and Mrs Bryan when they gave their evidence of the times they had worked as employee cleaners.

The preceding reason is sufficient alone to enable me to be satisfied the plaintiffs are not to be believed. However other aspects show that they are unreliable and not accountable. Refer to Facts 4 (i),(iv),(v) and (vi). Why did the plaintiffs submit invoices 99038 and 99042 for unspecified monthly cleans in 1999? They submitted twelve invoices one for each month of 1999. Why submit two extra invoices for unspecified months? Why did the plaintiff submit invoices 99039 and 99043 for unspecified months for the monthly clean of the male and female changerooms and showers? Why were two invoices namely 99032 and 99055 submitted for a quarterly clean for July-September 1999? Why did the plaintiff submit seven invoices for six monthly cleans over a three year period? At best the answer is incompetence which shows that they are unreliable and at worst it shows that they are being fraudulent which of course shows that they are unreliable.

Another aspect which shows that the plaintiffs are not to be believed stems from a consideration which arises out of their submission of invoices for payment prior to performance of the work for which payment was sought. As an example invoice 99074 is dated 24/10/99 but relates to work performed on 29/10/99,

invoice 99108 is dated 4/12/99 but relates to work performed on 7/12/99, invoice 99031 is dated 09/07/99, was received for payment on 14 July 1999 but relates to work to be performed after parties on two occasions in August and 99036 is dated 03/07/99, was received for payment on 30 July 1999 but relates to work to be performed after parties on three occasions in September 1999. Now the plaintiffs' case in relation to these invoices, which are DCC Schedule A invoices, is that " each of the prices referred to in such invoices represents an agreed price which had been negotiated by us (mostly Alicia Segovia) with Tony Parker and/or Janine Wilson…" and that "[e]ach of the negotiations were oral and occurred at or about the date on which the work referred to in the invoices was performed": see paragraph 45.1 of Exhibit 1. Assuming that the dates of invoices 99074 and 99108 are correct and being aware that invoices 99031 and 99036 were received for payment before the services were performed the plaintiffs' case set out above must be recent invention. Given the nature of the work claimed in 99031 and 99036 one would have thought that a request to clean up would occur either after the party when the extent of the mess was made apparent or if it was anticipated that a big messy party was to be held a few days before hand when it became apparent that the party was proceeding.

So far as my finding at Fact 12 is concerned, I accept the evidence of Anthony Parker, Janine Wilson, James Smith and Anita Huckstepp. These witnesses were confronted with the plaintiffs' allegations. They deny the allegations of any special requests or agreements to clean beyond the CLEANING TENDER AND CONTRACT other than those agreements referred to in paragraphs (b) and (c) of Fact 12. I believe their denials.

It is obvious that Exhibit 9 was fabricated for the purpose of these proceedings. Mrs Segovia spoke of documents thrown away. Yet a book remained which related to the employment of cleaners at Customs House only for the period July 1999 until November 1999. However the book is curious for its illogicality. Why did it not contain records beyond November 1999? Why does it only relate to employment at Customs House when at the very least according to the plaintiffs

the Bryans also worked elsewhere for the plaintiffs during the relevant period? Why is there not one "wage book" which covers all the work performed by all employee cleaners irrespective of the venue of that work? Otherwise there will be multiple wages envelopes and multiple remissions of PAYG tax instalments for one employee with the number of wages envelopes and tax instalment remissions determined by venues worked.

Exhibit 9 refers to TAX amounts. The plaintiffs lie is palpably shown by totalling Corrine Bryan's tax deductions. According to Exhibit 9 $509.80 is the total of her tax deductions yet Exhibit 41 reveals that Corrine Bryan's tax deduction for the 2000 tax year (ending 30 June 2000) pertaining to her employment with the plaintiffs is $162.06.

CATEGORISATION OF THE POST-31 MARCH 1999 RELATIONSHIP

To utilise pre-*Commonwealth of Australia v Verwayen* 170 CLR 394 terminology, the post-31 March 1999 relationship of the parties could, in the event of unjust or unconscionable behaviour by one party, be categorised as an estoppel by conduct. After 31 March 1999 the defendant by permitting the plaintiffs entry to Customs House induced them to consider that they could attend to clean as per that which they contracted to do prior to 31 March 1999.The plaintiffs by attending and cleaning at Customs house after 3I March 1999 induced the defendant, through its agents, to consider that it would receive cleaning services as per the CLEANING TENDER AND CONTRACT. However what has to be understood is that the inducement extended by both parties related only to the provision of what could be called regular cleaning services pursuant to the CLEANING TENDER AND CONTRACT, namely, monthly, quarterly and six-monthly cleans.

An estoppel could not be construed in relation to the third yearly clean because the expectation of the parties, which arises from a consideration of the CLEANING TENDER AND CONTRACT which determined the first two years of their relationship, was that such would be performed upon notification by the

defendant. Similarly any extra work after 31 March 1999 could not attract estoppel considerations until such work was negotiated. The CLEANING TENDER AND CONTRACT provided for eight items of cleaning under the heading NON-PERIODIC CLEANING ON AN AS REQUIRED BASIS. It would be expected after 31 March 1999 as before 31 March 1999 that any extra cleaning would be performed upon agreement by the plaintiffs to a request by the defendant and then after agreement of a price.

The plaintiffs' submission that an equitable estoppel arose because they were induced to clean and continued to clean and the defendant intended that this occur by not telling the plaintiffs "of their intention to recover the already paid invoices so as to continue the retention of the plaintiffs as their cleaners until May 2000" is untenable. There is no evidence to this effect and it cannot be inferred because the defendant withheld payment of invoices, including but not limited to 99070, 99087…hand–numbered (a) and 99094 (to which it has made admissions in these proceedings), after 15 December 1999. The impression is that the defendant's agents were not sure what to do after 8 November 1999 and this lack of uncertainty continued through the hearing of this matter. A sinister payment of disputed invoices to secure work until May 2000 cannot be inferred.

THE PLAINTIFFS' CLAIM

The plaintiffs in their FBA sue for the sum of $40,844.92. Of that sum the plaintiffs seek payment of thirty-three unpaid invoices totalling $37,544.92. The balance of $3,300 pertains to a claim for an "amount owing in respect of rise in cleaners award".

Admissions

The defendant admits certain of the plaintiffs' claim. The defendant admits that it owes the sum of $11,760 to the plaintiff for invoices 99070, 99087…hand–numbered (a), 99094, 2000…004, 2000…005 (for $1760 which is re-numbered 2000…005(b) in Exhibit 4 but not re-numbered in Exhibit 38), 2000…009 (for

$1760 which is re-numbered 2000…009 b) and 2000…018. This admission was made in submissions. It is based, so far as invoices 99070, 99087, 2000…005(b), 2000…009 b and 2000…018 are concerned on an implied admission in paragraph 8 of the defendant's DCC that the defendant agreed to the plaintiffs performing those additional cleaning services at a cost of $80 per day in respect of the previously unoccupied area at Level 3 of Customs House. Paragraph 8 of the DCC also refers to invoice 200002 which is an invoice upon which the plaintiffs do not sue. However I am satisfied that the defendant mistakenly pleaded 200002 when it meant 2000…004. Invoice 2000…004 relates to cleaning at the rate of $80 per day for Level 3 for the month of January (most probably January 2000). The other invoices relate to cleaning at the rate of $80 per day of Level 3 for the month adjacent to each invoice namely 99070 - October, 99087 - November, 99094 – December, 2000…005 – February, 2000…009- March and 2000…018 - April.

The defendant makes admissions in relation to invoices 99084, 99095, and 200003 (as per its DCC) or 200 003 (as per its written submissions). In paragraph 14 of its DCC it admits "it requested the plaintiffs to perform an extra daily clean of the shower/change rooms in the gymnasium on level 1 of the building (invoices 99084, 99085, and 200003)". In its written submissions it says that the plaintiffs are entitled to be paid the amounts adjacent to each invoice namely 99084 - $600, 99095 -$600, and 200003- $600.

I take the defendant's references to 200003 and 200 003 to be invoice 2000…03 A copy of 2000…03 against which number somebody has handwritten (a) or (q) appears in Exhibit 4 and is in the sum of $120. It relates to cleaning of the female and male change room showers on a daily basis on (sic) the week ending 7/10/2000. Another copy the number of which has not been altered by hand appears in Exhibit 38.

I take the admission in relation to 99084 to relate to the copy invoice which appears as part of Annexure A&CS23 at the plaintiffs affidavit (Exhibit 1). That

copy invoice has the last digit of the number hand-altered to 4. It is for the sum of $600 and relates to cleaning the male and female change room showers on a daily basis at $150 per week for November. There is another invoice which has been altered by hand to 99084. Copies of it appear in Exhibits 4 and 38. It is in the sum of $560 and relates to work cleaning the front and rear areas. This invoice has been paid and the defendant seeks a part of its counterclaim that the sum of $560 paid on this invoice be repaid to it.

Invoice 99095 relates to cleaning of the male and female change room showers for December and is in the sum of $600.

I interpret the defendant as admitting that it owes the plaintiffs the sum of $1320 for work involving the clean of the male and female shower/change rooms as follows:

99084	- $ 600	-for	November
99095	- $ 600	-for	December
2000…003	- $ 120	- to	7/1/2000
	$1320		

The defendant also admits that the plaintiffs are entitled to payment of the invoices relating to the monthly cleans performed in January and February 2000: see paragraph 20 of its DCC. The defendant in its written submissions appears to identify the invoices as 2000 001 and 2000 006 each the sum of $2349.61. A perusal of copies of invoices 2000…001 and 2000…006 hand altered to 2000…006 b reveals claims for monthly cleans for January 2000 and February 2000. These invoices have not been paid. I interpret the defendant to admit it owes the plaintiffs the sum of $4,699.22 for invoices 2000…001 and 2000…6 b (misidentified in the plaintiffs FBA as 2000 1 and 2000 6 respectively). In relation to this sum the defendant seeks that it be set off against the payment by it of two previous duplicated claims for monthly cleans.

The invoices for which Cynthia Dicker and/or Penni Samalga Elika were particularised as performing the work

On invoices 99059, 99063, 99064, 99074, 99085, 99086, 99088, 99089, 99098, 99099, 99100, 99101, 99102, 99103, 99108, 99109, 2000…014, 2000..015, and 2000…021 hand-altered to 2000..021 (a) (for $4550), I am not satisfied on the balance of probabilities that the work the subject of the invoices was performed and accordingly the plaintiffs' claim is not made out. The plaintiffs particularise that the work was performed by Cynthia Dicker and or Penni Samalga Elika at a time when they were not employed by the plaintiffs. They did not do the work the plaintiffs say they did.

To be entitled to judgement, one of the things, the plaintiffs must prove, is that they did the work, whether by themselves or through their agents/employees, claimed in the invoices. They endeavour to do this by pointing to two people who they say did the work. Those people did not do the work. There is no evidence that the work was done apart from an assurance by the plaintiffs that the work was done. The plaintiffs are not creditworthy. I do not accept their assurance. I am not satisfied they did the work for which they claim.

Paradox

The plaintiffs' claims for invoices 2000…005, 2000…009 and 2000…018 have been allowed as a consequence of the defendant's admissions. Yet the plaintiffs particularise that the work the subject of these invoices was performed by both Cynthia Dicker and Penni Samalga Elika. Is it safe to rely on the admissions when the plaintiffs cannot otherwise prove the work was performed?

I consider that it is safe to rely as the admissions for a public policy reason. The admission was made in the context of litigation. I doubt that the admission was sound in view of the fact that the defendant commenced the hearing of the matter less than fully prepared. I accept the admission for the public policy reason that there has to be an end to litigation which should be efficiently conducted. The admission resolves an aspect of this case which from an overall viewpoint has not been efficiently conducted.

Invoice 99068

This is the dust invoice which was not further particularised in the plaintiffs' FBA. The plaintiffs state that they undertook the work together with Robert and Corinne Bryan. The Bryans did not work for the plaintiffs on 18 October 1999 which is the date attributed to the work in invoice 99068. I am not satisfied that this work was performed. I am satisfied that the Bryans did not perform the work and I do not accept the plaintiffs are telling the truth when they say they did the work, whether with or without the Bryans.

The plaintiffs claim for payment of invoice 99068 is dismissed.

The increase in the cleaners award.

I have so far dealt with 32 of the invoices for which the plaintiff seeks payment. There remains for consideration Invoice 2000…013 hand-numbered letter (b) for $189 as well as the claim for $3300 for the "rise in [the] cleaners award".

In written submissions for the plaintiffs Mr Francis clarified the $3,300 claim. He said that this amount related to the period of 1 August 1998 until 31 December 1999 costed at the rate of $45 per week. The period 1 August 1998 to 31 December 1999 comprises exactly 74 weeks. 74 x $45 = $3330. Why the plaintiffs seek $3000 is not explained, especially in light of the reference in the plaintiffs facsimile of 22/12/99 to $3330:Annexure A&CS10 of Exhibit 1. In paragraph 20 of Exhibit 1 the plaintiffs swear that as from July 1998 the award rate for cleaners increased from $12.00 to $13.50 per hour. (As an aside, I query if this is true as the fabricated Exhibit 9 refers to a figure of $13.47 per hour.) That is an increase of $1.50 per hour. $45 divided by $1.50 equals 30. The plaintiffs appear to be claiming for 30 hours of work per week for their employed cleaners. $3,300 divided by $1.50 equals 2200. The plaintiffs appear to be claiming for 2200 hours of work for the period 1 August 1998 until 31 December 1999. The plaintiffs do not particularise the number of employed cleaners they

had for the period 1 August 1998 to 31 December 1999 and the hours that each cleaner worked.

The plaintiffs claim for $3,300 fails. There is no evidence before me in the form of wage records or group tax records or in the form of oral evidence from employees to enable me to determine that the number of hours worked by employee cleaners for the period 1 August 1998 to 31 December 1999 is 2200.

There is evidence from Robert George Bryan and Corinne Dorothy Bryan that for a period that is not fixed, ie, from about May to August 1999 that each cleaned at Customs House from approximately 2.00pm to 4.00pm on Mondays to Fridays. I am not told the number of weeks precisely that they worked. Should there be an allowance, worked out by guessing the number of weeks worked, calculated by multiplying $1.50 x 20 by my guess of the number of weeks worked?

The short answer is, no. The best evidence is that the Bryans worked for the plaintiffs after 30 March 1999. After 30 March 1999 both the plaintiffs and the defendant were mistaken as to the existence of their relationship. It was no longer contractual and could best be described as an estoppel relationship such relationship extending only to, or fixing on, the supply of regular cleaning services which were expected to be supplied as at 30 March 1999, for example, the monthly clean.

After 30 March 1999 no contract or agreement existed that the defendant would pay for any increase in the cleaners award. That is clear. The relationship of the parties bears this out. The plaintiffs wrote seeking that the increase in the award be passed on by letter dated 03/07/1998:see Annexure A&CS6 of Exhibit 1. This letter was not met with an answer. A perusal of the invoices in Exhibits 4 and 38 discloses that the first invoice seeking extra to cover the increase in the award is invoice 2000…008 hand-altered to 2000…008(6) or (b) dated 17/02/2000 seeking the increase for the month of January (presumably January 2000). It is clear from a consideration of the plaintiffs' failure to submit invoices seeking that the increase in the award be passed on for the period 1 August 1999 until 31

December 1999 that there was no agreement between the parties. There was not a meeting of the minds. The defendant did not respond to the plaintiffs' letter of 31/07/98. The plaintiffs by not submitting an invoice until 17/02/2002 show that they knew that the defendant had not agreed to pay the increase until possibly about January 2000. I say possibly because I do not know if there was any agreement struck about January 2000 or if the plaintiffs formed the view that in about February 2000 they would engage in a process of bluff, submit an invoice and wait to see if it was paid. In any event during the period of time that the Bryans were employee cleaners there was no agreement between the parties that the defendant would pay the award increase.

If I am incorrect, and if it can be said that the parties relationship was contractual after 31 March 1999, then I am not satisfied that a term can be implied into the contract so that the defendant is to pay extra to cover the increase in the cleaners award. (There is no specific term in the CLEANING TENDER AND CONTRACT which requires the defendant to top-up contract amounts if there is an award increase.)

Clauses 23, 24, and 25 of the CLEANING TENDER AND CONTRACT relate to payment of award wages to employee cleaners. They state

> "23 PAYMENT OF WAGES AND ALLOWANCES
>
> The Contractor shall ensure that all persons employed by him in or in connection with the performance of the cleaning services are paid wages and allowances of every kind required to be paid by or under any relevant award, determination, judgement or order of an appropriate Commonwealth, State or Territory Authority or by or under any industrial agreement that is in force in the State or Territory of the Commonwealth in which the cleaning services are being performed and that all such persons are employed under the conditions contained in any such award, determination, judgement, order or industrial agreement.
>
> 24. STATEMENT OF WAGES AND ALLOWANCES PAID OR UNPAID

Save as in this Condition otherwise provided, before paying any moneys to the Contractor under the Contract the Commonwealth may require the Contractor to make and deliver to the Commonwealth a statutory declaration that all persons who are or at any time have been employed by the Contractor in or in connection with the performance of the cleaning services have been paid in full all amounts which have become payable to them by virtue of their employment as wages and allowances of every kind required to be paid by or under any relevant award, determination, judgement or order of an appropriate Commonwealth, State or Territory Authority or by or under an industrial agreement that is in force in the State or Territory of the Commonwealth in. which the cleaning services are being performed and to the latest date at which such wages and allowances are payable. However, when any wages and allowances which have become payable remain unpaid, payment will be made by the Commonwealth to the Contractor upon receipt of a statutory declaration made by the Contractor in which is set out details and amounts of such unpaid wages or allowances but sufficient money to satisfy such unpaid wages and allowances may be withheld from any money which may be then payable or thereafter become payable by the Commonwealth under or by virtue of the provisions of the Contract until he supplies a further statutory declaration that all such wages and allowances have been paid.

25. FAILURE OF CONTRACTOR TO PAY WAGES AND ALLOWANCES

If the wages or allowances referred to in Condition 24 of these Conditions of any person who is or at any time has been employed by the Contractor in or in connection with the performance of the cleaning services remain unpaid, the Commonwealth may, upon the production to it of satisfactory evidence of a judgement or order of a court of competent jurisdiction in respect thereof, pay the amount of the judgement or order including any costs awarded thereby to the person concerned and any amount so paid shall be recoverable under the Contract".

Where there is a formal contract, ie, a recorded contract between parties the following principle applies, namely,

"…. for a term to be implied the following conditions (which may overlap) must be satisfied : (1) it must be reasonable and equitable; (2) it must be necessary to give business efficacy to the contract, so that no term will be implied if the contract is effective without it; (3) it must be so obvious that "it goes without saying"; (4) it must be

> capable of clear expression; (5) it must not contradict any express term of the contract".

See *BP Refinery (Westernport) Pty Ltd v Shire of Hastings* 180 CLR 266, at 283.

The plaintiffs do not discharge the onus of establishing that a term should be implied. They do not establish that "it must be necessary to give business efficacy to the contract, so that no term will implied if the contract is effective without it" and "it must be so obvious that goes without saying".

The contract was to clean for 2 hours per day (initially from 3.30 pm until 5.30 pm: see letter of acceptance dated 25 March 1997 (Annexure A&CS2 of Exhibit 1) during normal working days: see the CLEANING TENDER AND CONTRACT. I take normal working days to be Monday to Friday. Twenty hours work was to be performed weekly. The defendant took the view that the quotation for the contract cleaning was in the amount of $27,354.36 per annum: see the letter of acceptance dated 25 March 1997 (Annexure A&CS2 of Exhibit 1). The bulk of the work consisted of monthly cleaning at a per annum cost of $22,795.30 for the Australian Customs Service and $4,559.06 for the Australian Federal Police: see the CLEANING TENDER AND CONTRACT again. $22,795.30 plus $4,559.06 equals $27,354.36, which is the amount referred to in the letter of acceptance.

The contract has the appearance of being small. It has the appearance of providing part-time work at 20 hours per week for a remuneration of $27,354.36 with a provision for extra work. It has the appearance of a contract where the plaintiff would do the work themselves so as not to erode, by payment of wages to employee cleaners, their profits. I speak of appearances.

The question arises. Why, in relation to this contract, is there a need to employ cleaners? If one accepts the defendant's construction that the contract was for the amount of $27,354.36 and if one assumes that there are 10 public holidays falling on normal working or week days during a year then there are available 50 weeks per year at 20 hours per week to clean. 50 weeks times 20 hours per week is 1000

hours: $27,354.36 divided by 1000 is $27.35 per hour. $27.35 per hour divided by 2 is $13.67. I am told that the cleaners award for an employee cleaner originally provided for remuneration at $12.00 per hour. If the plaintiffs employed cleaners to work for them when the contract was struck they could anticipate assuming no increase in the cleaners award, a profit of $3,354.36 per year to be shared between two people. $3,354.36 is insufficient remuneration upon which two people can survive for one year. There is a strong inference that when the plaintiffs entered into the contract they intended to do the work themselves, ie, in person.

The cold fact is that the contract is effective without the implication of a term that the defendant pay for an increase in the cleaners award. The plaintiffs contracted to do the work. They could have done it themselves without the need for employee cleaners.

It is not so obvious that it goes without saying that the term should be implied. A natural question is to ask is, bearing in mind that industrial awards can change, why was there was no specific provision in the contract that the defendant would bear the cost of an increase in the award so far as the employee cleaners are concerned? One answer could be the parties did not think about it. Another answer could be that the defendant did not wish to be responsible for any increase in the award. The absence of a provision that the defendant would not top-up for an increase in the award indicates to me that it had no intention of doing so. If I am wrong and it is the case that the parties did not consider an increase of the award then it is not beyond the realms of possibility, had the issue been raised as part of negotiations pending formation of the contract, that the defendant would have said “No, this is a small contract, if you wish to employ employees you will absorb the cost of any award”. It is not so obvious to me that it goes without saying that the terms that the defendant will top-up an increase in the cleaners award is to be implied.

I turn now to invoice 2000..013 hand-numbered b or 6. The plaintiffs are not entitled to payment of this invoice for two reasons, namely;

1. the plaintiffs cannot rule out that the duplicates invoice 2000…018 (hand numbered b or 6) which was paid as invoice 2000.008 on 3 May 2000: see Schedule 1 to Fact 1 . Both invoice 2000..013 b or 6 and 2000…08 b or 6 are dated 17/02/2000, seek the sum of $189 and refer to the cleaners award for January, and

2. the plaintiffs do not state the name or names of their employed cleaners and the hours they worked.

Extra work

Refer to Facts 10 and 11. A construction of each conversation, which I accept on the balance of probabilities, is that a bargain was struck, in the case of the conversation on or about 8 October 1999 to clean an area of Level 3 after building work and in the case of the conversation in December 1999 to remove extra rubbish with a term to be implied that a reasonable sum of money be paid for the work undertaken.

The plaintiffs fail to discharge the onus that reposes in them on the issue of a reasonable price for the work performed. I do not accept their evidence in paragraph 25 of Exhibit 1 that "… we worked for a number of hours until approximately 9:30PM on Friday evening, for approximately 8 hours on Saturday, 9 October 1999 and for approximately 5 hours on Monday, 11 October …" to the best of their recollection with Penni Samalaga (sic) Elika and Cynthia Dicker. They do not state the number of hours worked for the extra rubbish removal task.

In order to resolve the issue, I consider it appropriate to rely on the defendant's admissions.

A reasonable sum for cleaning up after building work is $80.00 and a reasonable sum for extra rubbish removal is $20.00. I am satisfied that these are the sums to which the plaintiffs are entitled.

Conclusion

$11,760 plus $1,320 plus $4,699.22 plus $100 equals $17,879.22.

On the plaintiffs' claim, there will be judgement for the plaintiffs in the sum of $17,879.22.

DEFENDANT'S COUNTER CLAIM

The defendant has the onus of establishing on the balance of probabilities that the money paid by it to the plaintiffs should be repaid. A handy and concise definition of what the defendant has to establish can be derived by paraphrasing Covell and Lupton, *Principles of Remedies,* Butterworths, 1995 at page 40. The defendant has to prove

1. receipt by the plaintiffs of a benefit,

2. at the defendant's expense, and

3. in such circumstances that it would be unjust to allow the plaintiffs to retain the benefit.

I am satisfied on the balance of probabilities that the plaintiffs received the monies referred to in Schedule 1 to Fact 1 and that the payment of those monies was generated by the invoices identified against each payment which was submitted by the plaintiffs to the defendant.

Is it unjust to allow the plaintiffs to retain the benefit ?

Payments made on and after 15 December 1999

In *David Securities Pty Ltd v Commonwealth Bank of Australia* 175 CLR 353 at 378 Mason CJ, Deane J, Toohey J, Gaudron J and HcHugh J stated

> "…the payer will be entitled prima facie to recover monies paid under a mistake if it appears that the monies were paid by the payer in the mistaken belief that he or she was under a legal obligation to pay the money or that the payee was legally entitled to payment of the monies. Such mistake would be causative of the payment."

Earlier in their decision Mason CJ, et al, discussed three cases. They then said at page 373 and 374

> "An important feature of the relevant judgments in these three cases is the emphasis placed on voluntariness or election by the plaintiff. The payment is voluntary or there is an election if the plaintiff chooses to make the payment even though he or she believes a particular law or contractual provision requiring the payment is, or may be, invalid, or is not concerned to query whether payment is legally required; he or she is prepared to assume the validity of the obligation, or is prepared to make the payment irrespective of the validity or invalidity of the obligation, rather than contest the claim for payment. We use the term "voluntary" therefore to refer to a payment made in satisfaction of an honest claim, rather than a payment not made under any form of compulsion or undue influence. If such qualifying, factual circumstances are considered relevant, the sweeping principle that money paid under a mistake of law is irrecoverable or even the Federal Court's modification of that principle to the effect that mistake of law does not on its own found an action for the recovery of money paid is broader and more preclusive than is necessary. As the authorities cited earlier in explanation of the term "mistake of law" make clear, the concept includes cases of sheer ignorance as well as cases of positive but incorrect belief To define "mistake" as the supposition that a specific fact is true, as Parke B. did in *Kelly v. Solaria* (64), which was a mistake of fact case, leaves out of account many fact situations. A narrower principle, founded firmly on the policy that the law wishes to uphold bargains and enforce compromises freely entered into, would be more accurate and equitable".

I set out this passage because reference is made to an election to make a payment in a situation where the payer is not concerned to query whether the payment is legally required, or is prepared to make the payment irrespective of the validity or invalidity of the obligation rather than contest the claim for payment. I interpret their Honours as making a distinction between a "voluntary payment which is made in satisfaction of an honest claim" and a payment which is made

pursuant to an election which does not require an examination of the honesty of the claimant's claim.

In relation to the receipt on 15 December 1999 of the payments for invoices 99061, 99067, 99071, 99073, 99075 and 99077-99080 and the receipt on 19 January 2000 of the payments for invoices 99065, 99066, 99069, 99072 and 99076, the defendant simply cannot establish that the monies were paid under a mistaken belief that there was a legal obligation to pay the money or that there was a mistaken belief that the plaintiffs were legally entitled to the monies. Mr Parker's view that the invoices be paid; see Fact 13, was not based on or rooted in a belief that there was a legal obligation to pay or that there was a belief of legal entitlement to the monies. His view was that of a compromise namely the plaintiffs should receive the benefit of the doubt as distinct from forming the view that the plaintiffs were contractually entitled to the monies. A further factor from Mr Parker's perspective pertaining to invoices 99065, 99066, 99069, 99072 and 99076 was that "we should move on and pay them" in a situation where he was not satisfied that the work had been undertaken. He does not say "I held the view that there was a legal obligation to pay" or that "I was of the view that the plaintiffs were legally entitled to the money.

To summarise the defendant cannot prove that Mr Parker had the requisite mistake referred to in *David Securities Pty Ltd v Commonwealth Bank of Australia* (supra). It cannot prove that he had a belief he was under a legal obligation to pay or that the plaintiffs were legally entitled to payment of the monies. The best indication is that he was "prepared to make the payment irrespective of the validity or invalidity of the obligation rather than contest the claim for payment": see *David Securities Pty Ltd v Commonwealth Bank of Australia Limited* (supra) at pages 373 and 374.

Further payments made by the defendant were received by the plaintiffs on 3 May 2000 and 3 July 2000. On 3 May 2000 payments were received in relation to invoices 2000…008, 2000…012, 2000…013 and 2000...019. These payments

relate to an increase in the cleaners award (see DCC Schedule F). On 3 July 2000 further payments were received for invoices 99096, 2000...002, 2000…007 and 2000…011 (DCC see Schedule A), 99097 (see DCC Schedule B) and as part of the payment for invoice 2000..021 hand-numbered a the sum of $45 was paid in relation to an increase in the cleaners award. In relation to these payments the defendant fails to discharge the onus that reposes in it. The best that can be said is that these payments might have been made pursuant to the requisite mistake but then again they might not have been. The requisite mistake is a mistaken belief that the defendant was under a legal obligation to pay or that the plaintiffs were legally entitled to payment of those amounts. The making of these payments is curious. It would have been expected that an aftermath of the meetings of 9 December 1999 and 11 January 2000 would be a review of the invoices paid prior to 9 December 1999 or 11 January 2000 and a closer scrutiny of subsequent invoices submitted, or yet to be paid, to ascertain if there was a legal obligation to pay those invoices. Indeed certain of the invoices were not paid such as 99068, 99070, and 99074 noted on Mr Stark's facsimile of 8 November 1999: Exhibit 14 and 99084-99089 referred to in the plaintiffs' facsimile of 22/12/99: annexure A&CS10 of Exhibit 1. Why were some invoices not paid? Why were other invoices paid? Expecting that there that there would be a closer scrutiny of invoices after 11 January 2000 yet to be paid and submitted for payment the defendant cannot rule out that those invoices that were paid after 11 January 2000 were paid for the sake if convenience or for the sake of "moving on". There are two scenarios equally applicable namely the defendant's agents had the requisite mistake in relation to each invoice or that the defendant's agents held the view that there was no legal obligation to pay or no legal entitlement for the plaintiffs to receive the monies but nonetheless the payments were made for the sake of convenience to finalise the claim. I cannot chose one scenario over the other.

Payments for seven other invoices the subject of dispute were received on 15 December 1999 namely 99058, 99060 and 99084 (see DCC Schedule C), 99083

and 99090 (see DCC Schedule A) and 99092 (see DCC Schedule G - six-monthly clean) and 99093 (see DCC Schedule H - quarterly clean). I put aside invoices 99092 and 99093 because they will be considered at a later point in these reasons. In relation to 99058, 99060, 99084, 99083 and 99090 the defendant once again cannot discharge the onus that reposes in it. There are two competing scenarios equally valid. Were these invoices processed for payment by Mr Stack under the mistaken belief that the defendant was legally obliged to pay or the plaintiffs legally entitled to receive? Alternatively were these invoices paid because he felt it was convenient? Was he emboldened by Mr Parker's view in relation to invoices 99061 and 99065-99080 that the plaintiffs should receive the benefit of the doubt and did he then hold that view in relation to other invoices not considered by Mr Parker? He did not honour Mr Parker's view in full. He did not process for payment invoices 99063, 99064, 99068, 99070 and 99074. Why did he not process these invoices? Was he employing his own dictate of commercial convenience? Did he decide to pay invoices 99058, 99060, 99084, 99083 and 99090 as a type of tit-for-tat because he had not decided to pay 99063, 99064, 99068, 99070 and 99074 contrary to Mr Parker's view that those invoices be paid. I do not know. I am not told and I will not guess. The defendant cannot rule out that the payments of 99058, 99060, 99084, 99083, and 99090 were not as a result of the requisite mistake.

I have excluded invoices 99092 and 99093 from the above consideration. These invoices do not relate to "extra" work but regular cleaning services. In the immediate aftermath of Mr Stack's facsimile of 8 November 1999 the parties focus was on the claims for "extra" work which could only have been performed as a result of a request and subsequent agreement to undertake the work. Mr Stack processed invoices at a time when the defendant's agents had not sat down to closely construe the CLEANING TENDER AND CONTRACT to work out that the defendant was being overcharged for quarterly, six-monthly and yearly cleans.

Invoices paid prior to 15 December 1999

I shall divide these invoices into two categories namely invoices for work for which there was no agreement to perform the work and invoices for quarterly, six monthly and yearly cleans.

Invoices where there was no agreement to perform the work.

So far as the following invoices for the following services are concerned there was no agreement to perform the work. The defendant did not seek that the work be performed and there was no price agreed to perform the work. If the work was in fact performed it was either volunteered by the plaintiffs or in certain cases constituted a regular cleaning service that the plaintiffs were expected to perform pursuant to no extra reward.

Cleaning up after parties and interviews and conferences (part of DCC Schedule A)

990001 hand-numbered a or q	$800
990002	$800
99027	$200
99031	$400
99036	$600
99049	$800
99050	$350
TOTAL	$3,950

Level 3 cleaning up after the builders (part of DCC Schedule A)

99054	$1,150
99057	$710
TOTAL	$1,860

Cleaning of internal and external windows or ground and first floors and glass doors (part of DCC Schedule A)

97014	$400
98021	$400

980035 renumbered 980036		$400
980036 originally numbered 980035		$400
99005		$400
990116	$400	
99017	$400	
99018	$100	
99020	$400	
99025	$400	
99029	$400	
99035	$400	
99040	$400	
99048	$400	
TOTAL	$5,300	

Fire Exits (DCC Schedule B)

99052	$300

Outside Front and Rear Cleaning (DCC Schedule C)

99056	$420

Rubbish Removal (other than the agreed monthly charge of $150 for removal of cardboard boxes and shredded paper (DCC Schedule D)

99002 part of	$280
99053	$750
TOTAL	$1,030

Level 2 cleaning because people worked on the weekend (DCC Schedule E)

99051	$600

(Please note in the defendants written submissions reference was made to Invoice 99068 as part of the Counterclaim. This reference is incorrect because the plaintiffs sued on 99068 which is the dust invoice)

$3950 plus $1860 plus $5300 plus $300 plus $420 plus $1030 plus $600 equals $13,460. The sum of $13,460 was paid to the plaintiffs pursuant to a mistake. Mr Stark thought that the payments he approved were inside the terms of the relevant

contract. They were not. The defendant has established the existence of the requisite mistake.

Is it unjust to allow the plaintiffs' to retain the sum of $13,460. The short answer is yes.

The quarterly, six-monthly and yearly cleans (DCC Schedules H, G and I respectively).

The defendant paid the above claims. The defendant now says amongst things that it paid too much. It says that Mr Stack processed the claims believing them "inside the terms of the relevant contract". The defendant says Mr Stack made the requisite mistake.

Its argument is based on a construction of the CLEANING TENDER AND CONTRACT. He says the plaintiffs are entitled to receive for a quarterly clean the sum of $266.67 PER SERVICE, for a six-monthly clean the sum of $916.67 PER SERVICE and for a yearly clean the sum of $426.67 PER SERVICE.

The CLEANING TENDER CONTRACT contains the following as part of ATTACHMENT B under the heading DETAILED SPECIFICATIONS OF CLEANING SERVICES for both the Australian Customs Service and Australian Federal Police

> **"*CLEANING DUTIES - QUARTERLY**
>
> The Contractor shall during the first week of March, June, September and December:
>
> Clean the interior and exterior faces and sills of all windows
> Clean all high glass partitions and high horizontal surfaces
> Damp wipe clean all air vents.
> Sweep and maintain all fire escapes.
>
> ***CLEANING DUTIES - SIX MONTHLY**

The Contractor shall during the periods March /April and October/November:

Pile lift, rotary dry foam then Set stream extract all carpets.
Detergent based products are not to be used.
Windows - clean the interior of all glass partitions and windows.

***CLEANING DUTIES - ANNUALLY**

The Contractor shall be notified when the following services are required to be carried out:

Wash all inside washable paintwork, wall tiles and ledges. Abrasive cleaners are not to be used.
Thoroughly clean all interior glass surfaces.

* Payment for these duties will be made on satisfactory completion and certification.

The cleaners shall clean **as required** the areas located at Fort Hill Wharf and Stokes Hill Wharf during normal office hours."

The area to be cleaned pursuant to the CLEANING TENDER AND CONTRACT which included the area occupied by the Australian Federal Police was 2675 square metres over six stories. The area occupied by the Australian Federal Police was 475 square metres. For cleaning the Australian Federal Police occupied area the plaintiffs were to be paid the sum of $320 PER SERVICE for a quarterly clean, the sum of $1,100 PER SERVICE for a six monthly clean and the sum of $512 PER SERVICE for an annual clean.

PER SERVICE is not defined in the CLEANING TENDER AND CONTRACT.

The plaintiffs argue that PER SERVICE means per storey or level of the building and not the provision of the relevant periodic clean throughout the building.

I interpret PER SERVICE to mean exactly what it says, namely, for the relevant service. As an example on a quarterly basis the plaintiffs were entitled to be paid the sum of $266.17 if they, during the first week of March or June or September or December, on all five storeys occupied by the Australian Customs Service,

cleaned the interior and exterior faces and sills of all windows, cleaned all high glass partitions and high horizontal surfaces, cleaned by damp wiping air vents and swept and maintained all fire escapes.

The plaintiffs' construction is untenable. It seems to be based on a consideration that they were to be paid if I take the example of a quarterly clean the sum of $320 for a quarterly clean of one storey occupied by the Australian Federal Police and $266.67 for a quarterly clean of one storey occupied by the Australian Customs Service. They seem to say that the reference to PER SERVICE for a quarterly clean of five storeys has to be wrong because they are paid less for cleaning five storeys occupied by the Australian Customs Service than they are paid for cleaning one storey occupied by the Australian Federal Police.

I refer to *BP Refinery (Westernport) Pty Ltd v Shire of Hastings* (supra). A term based on the plaintiffs' consideration that PER SERVICE means PER LEVEL or PER STOREY cannot be implied. It is not necessary to give business efficacy to the contract and it is not so obvious "that it goes without saying". A quarterly clean for the whole six levels of the building if performed attracts a total charge of $586.67. I cannot find that the charge is unreasonable considering the area to be cleaned of 2675 square metres and the limited nature of the work specified as a quarterly clean. The apparent weighting in the CLEANING TENDER AND CONTRACT of a larger payment in favour of a quarterly clean of the area occupied by the Australian Federal Police could well be justified on budgetary grounds internal to the defendant. As an example, it could be speculated that the Australian Federal Police might have had more money in its budget for cleaning than the Australian Customs Service so it was prepared to share, when one considers cleaning the building as a whole a greater share of the burden of the costs of the quarterly, six monthly and yearly cleans. It does not go without saying that PER SERVICE means PER LEVEL. The business efficacy of the contract is not restricted when one considers that the total charge for a quarterly clean for the building is $586.67. I cannot appreciate what is unreasonable about this charge for a quarterly clean of the whole building.

Similar reasoning applies to the cases of the six-monthly cleans and the yearly cleans.

So far as the six-monthly cleans are concerned, one of the tasks that the plaintiffs were required to undertake was to pile lift, rotary dry foam then jetstream extract all carpets. They have admitted that they did not undertake this task. They were also required to clean the interior of all glass partitions and windows. Yet they were also required to do this as part of quarterly cleans. The defendant cannot establish that the work involved in cleaning on a six-monthly basis the interior of all glass partitions and windows was not done. However I am not able to assess a reasonable allowance that could be paid for this work on the material before me.

The payments for the six-monthly cleans were made subject to the requisite mistake. The plaintiffs were not entitled to be paid for work that they did not perform. The plaintiffs were paid as follows:

97009	$3,623.35
98018	$4,583.35
980030	$4,583.35
99003	$4,583.35
99023	$4,586.35 (not $4,583.35)
99037	$4,583.35
99092	$4,583.35
TOTAL	$31,126.45

It is not just that the plaintiffs retain the sum of $31,126.45.

So far as the quarterly cleaning claims are concerned the defendant conceded that the plaintiffs are entitled to $266.67 per service. The plaintiffs were paid as follows, for eleven quarterly cleans:

97012	$1,773.35
98020	$1,773.35
980024	$1,773.35
980028	$1,773.35
980033 re-numbered 980034	$1,773.35
980034 originally numbered 980033	$1,773.35
99009	$1,773.35

99022	$1,773.35
99032	$1,773.35
99055	$1,773.35
99093	$1,773.35
TOTAL	$19,506.85

They were paid twice for the October – December 1998 clean (invoices 990033 re-numbered 980034 and 980033) and for the July – September 1999 clean (invoices 99032 and 99055). They should not be paid twice for one clean. Accordingly they should only be entitled to nine cleans at $266.67 per clean. 9 x $266.67 equals $2,400.03. The plaintiffs were not entitled to be paid the difference between $19,506.85 and $2,400.03 which equals $16.666.82. It is not just that the plaintiffs retain the sum of $17,106.82.

So far as the yearly cleans are concerned the plaintiffs were paid as follows

980023	$3,133.35
99012	$4,550.00
TOTAL	$7,683.35

The defendant in submissions concedes that the plaintiffs are entitled to the charge of $426.67 per service 2 x $426.67 equals $853.34. The plaintiffs were not entitled to be paid the difference between $7,683.35 and $853.34 which equals $6830.01.

Double payments

The plaintiffs were paid twice for the monthly clean for October 1998 in the sum of $2,349.61: refer to Fact 4 (ii). The plaintiffs were paid twice for the monthly clean for December 1998 in the sum of $2349.61: see Fact 4 (iii) (b). The duplicated payments were a mistake and it is not just that the plaintiffs retain $4699.22.

Extra payments (DCC Schedule J)

See Fact 4 (i). The defendant paid the sum of $4,699.22 to the plaintiffs for two unspecified monthly cleans (invoices 99038 and 99042). (The defendant has not paid the plaintiffs for the monthly clean for January 2000 (invoice 2000…001) and the monthly clean for February 2000 (invoice 2000…006 hand-altered to b) and the plaintiffs have received judgement for these claims.) Its payment of the unidentified monthly cleans was pursuant to the requisite mistake. It is not just that the plaintiffs retain the sum of $4,699.22.

See Fact 4 (iv) and the reference to the two invoices (99039 and 99043) for unspecified months for monthly cleans of the male and female change room showers. Refer to Admissions under THE PLAINTIFFS' CLAIM where the defendant makes admissions in relation invoices 99084 and 99085 which respectively pertain to November and December cleans of the male and female change room showers. The payment of invoices 99039 and 99043 was subject to the requisite mistake. If one takes into account that the common part-pre-fix of 99 to each invoice specified in Fact 4 (iv) denotes the year of 1999 in which each invoice was submitted and ignores invoice 99002 for an unspecified month, and takes into account the defendant's admissions that payment is owed for cleans for November and December, then one can see that there is an appearance that the plaintiffs have been and will be remunerated for the months of March-December 1999. Given that the invoice numbers for the two unspecified cleans fall between invoice 99034 for the September clean and 99047 for the October clean then the inference arises, which I accept, that the plaintiffs have been paid for two cleans that they did not perform in the period March-December 1999. It is not just that the plaintiffs retain the sum of $1200.

Invoice 99084

The plaintiffs are entitled to payment in the sum of $600 for the invoice numbered 99084 (hand-numbered 4) for the November clean of the male and female change room showers: see Admissions under THE PLAINTIFFS' CLAIM. The defendant cannot establish that its payment of 99084 hand-numbered 4

(99084) for the sum of $560 for the clean of the front and rear areas on 1,2,3,4 November was pursuant to mistake.The plaintiffs receive payment for one invoice and retain payment for the other invoice.

Unjustness

Once a mistake is found the payer is prima facie entitled to recovery: *David Securities Pty. Ltd v Commonwealth Bank of Australia* (supra).

The plaintiffs submit that there has been a change of position. The plaintiffs have the onus of proving that this defence applies: *David Securities Pty. Ltd v Commonwealth Bank of Australia* (supra), at 379. They have to point to something that shows that they have acted to their detriment on the *faith of the receipt* of the money: *David Securities Pty. Ltd v Commonwealth Bank of Australia* (supra) at 385.They cannot. They say that they continued working which they would not have done if had known that their claims for payment were disputed by the defendant. Putting aside that a continuation of a course of conduct is not a change in position and that the plaintiffs do not point to any remunerative employment that they forwent in order to continue cleaning at Customs House, they appear to misconceive the defence. They have to point to expenditure and or financial commitment which can be ascribed to the mistaken payment: *David Securities Pty. Ltd v Commonwealth Bank of Australia* (supra), at 385 however this expenditure cannot be expenditure on ordinary living expenses: *David Securities Pty. Ltd v Commonwealth Bank of Australia* (supra),at 386. They do not point to any such expenditure. They do not, for, example, say "Look at the payment of $2000.00 on 27 October 1999. $1400 of that payment was pursuant to mistake. We spent that particular amount on wages for our employees." or "We spent exactly $100.00 of that amount on cleaning materials which were used in Customs House and the balance was used to purchase Telstra shares." In simple language they do not trace or show what they did with each mistaken payment.

They also say they gave good consideration. I cannot see this. In the case of those invoices which related to work for which there was no agreement to perform the work, and if I assume that the plaintiffs did the work, the defendant should not be required to pay for work which was unsolicited or volunteered by the plaintiffs. A requirement that a person pay for work that is unsolicited or foisted upon him/her (akin to a motorist being the subject of a demand by a road-side windscreen cleaner for payment of a windscreen clean executed peremptorily and without the permission of the motorist) offends public policy and commercial reality. In the case of the invoice (980035 or 980036) which involves double payments the plaintiffs have given nothing in response to one of those invoices.

The plaintiffs do not show that the defendant should not have its prima facie entitlement.

Clarification

On 5 July 2002 (which was the last day that oral evidence was taken) the defendant was granted leave to amend DCC Schedule J to include invoices 97008, 980037,980036, 980034 and 980039.

I make no finding in relation to 97008 because it was the September 1997 monthly clean and its payment has not been duplicated. So far as invoices 980037 and 980039 are concerned I consider the defendant to be confused. Invoice 980039 has not been tendered and appears not to exist. Invoice 90037 appears to be a mistake as 980037 is the re-numbered 980035 which relates to the January 1999 clean. This payment is not in dispute. I take 980037 to be 980035 but originally numbered 980034 which was the subject of a double payment on 20 January 1999.

Conclusion to the defendant's claim

The defendant is entitled to repayment to it of the following sums namely $13,460 plus $31,126.45 plus $17,106.82 plus $6,830.01 plus $4,699.22 plus $4,699.22 plus $1200, which equals $79,121.72.

There will be judgement for the defendant in the sum of $79,121.72.

I will hear the parties on the issue of costs.

Dated this sixteenth day of December 2002.

……

Anthony Gillies
Stipendiary Magistrate

Schedule 1 to Fact 1

Date Received	***Amount Received***	***Amount relates to invoice numbered***		
10 July 1997	$3,799.20	97002		
		97004		
08 August 1997	$1,899.61	97005[1]		
21 October 1997	$140.00			
	$150.00	97008		
	$1,899.61			
31 October 1997	$150.00	97009 but this invoice does not claim $150.00		
	$3,623.35	97009 claims $3623.35		
24 November 1997	$140.00			
	$150.00	97010		
	$1,899.61			
10 December 1997	$140.00			
	$150.00	97011		
	$1,899.61			
23 December 1997	$1,733.35	97012		
02 February 1998	$150.00	97013		
	$160.00	97014		
	$240.00			
	$2,199.61	97013		
	$2,349.61	98015[1]		
09 March 1998	$2,349.61	98016		
20 April 1998	$2,349.61	98017		
29 April 1998	$1,773.35	98020		
01 May 1998	$400.00	98021		
	$2,349.61	98019		
	$4,583.35	98018		
02 June 1998	$2,349.61	98022		
01 July 1998	$1,773.35	98024		
	$2,349.61	98025		
	$3,133.35	98023		
Comments				
1. Not in evidence, ie. not exhibited				

Date Received	***Amount Received***	***Amount relates to invoice numbered***		
03 August 1998	$140.00			
	$150.00	98026		
	$160.00			
	$1,899.61			
10 September 1998	$2,349.61	98027		
01 October 1998	$4,522.96	980031[2]	$400.00	Originally numbered 980031 and not re-numbered
		980029	$2,349.61	
		980028	$1,773.35	
			$4,522.96	
22 October 1998	$4,583.35	980030		
04 November 1998	$2,349.61	980032[2]	$2,349.61	Originally numbered 980031 but re-numbered 980032
20 January 1999	$16,094.75	980037[3]	$2,349.61	Originally numbered 980035 but re-numbered 980037
		980036[3]	$400.00	Originally numbered 980035 but re-numbered 980036
		980035	$2,349.61	Originally numbered 980034 but re-numbered 980035
		980034	$1,773.35	Originally numbered 980033 but re-numbered 980034
		980033	$2,349.61	Originally numbered 980032 but re-numbered 980033
		980035[3]	$400.00	Originally numbered 980035 and dated 25/11/95 but re-numbered 980036
		980034	$2,349.61	Originally numbered 980034 but re-numbered 980035
		980033	$1,773.35	Originally numbered 980033 but re-numbered 980034
		980032	$2,349.61	Originally numbered 980031 but re-numbered 980032
			$16,094.75	
17 February 1999	$3,229.61	99002	$880.00	
		99001	$2,349.61	
			$3,229.61	
17 March 1999	$7,932.96	99005	$400.00	
		99004	$2,349.61	
		99003	$4,583.35	
		99006	$600.00	
			$7,932.96	
Comments				
2. There are two invoices each originally numbered 980031, one dated 7/9/98 for $400 and one dated 2/10/98 for $2349.61				
3. There are two invoices each originally numbered 980035 one dated 25/11/98 for $400.00 and the other dated 25/12/98 for $2349.61.				

Date Received	***Amount Received***	***Amount relates to invoice numbered***		
19 May 1999	$7,672.57	99013	$2,349.61	Originally numbered 99009 but re-numbered 99013
		99010	$600.00	
		99009	$1,773.35	
		99008	$2,349.61	
		99007	$600.00	
			$7,672.57	
22 June 1999	$10,109.31	99023	$4,586.35	
		99022	$1,773.35	
		99021	$600.00	
		99020	$400.00	
		99019	$2,349.61	
		99017	$400.00	
			$10,109.31	
21 July 1999	$8,549.61	99012	$4,550.00	
		99018	$50.00	NB Amount claimed is $100.00 but $50.00 paid
		99024	$2,349.61	
		99025	$400.00	
		99026	$600.00	
		99027	$200.00	
		990116	$400.00	
			$8,549.61	
28 July 1999	$3,749.61	99028	$2,349.61	Monthly clean - August 1999
		99029	$400.00	
		99030	$600.00	
		99031	$400.00	
			$3,749.61	
18 August 1999	$6,402.96	99032	$1,773.35	
		99033	$2,349.61	Monthly clean - September 1999
		99034	$600.00	
		99035	$400.00	
Comments				
4. There are two invoices each originally numbered 990001. One is dated 20/07/99 for $630, numbered 990001 in Exhibit 38 but				
re-numbered 990001.b in Exhibit 4. The other is dated 17/05/99 for $800.00. It only appears in Exhibit 4 where it is re-numbered 990001a or (q).				

Date Received	***Amount Received***	***Amount relates to invoice numbered***		
18 August 1999		99036	$600.00	
		990001[4]	$630.00	
		99018	$50.00	See payment for 21 July 1999. This is the balance of the invoice 99018
			$6,402.96	
29 September 1999	$12,882.57	990001[4]	$800.00	17/05/99
		990002	$800.00	
		99044	$400.00	
		99043	$600.00	Cleaning male and female showers
		99042	$2,349.61	Monthly clean, but month not identified
		99040	$400.00	
		99039	$600.00	Cleaning male and female showers
		99038	$2,349.61	Monthly clean, but month not identified
		99037	$4,583.35	
			$12,882.57	
15 October 1999	$8,202.96	99057	$710.00	
	**Note amount creditied exceeds total of invoices against which amount is paid by $9.00 which is the difference in amount of Invoice 99046 as orginally claimed and paid.*	99056	$420.00	
		99055	$1,773.35	
		99054	$1,150.00	
		99051	$600.00	
15 October 1999		99049	$800.00	
		99048	$400.00	
		99046	$2,340.61	October 1999 monthly clean. Original invoice is for $2349.61
			$8,193.96	

Date Received	***Amount Received***	***Amount relates to invoice numbered***		
27 October 1999	$2,000.00	99053	$750.00	
		99052	$300.00	
		99050	$350.00	
		99047	$600.00	
			$2,000.00	
15 December 1999	$20,105.92	99093	$1,773.35	
		99092	$4,583.35	
		99091	$2,349.61	Monthly clean - December 1999
		99090[5]	$280.00	
		99084[6]	$560.00	Handwritten 99084 dated 05/11/99
		99083	$400.00	
		99082	$2,349.61	Monthly clean - November 1999
		99081[1]	$600.00	
		99080	$560.00	
		99079	$560.00	
		99078	$440.00	
		99077	$440.00	
		99075	$750.00	
		99073	$440.00	
		99071	$840.00	
		99067	$700.00	
		99062	$750.00	
		99061	$750.00	
		99060	$560.00	
		99058	$420.00	
			$20,105.92	
Comments				
1. Not in evidence, ie. not exhibited				
5. In Exhibit 38 there are two invoices numbered 99090. With the exception of the date 02/11/99 in one and a hand written 30 over the digit 2 in the date 2/11/99 for the the other invoice, they appear identical.				
6. There are two invoices each relating to different work numbered 99084. One dated 5/11/99 in the sum of $560 appears in Exhibit 4 and Exhibit 38.				
The other appears in the Annexure A&CS23 to Exhibit 1 and is dated 05/11/99 for the sum of $600.				

Date Received	***Amount Received***	***Amount relates to invoice numbered***		
19 January 2000	$7,110.00	99076	$1,030.00	Invoice was incorrectly totalled for $830.00. Correct total is $1030.00
		99072	$1,800.00	or $1900.00[7] invoice total is $1900.00
		99069	$1,780.00	
		99066	$1,200.00	
		99065	$1,200.00	
			$7,010.00	**or $7110.00**
03 May 2000	$3,214.61	2000..020	$100.00	
		2000..019	$180.00	
		2000..012	$189.00	
		2000..010	$2,349.61	
		2000.008	$189.00	
		2000..013	$207.00	
			$3,214.61	
03 July 2000	$5,682.01	2000...021[8]	$1,032.40	$4,550.00 claimed but $1032.40 paid
		2000...017	$400.00	
		2000...016	$2,349.61	
		2000...011	$400.00	
		2000...007	$400.00	
		2000...002	$400.00	
		99097	$300.00	$600 claimed but $300 paid
		99096	$400.00	
			$5,682.01	
Comments				
7. The printing of the amount for Invoice 99072 in Exhibit 32 is unclear.				
8. There are two invoices each originally re-numbered 2000..021. One is dated 15/04/2000 in the sum of $4550 and the other is dated 02/05/00 in the sum of $1032.40.				
The sum of $1032.40 was paid against the invoice in the sum of $4550.00.				