CITATION: *Territory Revenue Office v Higgins* [2009] NTMC 032

PARTIES:	TERRITORY REVENUE OFFICE
	v
	JONATHON HIGGINS
TITLE OF COURT:	Court of Summary Jurisdiction
JURISDICTION:	Darwin
FILE NO(s):	20726892
DELIVERED ON:	30 July 2009
DELIVERED AT:	Darwin
HEARING DATE(s):	19 & 30 March, 2 April and 7 July 2009
JUDGMENT OF:	Melanie Little SM

CATCHWORDS:

First Home Owners Grant Act – s 41(2)(d) offence charged – whether charge correctly laid - residential requirements – whether offence made out

REPRESENTATION:

Counsel:

Prosecution:	R Murphy
Defendant:	A Woodcock

Solicitors:

Prosecution:	Solicitor for the Northern Territory
Defendant:	Woodcock Solicitors

Judgment category classification:	C
Judgment ID number:	[2009] NTMC 032
Number of paragraphs:	44

IN THE COURT OF SUMMARY JURISDICTION
AT DARWIN IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. 20726892

[2009] NTMC 032

BETWEEN:

TERRITORY REVENUE OFFICE
Plaintiff

AND:

JONATHON HIGGINS
Defendant

REASONS FOR JUDGMENT

(Delivered 30 July 2009)

Ms Melanie Little SM:

1. The defendant is charged on Complaint that on 12 July 2005 at Darwin, being a person upon whose application "a First Home Owners Grant" was paid in anticipation of compliance with the residence requirements, did fail to comply with those requirements and did fail to notify the Commissioner in writing within thirty days of the date on which it first became apparent that the residency requirements would not be complied with during the period allowed for compliance - Contrary to s 41(2)(d)(i) of the *First Home Owner Grant Act* (NT) ("the Act"). Particulars alleged are that the date of commencement of occupancy was 9 March 2005, the period in which he was to commence occupancy was 12 months between 9 March 2005 and 9 March 2006 and the date when non-compliance became known was 11 June 2005. The property concerned is a unit at 10/6 Mannikan Court, Bakewell, Northern Territory.

2. Prosecutions bear the onus of proof and they must prove each element of the offence beyond reasonable doubt. If they do not do so, the defendant will be found not guilty.

3. At the time of the alleged offence, s 41(2)(d) of the Act read as follows:

> (2) A person to whom this section applies must
>
> (a) notify the Commissioner, in writing, of the person's ineligibility … and
>
> (b) pay to the Commissioner the amount of the grant ,
>
> within:
>
> …
>
> (d) in the case of non-compliance with the residence requirements – 30 days after -
>
> (i) the date by which the person was to have occupied the home; or
>
> (ii) the date on which it first became apparent that the residence requirements would not be complied with during the period allowed for compliance,
>
> whichever occurs first.

4. A person who fails to comply with ss 41(2)(d) of the Act commits a regulatory offence (ss 41(8) of the Act). Section 43A of the Act sets out that a prosecution under the Act is to be commenced within three years after the day on which the offence is alleged to have been committed. The offence was alleged to have been committed on 12 July 2005. The charge was laid on 8 October 2007 and so was laid within the time limitation under the Act. Under the Act there are powers of investigation which place requirements upon applicants to answer

certain questions. In this case a solicitor responded on behalf of the applicant prior to the charge being laid. Agents, including as real estate agents who manage properties on behalf of landlords, can be required to hand their files over for investigation. Banking institutions can be served with a notice to furnish information. Notices pursuant to section 35 of the Act were issued to the relevant agents and banks in this case. All such notices were complied with. Searches were undertaken of records relating to the property were undertaken including searches of Power and Water records and with the Land Titles Office. Searches were also undertaken with respect to the defendant including the Motor Vehicles Registry.

5. Oral evidence was taken and a considerable number of documents were tendered. After the prosecution case closed, defence submitted there was no case to answer. I found there was a case to answer and gave some reasons for that decision. After final submissions, decision was reserved. In final submissions, the defendant raised matters regarding the way the charge was laid. Those matters will be decided in the course of the decision. All admitted evidence has been taken into account in the making of this decision.

6. As far as I am aware, there are no reported or unreported cases involving this section of the Act, nor any Supreme Court cases regarding the Act generally. I have previously considered parts of the Act in the case of Territory Revenue Office v Walker.

7. The long title of the *First Home Owner Grant Act* is "an Act to encourage and assist home ownership and to offset the effect of the GST on the acquisition of a first home by establishing a scheme for the payment of grants to first home owners". The intention of the Act is clear. It is a *first home* owner's grant – it is not an investment grant. Home is defined in s 4 of the Act as a building affixed to land that may

lawfully be used as a place of residence and that is, in the opinion of the Commissioner, a suitable building for use as a place of residence. There are eligibility criteria for the grant. Some criteria can be satisfied prior to or by the time of the allocation of the grant – such as being a natural person over 18 years at the commencement date of the transaction, being an Australian citizen or a permanent resident, that the applicant has not received a grant before and that the applicant has not held a relevant interest in residential property previously.

8. This case relates to residence requirements. Section 12 of the Act sets out criteria number 5 – 'the residence requirements'. These are future requirements and they can only ever be future requirements. Section 12(1) of the Act sets out that the applicant for the grant must occupy the home as their principal place of residence for a continuous period of at least six months. Section 12(1B) of the Act sets out that this period of occupation must start within 12 months after completion of the eligible transaction. An eligible transaction is defined in the Act and a variety of scenarios are anticipated by the legislation. In this case the eligible transaction is the contract to purchase a house (s 13 of the Act). The commencement date of the eligible transaction is the date when the contract is made. The eligible transaction is completed once the purchaser becomes entitled to possession and the purchaser has obtained a registered title to the land (s 13(6) of the Act). There are powers for the Commissioner to approve a shorter period of residence or exempt an applicant, if there are special reasons. No such application was made by the defendant and the exemption provisions are not relevant in this case.

9. Under the Act a grant of money is paid in anticipation of the beneficiary of the grant residing in the home within a 12 month period for a minimum continuous period of six months. There is an onus placed on the recipient of the grant to advise the Commissioner in

writing of their ineligibility for the grant at the end of the 12 month period <u>or</u> when it first becomes apparent that the residential requirements would not be complied with, <u>whichever occurs first</u>. (my emphasis). The application form notifies the applicant accordingly. As stated in the preliminary decision, it is difficult to see how there could be a way of the Commissioner checking whether the residence requirements have been met, without random and regular intrusions on an applicant's privacy.

10. During final submissions, some preliminary questions were raised by defence. These will now be resolved. The defendant disputes that the charge and the particulars have been properly laid. The first issue raised is that the particular setting out the date of commencement of occupancy as 9 March 2005 was incorrect and that it should have read 14 January 2005 (or 13 January 2005) – being the date of the contract of sale. On my reading of s 12 (1B) of the Act, this particular relates to the *completion* of the eligible transaction. The period of occupation must start within 12 months of the completion of the eligible transaction. The completion of the eligible transaction is the date when the purchaser becomes entitled to possession of the home under the contract and transfer of the title has occurred (s 13(6) of the Act). That occurred on 9 March 2005, settlement day (P4). I do not accept that this particular should have read 14 January 2005 as the relevant date. Rather, that is the commencement of the eligible transaction (s 13(5) of the Act).

11. I find that the commencement date of the eligible transaction is the date of the contract of sale namely 14/1/05 (P7). I find that the completion date of the eligible transaction is 9/3/05 – the date the defendant was entitled to possession of the unit. (P7 and P4 transfer document – at bottom of the document registered on 9.3.2005 at 9.18am and stamped by the Registrar General). There is no issue which can be taken with

this particular. I find that the commencement date for occupancy was 9 March 2005.

12. The second particular is set out as follows - the period in which occupancy was to commence was 12 months between 9 March 2005 and 9 March 2006. Following the submission relating to particular one, defence submitted that this particular should read that the relevant period was between '14 January 2005 and 14 January 2006'. Section 12 of the Act sets out that the applicant must occupy the home as their principal place of residence for a continuous period of six months and this period of occupancy must start within 12 months after completion of the eligible transaction. I have found that the commencement date for occupancy was 9 March 2005. That is the date of the completion of the eligible transaction. There is a period of 12 months from 9 March 2005 in which occupancy must start. Based on the allegations and findings made, I decline to find that this particular should read as between 14 January 2005 and 14 January 2006.

13. The final particular sets out that the date when non-compliance became known was 11 June 2005. That particular relates to the date when the second tenancy of the unit commenced – with a 12 month lease commencing from that date (P11). That is the basis of the prosecution case. The Act reads "the date on which it first became apparent" rather than "became known". The charge on the complaint has been laid using the words from the Act. The particulars use different words. Nonetheless, I find that the particulars are not inconsistent with either the charge on complaint or the Act.

14. Defence submits that the charge on complaint has not been properly laid as it mixes up the criteria under s 41(2)(d) of the Act. As set out above, subparagraph (d) sets out that in the case of non-compliance with the residency requirements, a person has 30 days in which to

notify the Commissioner in writing and repay the amount of the grant – that is 30 days after <u>either</u> (i) the date by which the person was to have occupied the home <u>or</u> (ii) 30 days after the date on which it first became apparent that the residence requirements would not be complied with during the period allowed for compliance, <u>whichever occurs first</u> (my emphasis). This sub-section refers only to residence requirements and does not relate to the other eligibility requirements for the grant. The two periods of time are linked to each other, setting out that the date relevant to a charge is the date which occurs first. Before considering which allegation will form the basis of a charge, both dates must be identified. There may be occasions when the dates are the same. In this case, prosecution has calculated the 30 day period from the date they say it first became apparent that the residence requirements would not be complied with and have alleged that date on the charge (rather than 30 days after the end of the 12 month period), as being the date which occurred first. Arguably this election has made the prosecution of the case more difficult as there is more that prosecution must prove for the offence to be made out. Nevertheless, the Act specifies that whichever date occurs first is the relevant date and the charge has been laid in accordance with the legislative requirements. This particular ensures that the defendant knows the case against him is linked to the second tenancy of the unit.

15. It is submitted by defence that the two discreet offences in s 41(2)(d) of the Act are blended together in the charge. Defence submits that when the charge is read in conjunction with the particulars, the charge as laid is a nullity. An alternative argument is that the charge laid has specified subparagraph (i) of the subsection and the words of the charge point towards an offence pursuant to subparagraph (ii). On either argument it is submitted that the Court cannot make sense of the charge on complaint and nothing can be done to remedy the situation.

16. I have considered the complaint laid and I do not accept that the charge has been laid in such a way as to result in it being a nullity. Further, I do not accept that the Court cannot make sense of the charge. Defence submit that the first two particulars mean that s 41(2)(d)(i) of the Act is relied upon. Whilst these particulars would have been relevant to such a charge, they are equally relevant to a charge relating to the second limb of the sub-paragraph. For the charge as laid to be made out, it is necessary to prove the period allowed for compliance based upon the legislative definition of the commencement date for occupancy and the period in which occupancy was to have commenced. This necessitates the first two particulars to be set out as they have been. Defence argue that the third particular means that s 41(2)(d)(ii) of the Act is relied upon. This is undoubtedly correct. The complaint sets out a charge based upon s 41(2)(d)(ii) of the Act. The way the case has been conducted also makes that clear. The defendant has been aware since at least 21 February 2007 (and possibly earlier based upon material in the letter from the Northern Territory Treasury where it is asserted that previous correspondence had been sent to the defendant) that the allegation was in these terms (P23). This finding means that the charge on complaint has set out an incorrect subparagraph of the section as the offence allegedly committed. The charge reads s 41(2)(d)(i) of the *First Home Owners Grant Act* and it should read s 41(2)(d)(ii) of the *First Home Owners Grant Act*.

17. Has the Court power to amend the charge and if so should that power to amend be exercised?

18. Sections 181-183 of the *Justices Act* (NT) read as follows:

> 181 Form of information or complaint
>
> It shall be sufficient in any information or complaint, if the information or complaint gives the defendant a reasonably clear and

intelligible statement of the offence or matter with which he is charged.

182 Information or complaint not to be objected to for irregularity

No objection shall be taken or allowed to any information or complaint in respect of –

(a) any alleged defect therein, in substance or in form; or

(b) any variance between it and the evidence adduced in its support at the preliminary examination or at the hearing (as the case may be):

Provided that the Court shall dismiss the information or complaint, unless it is amended as provided by section 183, if it appears to him or to it –

(a) that the defendant has been prejudiced by the defect or variance; or

(b) that the information or complaint fails to disclose any offence or matter of complaint.

183 Amendment of information or complaint

If it appears to the Court before whom any defendant comes or is brought to answer any information or complaint that the information or complaint –

(a) fails to disclose any offence or matter of complaint, or is otherwise defective; and

(b) ought to be amended so as to disclose an offence or matter of complaint, or otherwise to cure the defect,

the Court may amend the information or complaint upon such terms as may be just.

relating to the same defendant and arising from the same or associated circumstances,

19. The *Justices Act* (NT) does give the Court power to amend the complaint. This discretion must be exercised judicially. If it appears to the Court that the defendant has been prejudiced by the defect or variance, the amendment should not be made. The defendant has been

aware of the general allegations since at least 21 February 2007 (P23). At that time, detailed information was given of the allegations and the evidence that Territory Revenue Office had been gathering. The major piece of evidence before the Court which was not set out in the letter to the defendant of 21 February 2007 was the fact of landlord's insurance being taken out on 18 May 2005 (P10). The charge was laid on 8 October 2007.

20. On the morning of the hearing, there was an application to amend some of the particulars and the section of the Act allegedly breached. I understand some notice had been given the week before. While there were some comments made with respect to delay, that was not objected to and no application was made for an adjournment of the hearing. The case was conducted without any deviation from the allegations made in the letter of 21 February 2007 (P23). The Court was not advised of any specific prejudice that the defendant would suffer if the charge was amended to reflect an offence under s 41(2)(d)(ii) of the Act. I have considered this question and I cannot see any prejudice that the defendant would suffer. I am of the view that the complaint gives the defendant a reasonably clear and intelligible statement of the offence with which he is charged. Undoubtedly it would be preferable for a charge to be laid without the need for any amendment by the Court. The relevant authorities have had significant time to consider the matter. I decline to find the complaint is a nullity.

21. In my view the charge is clearly set out and the particulars are sufficient for defence to be aware of the case which is being pursued by the complainant. The Court will amend the charge on complaint to read "contrary to section 41(2)(d)(ii) of the *First Home Owner Grant Act*".

22. A chronology of events will be of assistance in this matter. All entries relate to the unit property at 10/6 Mannikan Court, Bakewell Northern Territory :

Chronology

13/01/05	Contract of Sale for Property at 10/6 Mannikan Court Bakewell – signed by Defendant's father on behalf of the Defendant (P7)
14/01/05	Date of contract (P7)
28/01/05	Defendant applies for loan for property from National Bank (P6)
28/01/05	Defendant completes and signs First Home Owner Grant Application Form (P1)
09/03/05	Settlement date for Transfer of Unit transfer, see date of registration at bottom of document (transfer signed by defendant (P4). Start of 12 month period for occupancy under the Act
21/03/05	Authority to act as managing agent given to Raine and Horne by the defendant, signed by defendant for the property (P18)
01/04/05	Notice to vacate unit given by tenants in first tenancy (P19)
08/04/05	Tenants left unit (P19)
04/05/05	End of first tenancy to unit had tenants not vacated early (P9)
17/05/05	Power Water start day for bill to be in defendant's name at the unit. Postal address for bill to PO Box 843 Kent Town SA (P3)
18/05/05	Landlords Property Protection Insurance for Unit – effective from 1/4/05 paid via agent Raine and Horne (P10)
19/05/05	Air conditioner installed at Unit (P21)

01/06/05	Invoices for expenses relating to the Unit given to defendant's father by Raine and Horne (P21) Defendant's father to collect keys from Raine and Horne (P20) Raine and Horne no longer to be agents –told that defendant to live in property until October then would give property back to Raine and Horne to manage (P20)
11/06/05	Start of Second Tenancy at the Unit – signed by defendant's father; to expire on 10 June 2006 (P11) Date alleged by prosecution as the date when it first became apparent that the residence requirement would not be complied with by the defendant.
12/07/05	Date of alleged offence – based upon a 30 day period after the Commissioner was to have been notified in writing of these alleged circumstances.
11/11/05	Power and Water final day for bill to be in defendant's name at Unit (P3)
09/03/06	End of period occupancy was to have commenced under the Act
18/03/06	Second agreement for Raine and Horne to be agents for unit (P12)
01/06/06	Start of application to remedy breach of agreement Commissioner of Tenancies – using Raine and Horne as agents (P15)
10/06/06	End of Second Tenancy as per agreement (P11)
21/02/07	Letter from NT Treasury to defendant setting out allegations (P23)
23/04/07	Letter from defendant's solicitor to Territory Revenue Office (P22)

23. Much of this case will be decided upon the contents of the documents tendered as evidence. The primary document is the First Home Owners Grant Application Form (P1). This application was signed by the

defendant on 28 January 2005. There is evidence to find that the defendant completed the form. This is based upon the handwriting including the way the defendant writes a zero. The application for the first home owners grant includes the residence requirement in the eligibility criteria in section 1 at point 6 of the application. In answer to the question - "will each applicant be occupying the home as their principal place of residence for a continuous period of six months commencing within 12 months of completion of the eligible transaction?" the answer "Yes" has been ticked. Section 6 is the declaration section and point 3 relates to this issue where it sets out "I acknowledge that I must reside in the home that is the subject of this application as my principal place of residence for a continuous period of 6 months commencing within 12 months of completion of the eligible transaction". The defendant signed the application form on 28 January 2005 (P1). The defendant as applicant has made a future undertaking in his application for the grant. The defendant received the First Home Owners Grant based upon this application, which included this future undertaking.

24. After considering all the admitted evidence before the Court, both oral and documentary, I find the following matters proven beyond reasonable doubt.

25. I find that the defendant was a person who was paid the First Home Owners Grant in anticipation of compliance with residency requirements. I find that is proven beyond reasonable doubt. Settlement of the property was on 9 March 2005. From that date, the defendant had 12 months in which to commence the period of residence of six continuous months at the unit property in 10/6 Mannikan Court, Bakewell. The evidence before the Court is that at no stage during the 12 month period did the defendant reside at the unit property and in particular, during the period 9 March 2005 and 9 March 2006 that he

did not reside at that property. That is admitted in Exhibit P22 at page 2. I find that it is proven beyond reasonable doubt that the defendant did not comply with that residence requirements within the period allowed for compliance. The complaint is laid relating to a period prior to the March 2006 date.

26. On 11 June 2005 a second Tenancy Agreement was entered into with respect to the property. It was a 12 month Tenancy Agreement. From 11 June 2005 the defendant was then contractually bound and could not reside at the property at 10/6 Mannikan Court, Bakewell without terminating the Tenancy Agreement. The defendant then had 30 days from 11 June 2005 in which to notify the Commissioner in writing that he was not able to comply with the residency requirements, that is by 12 July 2005. No notification in writing was received by the Commissioner. An admission is contained in the correspondence from the defendant's solicitor to the Territory Revenue Office dated 23 April 2007, that the defendant failed to notify the Commissioner in writing of the non-compliance with the residency requirements is evidence of that fact (P22 page 3). There is evidence to find this element of the offence is proven beyond reasonable doubt. I find no notification was given to the Commissioner between the period 11 June 2005 and 12 July 2005. Further, I find that no notice was ever given by the defendant to the Commissioner.

27. The second Tenancy Agreement was not signed by the defendant and I find that the second tenancy agreement was signed by the defendant's father (P11). I have examples of the defendant's signature and writing on various documentation before the Court, including P1 the First Home Owners Grant Application and P6 the Loan Application. The address for payments of rent to be made pursuant to the Tenancy Agreement in P11 is the defendant's father's address in Palmerston (the information for that address is contained in the Loan Agreement and the

address corresponds with the address in the Tenancy Agreement). I also have examples of the defendant's fathers writing. I find that the defendant's father was acting as agent for the defendant with respect to the property and in particular, in securing the second tenancy on his behalf. I rely upon the following evidence in making this finding; the material from the real estate agent that the defendant's father was collecting the keys for the property from them at the end of the first tenancy (P20), that the agents gave invoices relating to the unit to the defendant's father and that the original contract for sale had been signed by the defendant's father on behalf of the defendant (P7). I find that the defendant's father was acting as agent for the defendant with respect to the second tenancy transaction.

28. The next question is whether prosecution have proven beyond reasonable doubt that it became apparent that the residency requirements would not be met and if so, when it first became apparent. I have looked at the legislation and have considered the material put to me by both prosecution and defence on this question. I have previously found that it is not necessary for prosecution to prove that it became apparent to the defendant that the residency requirements would not be complied with. I gave reasons for that decision following no case submissions. I rely upon those reasons. This is a strict liability offence. The wording of the legislation does not lead the court to conclude that prosecution must prove that there was any particular knowledge that the defendant held. Accordingly, I find that it is not necessary for there to be any material before the Court directly on the question of what was apparent to the defendant for the charge to be made out.

29. The Court can conclude that the defendant was aware of the obligations upon him and the requirements under the Act by the wording of the declaration signed by him. Section 6 of P1 is the Declaration section of

the First Home Owner Grant Application Form which includes the following clauses:

> "1. I have read and understood this application and the First Home Owner Grant Lodgement Guide relating to the conditions of eligibility and I accept that if the conditions are not met, I may not be entitled to receive or retain the Grant.
>
> 2. I have completed the application form and attached all relevant documents in support of this application
>
> 3. I acknowledge that I must reside in the home that is the subject of this application as my principle place of residence for a continuous period of six (6) months commencing within twelve (12) months of completion of the eligible transaction.
>
> ….
>
> 9. I acknowledge that under the *First Home Owner Grant Act* penalties will apply for making a false or misleading statement in or in connection with this application.
>
> I declare that the statements contained herein and supporting documentation provided are true and correct in every particular".

30. On 28 January 2005, the defendant signed his name under that declaration.

31. Submissions on behalf of the defendant centred on the word "apparent" and the expression "first became apparent". The word apparent is not defined in the legislation and there is no case law on the section. The Court will look at the ordinary meaning of the word and the expression. To assist in this, reference was made by defence to the Macquarie Dictionary definition of "apparent" which defines the word as "clearly perceived or understood, seeming ostensible, easily seen or understood". I have also considered the Concise Oxford Dictionary definition of "apparent" as "manifest, palpable, seeming". These definitions emphasise the transparent nature of what is said to be apparent.

32. I find that upon the second tenancy agreement being entered into for 12 months, to expire on 10 June 2006, some three months after the time in which occupancy was to have commenced, it first became apparent that the residency requirement would not be met. I have made this finding based upon the ordinary meaning of the words first became apparent. It became understood, seeming ostensible, easily seen or understood, manifest, palpable, seeming that the defendant would not meet the residency requirements. On the 11 June 2005 the fact that compliance with the residency requirements would not be met became apparent. There being no notice in writing to the Commissioner within 30 days of that date, I find the charge is proven beyond reasonable doubt.

33. If I am found to be wrong in coming to the conclusion that there does not need to be any material before the court on the question of what was apparent to the defendant I will consider the matter further.

34. In the First Home Owner application form in response to the question in section 4 "Date when occupation as principal place of residence commenced or is intended to commence (if not known estimate)" the defendant responded "09/05/2005", that is some five days after the first tenancy was due to expire (P1). In that application form the defendant set out that his residential address was 1/52 Bayview Road Bayview NT 0820 when in fact he resided in South Australia. The nominated address was his father's address. The First Home Owner Grant Application Form contained very specific declaration sections which the defendant signed on 28 January 2005.

> Section 6 of P1 is the Declaration section of the First Home Owner Grant Application Form which includes the following clauses:
>
> "1. I have read and understood this application and the First Home Owner Grant Lodgement Guide relating to the conditions of eligibility and I accept that if the conditions are not met, I may not be entitled to receive or retain the Grant.

> 2. I have completed the application form and attached all relevant documents in support of this application
>
> 3. I acknowledge that I must reside in the home that is the subject of this application as my principle place of residence for a continuous period of six (6) months commencing within twelve (12) months of completion of the eligible transaction.
>
> ….
>
> 9. I acknowledge that under the First Home Owner Grant Act penalties will apply for making a false or misleading statement in or in connection with this application.
>
> I declare that the statements contained herein and supporting documentation provided are true and correct in every particular".

These declarations are evidence of the defendant's knowledge of his obligations and of his knowledge of the requirements under the Act.

35. The defendant did not reside in the Northern Territory and he was employed in South Australia during the entire 12 month period between 9 March 2005 and 9 March 2006. The defendant applied for a job in the Northern Territory by letter dated 13 November 2005. He visited Darwin from 22 December 2006 to 4 January 2007.

36. Ms Brand, a former employee of Territory Revenue Office, gave evidence that she undertook a search of the Motor Vehicles Registry records on 23 August 2006. She ascertained that the defendant had never held a Northern Territory Drivers Licence and had never had a motor vehicle registered in the Northern Territory.

37. The power at the unit was in the name of the defendant from 17 May 2005 to 11 November 2005 (P3). The postal address for the power bill to be sent was the defendant's postal address in Kent Town South Australia.

38. The defendant had authorised his father to collect keys from the real estate agent (P20). The defendant's father had signed the original contract of sale on behalf of the defendant (P7). It was clear the defendant was using his father as an agent with respect to this property. The agent was aware of this arrangement.

39. The defendant took out Landlords Property Protection insurance with Millennium General Insurance (through Raine and Horne) for the property effective from 1 April 2005. The period of insurance is stated to be from 18/5/05 to 1/4/06 (P10).

40. On or about 1 June 2005 Raine and Horne was advised that they were no longer to be property agents for the unit. They were told that the defendant was going to live in the unit property until October 2005 and that he would then give the property back to Raine and Horne to manage (P20). The defendant continued to reside and work in South Australia during this time.

41. Exhibit P11 is a Tenancy Agreement for three persons, namely Simkins, Roll and Collins to reside at the premises 10/6 Mannikan Court for a term of 12 months commencing 11 June 2005 and expiring on 10 June 2006. Rent was collected in cash by the father of the defendant, as agent for the defendant. Once the lease commenced, the owner of the property (the defendant) was not in a position to reside at the property for that 12 month period. This Tenancy Agreement is a legally binding document. I find that it was apparent as at the date of the lease being entered into that the defendant could not reside at the property without breaching the Tenancy Agreement.

42. As stated above, the power was in the name of the defendant from 17 May 2005 until 11 November 2005. There are special conditions attached to the lease. Special condition C sets out that the electricity supply is in the name of the owner (the defendant) for the first six

months of the lease and that the tenants agree that they will meet all such expenses by paying on demand the amount indicated on the relevant Power and Water account (P11-underlined in the document). The court has no material before it to explain why an owner/landlord would accept primary responsibility for a tenants' power bill. It is somewhat surprising that such liability would be accepted without there being some perceived advantage to the owner/landlord. The period specified in the second tenancy agreement that the power would be in the name of the owner (6 months) is the same period of time of occupancy to comply with the residential requirements under the Act. I do not regard this as a coincidence.

43. Somewhat unusually there is a two week electricity security to be paid by the tenants. The four weeks security deposit is not to be refunded in accordance with the *Agents Licensing Act.* That clause is deleted from the agreement. The tenancy was being privately managed. (P11).

44. I find that the material before the Court proves beyond reasonable doubt that it was apparent to the defendant that he would not meet the residency requirements. That first became apparent at the time of the second Tenancy Agreement commencing, namely 11 June 2005. I find that on that date it first became apparent that the defendant would not meet the residence requirements. He had 30 days in which to advise the Commissioner in writing. That was not done. I find the charge is proven beyond reasonable doubt and I record a verdict of guilty to the charge as amended.

Dated this 30th day of July 2009

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Melanie Little
STIPENDIARY MAGISTRATE