

CITATION: *Mallett Super Fund v Health Focus Australia Pty Ltd [2016] NTLC 029*

PARTIES: Mallett Enterprises Pty Ltd as trustee for the
Mallett Super Fund
v
Health Focus Australia Pty Ltd

TITLE OF COURT: Local Court

JURISDICTION: Civil Jurisdiction

FILE NO(s): 21620035

DELIVERED ON: 04 November 2016

DELIVERED AT: Darwin

HEARING DATE(s): 07 September 2016

JUDGMENT OF: Judge Fong Lim

CATCHWORDS:

Contract –implied variation of terms- convertible Notes-extension of Maturity Date by implication.

Estoppel – waiver -forbearance to sue – conditional payment of debt – acceptance of cheque

Practice and Procedure – crystallisation of cause of action

Agricultural and Rural Finance Pty Ltd v Gardiner & anor [2008] 251 ALR 322
considered

Wardle v Agricultural and Rural Finance Pty Ltd; Agricultural and Rural Finance Pty Ltd v Brakatselos [2012 NSWCA 107 – distinguished

Stirling v Yerba [1987] 74 ACTR 1 – distinguished

George v Cluning [1979] 28 ALR 57 - distinguished

REPRESENTATION:

Counsel:

| | |
|------------|-------------|
| Plaintiff: | Mr Bohning |
| Defendant: | Mr Baddeley |

Solicitors:

| | |
|------------|-----------------|
| Plaintiff: | Finlaysons |
| Defendant: | William Roberts |

| | |
|-----------------------------------|---|
| Judgment category classification: | A |
|-----------------------------------|---|

| | |
|---------------------|----------|
| Judgment ID number: | NTLC 029 |
|---------------------|----------|

| | |
|-----------------------|----|
| Number of paragraphs: | 87 |
|-----------------------|----|

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

No. 21620035

BETWEEN:

**Mallet Enterprises Pty Ltd as trustee for
the Mallett Super Fund**

Plaintiff

AND:

Health Focus Australia Pty Ltd

Defendant

REASONS FOR JUDGMENT

(Delivered 4 November 2016)

JUDGE FONG LIM:

1. Mallet Enterprises Pty Ltd (the Plaintiff) is a trustee company for the self-funded superannuation fund for Cheryl Mallett. In June of 2012 the Plaintiff purchased convertible Notes in the Health Focus Australia Pty Ltd (the Defendant). The total value of that investment was \$44,000 and had the Maturity Date of 30 June 2014 with regular payments of interest to be made to the Plaintiff for the duration of the Deed.

2. In August 2013 replacement Notes were issued to the Plaintiff by the Defendant on the same terms and conditions of the Deed Poll of the 26 June 2012 which created the first issue. The maturity date of 30 June 2014 remained the same.
3. From the 22 January 2015 Cheryl Mallett, director of the Plaintiff contacted the Defendant on several occasions to chase up outstanding interest payments and those payments were made but were consistently late.¹ From the 30 October 2015 Ms Mallett started making demands of the Defendant for the repayment of her principal sum of \$44000. In their correspondence with Ms Mallett the Defendant stated they wanted to discuss repayment of the principal and advised that the company was “well underfunded” and that her monies could be “repaid by the 10th November” 2015².
4. On the 10 November 2015 the Plaintiff indicated it was willing to accept “the interim payment arrangement up to the end of January” 2016 in response to another request from the Defendant for an extension of time to pay the principal.³
5. By the 14 March 2016 the Plaintiff still had not been paid her principal and the Defendant continued to be late in its payment of interest. It is then the Plaintiff made a demand for payment of all outstanding interest and principal and threatened to petition for the winding up of the Defendant.⁴
6. The Defendant’s response to the email of the 14 March 2016 was to pay the arrears in interest and an unsolicited advance on the next quarter’s interest up to the 30 June 2016. The advanced interest was accepted by Ms Mallett who also made another enquiry as to when she might be repaid her principal.

¹ Tender book pages 50-58

² Email 30 October Tender book page 33

³ See pages 37 and 52 of Tender Book

⁴ See page 55 of Tender Book

7. The Plaintiff then sent a formal demand for the repayment of the outstanding principal through its solicitors on the 14 April 2016⁵ which demand was met with silence from the Defendant. The proceedings were commenced on 26 April 2016 for the principal sum of \$44,000 plus costs. There is no claim for interest.
8. On the 3 August 2016 the Defendant forwarded to the Plaintiff a cheque for the amount of \$44,000 which it claims was in full satisfaction of its debt to the Plaintiff. The cheque was held but not banked by the Plaintiff on the basis that there was still interest outstanding and costs of the action to be resolved.
9. The Defendant submits the acceptance of the advance interest in March of 2016 was an implicit acceptance by the Plaintiff to extend the time the Defendant had the use of the \$44,000. That is the acceptance of that interest by implication extended the Maturity Date of the Notes until the 30 June 2016.
10. The Plaintiff submits the Maturity Date of the Notes can only be varied by certain processes being undertaken as set out in the Deed and none of those processes have been undertaken. It is the Plaintiff's case that the Maturity Date cannot be varied by agreement between the parties without ratification by a special general meeting.
11. It is further submitted by the Defendant that the Plaintiff's action was brought prematurely or in the alternative if not prematurely the debt had been satisfied by the tender of the cheque on the 3 August 2016 and therefore there is nothing for this Court to adjudicate.

The Evidence

12. The matter proceeded on the papers as agreed by the parties and some oral evidence from Ms Mallett.

⁵ See page 61 of Tender Book

13. The documentation set out the timeline and the dealings between the parties and Ms Mallett explained her reasoning behind accepting the interest in advance. She says she accepted the interest because she had no faith that her money was going to be paid back to her and she also accepted in cross examination that it was possible for her to agree to give the company extra time to pay. She did not accept that she had in fact granted that extra time.

The Issues

14. What is the Maturity Date of the Notes? Was the Maturity Date of the Notes varied by the Plaintiff accepting an advance on the interest payable up to June 2016?
15. Did the Plaintiff waive its rights under any breach prior to March 2016 by its acceptance of the interest paid in advance? Was there by that acceptance of advanced interest a forbearance to sue?
16. Had the right to sue for the principal sum crystallised before the commencement of these proceedings or were these proceedings premature?
17. Did the Plaintiff, by accepting the delivery of the cheque for the principal amount accept a conditional discharge of the Defendant's debt to the Plaintiff?
18. **The Maturity Date of the Notes.** - It is agreed the original Maturity Date of the Notes was the 30 June 2014. In accordance with the terms of the Deed Poll creating these Notes. In other words 30 June 2014 is the date when the Notes become due and payable and the date when the Defendant must pay the principal back to the noteholder.
19. In the terms of the Deed Poll the Maturity Date is defined as the 30 June 2014 and pursuant to clause 5.1 of the Deed the Defendant:

“unless earlier redeemed, purchased and cancelled or converted, the Company must repay the Face Value on the Maturity Date and redeem all Notes”

20. There are of course circumstances in which the company can redeem the Notes at an earlier date however those conditions are not relevant to the present case.
21. There are no specific conditions relating to an extension of time for of the Maturity Date of the Notes however there are specific conditions relating to the variation of the Deed contained in condition 17.4 which requires any substantive change to be authorised by an Extraordinary Resolution⁶.
22. At no time was an Extraordinary Resolution passed to change the Maturity Date.
23. The Plaintiff has submitted that the Maturity Date can only be changed via Extraordinary Resolution and since 30 June 2014 the Notes were redeemable and the Defendant was obliged to pay the face value of those Notes to the Plaintiff upon the Plaintiff’s request.
24. I agree with the Plaintiff. The date that the Notes matured and principal sum was due and payable was the 30 June 2014. That is the date when the Defendant’s obligation to repay the principal sum became enforceable. Any change to that Maturity Date must be made through proper processes and if no changes are made through those processes the Plaintiff has a right to enforce the repayment of that money. Equally the Plaintiff also has the choice not to enforce or delay the enforcement of that obligation.
25. In this case there were no formal processes undertaken to change the Maturity Date of the Notes and therefore the Maturity Date remains at 30 June 2014.

⁶ See Condition 17.4 of Deed Poll of replacement Notes.

26. **Did the Plaintiff waive rights to pursue the Defendant for the principal sum by accepting the payment of interest in advance in March 2016?**
27. The question is whether, by accepting the payment of interest in advance up to 30 June 2016, the Plaintiff has waived its right to enforce the redeeming of the Notes when the Defendant has clearly defaulted in its obligations to repay the principal sum on 30 June 2014. The Defendant relies on the Plaintiff's acquiescence in accepting the payment as an implicit acceptance of an extension of time to the Defendant to repay the Plaintiff's principal sum.
28. Ms Mallett stated in her evidence that she did not take the interest intending to give the Defendant further time to pay the principal on the Notes, she did so because of the Defendants' behaviour in the past with late payments of interest and the failure to pay the principal despite continued requests.
29. The payment of interest in advance was proffered unilaterally by the Defendant without explanation. The Defendant did not suggest that the payment was for the extended use of the principal sum until they were pursued by the Plaintiff through this action. Unlike the email of the 10 November 2015 where the Plaintiff explicitly agreed to allow the Defendant until the end of January to repay the principal there was no such indication in the email of the 14 March 2016 which acknowledged receipt of the payment of the advanced interest. In fact the email ended with:
- “I look forward to hearing from you regarding the return of my capital”
30. The unilateral payment of interest in advance cannot amount to a waiver to pay the principal otherwise whenever a company has cash flow problems in this situation it could hold its investors monies indefinitely.

31. Waiver is a concept based in the application of equitable principles. A person cannot act in a way to cause another to expect that they would not be pursuing their rights under a contract. It is in fact a form of estoppel.
32. The question in the present case is whether the Plaintiff in its acceptance of the payment of the advanced interest has acted in such a way as to lead the Defendant to assume that they would not pursue their rights under the contract until the end of that interest period.
33. In *Hughes v Metropolitan Railway Co*⁷ Lord Cairns LC set out the interaction between reliance in equity and unconscionable conduct where he stated:
- “it is the first principle upon which all courts of equity proceed, that if parties who have entered into definite and distinct terms involving certain legal results - certain penalties of legal forfeiture- afterwards by their own act or with their own consent enter upon a course of negotiation which has the effect of leading one of the parties to suppose that the strict rights arising under the contract will not be enforced, or will be kept in suspense, or held in abeyance the person who otherwise might have enforced those rights will not be allowed to enforce them where by it would be inequitable having regard to the dealings which have thus taken place between the parties.”
34. It is trite to say those who want to rely upon equitable relief must also act equitably.
35. In *Agricultural and Rural Finance Pty Ltd v Gardiner*⁸ the High Court considered the effect of the acceptance of late loan repayments made by Gardiner to ARF on the operation of an indemnity agreement. Gardiner’s repayment of the principal sum was subject to an indemnity by another company as long as loan repayments made by

⁷ (1877)2 App Cas 439

⁸ [2008] 238 CLR 570

Gardiner had been made punctually and other specific circumstances applied. In that matter the scheme failed and ARF sued Gardiner for the principal which Gardiner argued was subject of the indemnity. During the course of the loan Gardiner was sometimes late in his repayments however the ARF accepted those payments as “on time”. Gardiner argued that by the acceptance of the late payment the lender had waived its right to pursue him for the principal and should look to enforce its indemnity instead.

36. Their Honours discussed “waiver” specifically stating that while it is a term used by lawyers there is no separate doctrine of waiver rather it is a word used to encompass the application of many different principles such as estoppel, election or variation of contract⁹ and the plea of waiver will depend on the facts in the particular case. In Gardiner’s case the appellant relied on a letter from a representative of the lender which specifically advised him that they were willing to accept late payment and claimed that letter was a waiver of the lender’s and the third party’s rights to rely on the late payment as a breach of Gardiner’s obligations under the contract.
37. It was clear from their Honours’ reasoning that it was necessary to consider the facts of each case to decide whether waiver based in different doctrines applied. Their Honours found that estoppel did not apply in that case because Gardiner had not acted to his detriment because of that representation, nor could the actions of ARF bind the indemnifier as they had no privity in the contract between the Plaintiff and ARF.
38. In relation to forbearance their Honours found that there must be some consideration moving between the parties and/or a reliance on the

⁹ [2008] 238 CLR at page 587

representation for there to be any basis of and argument for forbearance or estoppel.¹⁰

39. In the present case the Defendant has not alleged that it has acted to its detriment and even though estoppel is referred to in their submissions there is no evidence of detriment to them. They in fact have enjoyed an advantage by retaining the use of the Plaintiff's funds without the Plaintiff's consent.
40. By holding the funds of the Plaintiff the Defendant has control of the relationship between the parties and therefore has the balance of power in the relationship. Any consideration of the actions of the parties must have that balance of power in mind if equitable remedies are to be considered outside of the terms of contract. The court must have regard to those prior dealings
41. In this present case at no stage did the Defendant demand the repayment of the advanced interest once the Plaintiff demanded the repayment of the principal sum, before 30 June 2016 nor did they indicate that the principal was not due and payable.
42. The Defendant had consistently stonewalled the Plaintiff in relation to the repayment of the monies which were due and owing and through its actions have used its bargaining power to gain advantage over the Plaintiff.
43. In the circumstances described and based on the documentary evidence I am satisfied on the balance of probabilities that there was no agreed extension of time granted to the Defendant by the Plaintiff by its acceptance of the interest in advance and consequently no waiver of the Plaintiff's right to insist upon the repayment of the "due and payable" principal.

¹⁰ See para 68-74 of judgement in [2008] 251 ALR 322

44. It is the evidence of Ms Mallett that she accepted the interest payment because she thought she was never going to get her money back given the Defendant's past behaviour. The Defendant's actions to the demands made by the Plaintiff's solicitors are not actions consistent with their contention that they believed they had the use of the Plaintiff's funds until the 30 June 2016.
45. There was nothing in the actions of the Plaintiff which would have led the Defendant to believe that the Plaintiff would not enforce its rights to the redemption of the Notes.
46. Accordingly I find that the Plaintiff had not waived its rights to enforce the redemption of the Notes on the Defendant pursuant to the contractual terms. *Clause 5.1 of the Deed Poll* requires the Defendant to "*repay the Face Value on the Maturity Date*".
47. **Has the right to sue crystallised or were the proceedings premature?** - The Defendant has not repaid the Face Value of the Notes held by the Plaintiff on the Maturity Date or upon several demands for repayment or even at the date agreed to by the Plaintiff. The Defendant is in default of its obligations under the contract and the Plaintiff had a cause of action which crystallised on the Maturity Date.
48. **Has there been a forbearance to sue?** - From the 22 January 2016 the Plaintiff had the Defendant on notice that she wanted to redeem the Notes. Even though it was only in her email of the 2 February 2016 she actually referred to "redeeming" the Notes it was clear from her reference to repayment of the principal sum that she was calling on the debt owed to her by the Defendant.
49. Prior to the email of the 10 November 2015 the Plaintiff made consistent requests for the repayment of the principal sum and then in that email the Plaintiff gave the Defendant until the end of January 2016 to repay the money. Ms Mallett's exact words were:

“I am willing to accept the interim payment arrangement to the end of January 2016. If full payment cannot be made by then (including outstanding interest) I will need to re-consider my position”

50. Prior to that email the Plaintiff had threatened to seek “legal enforcement of (its) rights”¹¹.
51. The clear intention of the Plaintiff by the email of the 10 November 2015 was to indicate a forbearance to sue up to the end of January 2016. However it was also clear that should she not be paid by the end of January 2016 she would reconsider her position and any forbearance would be reconsidered at the end of January.
52. After that email the Defendant continued to delay in paying interest and made no firm commitment to repay the principal.
53. When the monies were not repaid at the end of January 2016 the Plaintiff continued to make demands for the payment of outstanding interest and the principal. From that time the Plaintiff through its demands had indicated that any forbearance to sue was no longer in operation.
54. The Plaintiff’s acceptance of the interest in advance was explained by Ms Mallett as an acceptance of a payment which she would offset against the principal owed if she was paid the principal before the end of June 2016. The Plaintiff took the funds because Ms Mallett had no confidence that she would be paid her principal any time soon. At no stage upon accepting that interest did she advise the Defendant that they had until the end of June to pay the principal.
55. In the emails between the parties the Plaintiff has always expressed a clear desire to redeem the Notes and, despite the delaying tactics by the Defendant, had only given one express reprieve to the Defendant that was contained in the email of the 10 November.

¹¹ Tender book document 4 - email of 30 October 2015

56. In relation to the acceptance of the advanced interest the Defendant did not tender that advanced interest with any express condition. The Defendant did not tender the advanced interest and request the use of the principal funds in return for that interest and neither did the Plaintiff accept that interest indicating that it would allow further time until the 30 June 2016 in which to pay the principal.
57. The Defendant did not indicate its expectation to the Plaintiff that the payment of advanced interest was on the basis that it would continue to have use of the Plaintiff's funds until the 30 June 2016, given the recent past between the parties had the Defendant done so the interest may not have been accepted.
58. It is understandable that Ms Mallett thought she had no choice but to accept the interest in advance because of the past delay the Defendant had engaged in regarding the return of her principal sum. It was not her intention to keep that money as some sort of bonus if the principal was paid back to her sooner, her intention was to offset the amount against what was owed to her.
59. She was adamant that she still believed the principal sum was due and owing to her and is supported by the Plaintiffs action of suing for the principal sum before the end of June.
60. It is of note that the Defendant did not respond to the Plaintiff's letters of demand¹² on the 24 March and the 14 April in which the Plaintiff demanded payment of the monies owing and threatened legal action. If the Defendant was of the view that the Plaintiff had agreed to an extension of time for the use of the Plaintiff's money it would be expected they would have responded accordingly.
61. Given the Defendant's lack of response to the letters of demand, the fact that there was no explanation for that lack of response, and given the Defendant had been delaying redeeming the Plaintiff's Notes for

over a year I am satisfied on the balance of probabilities that the Defendant's unsolicited payment of the advance interest was another delaying tactic on its behalf. It is most likely the payment was to avoid further action by the Plaintiff for the redemption of the Notes and was not an implicit agreement to waive any default by the Defendant under the Deed Poll for the redemption of the Notes.

62. There was clearly no meeting of the minds regarding the purpose for which the advance interest was tendered and accepted and therefore there was no implied variation of contract (an extension of the date when the principal was payable). There was no representation that the Plaintiff would not pursue payment of those monies and no detriment ensued from the alleged representation. There was no waiver, express or otherwise, of the Plaintiff's right to enforce the repayment of the monies owed and further there was no indication from the Plaintiff that it would forbear from enforcing the repayment of the money due past January 2016.
63. I am satisfied that the redemption of the Notes remained due and payable at the 30 June 2014 and that the Plaintiff only agreed not to enforce its right to redeem those Notes and be paid the principal sum up until the end of January 2016. After that date the Plaintiff's right to sue for the principal re-enlivened.
64. **Was the tender of the cheque a conditional discharge of the debt owed?**
65. The cheque was tendered to the Plaintiff's solicitors and the Plaintiff through its solicitor refused to present the cheque on two bases, first that the name Mallett had been misspelled, and secondly there was no indication by the Defendant upon what basis the cheque was tendered.
66. It is important to note that at that point there was further interest outstanding and legal costs had been incurred.

67. The letter enclosing the cheque¹³ referred to the cheque as :
“Payment of the sum constitutes our clients entire obligation under the Deed Poll”
68. The letter also invited the Plaintiff’s solicitors to suggest “ how the matter can be finalised”
69. It is clear that the entire obligation of the Defendant could not have been satisfied by the payment of the \$44,000 on the 5 August 2016 because they had only paid interest on those funds up to the 30 June 2016.
70. The terms of the relevant Deed Poll requires interest to be paid “up to and including the date on which the Note is converted or redeemed”¹⁴
71. It is also clear that the Defendant accepted there were outstanding matters to be finalised in the litigation.
72. The Defendant referred to *Wardle v Agricultural and Rural Finance Pty Ltd; Agricultural and Rural Finance Pty Ltd v Brakatselos*¹⁵ as an authority for the proposition that a cheque provided a conditional discharge of the debt and therefore the Plaintiff’s continued prosecution of its claim was not supported.
73. The Plaintiff’s solicitors have held the cheque without presenting it for payment. The Plaintiff not accept the cheque as discharging the Defendant’s obligations and made it clear it wanted to be paid outstanding interest and legal costs.¹⁶
74. The question is can the Plaintiff, through its solicitors merely hold the cheque and continue to sue the Defendant for the \$44,000.

¹³ Exhibit P4

¹⁴ Clause 3.1 of Deed Pol of Replacement Notes exhibit D1

¹⁵ [2012] NSWCA 107

¹⁶ Letter from Finlaysons to William Roberts exhibit P5

75. The Defendant submitted, applying the reasoning in Wardle's case¹⁷, that the tender of the cheques constituted a discharge of the debt and the Plaintiff's decision to physically hold onto the cheque, even though they have not banked it, amounts to an acceptance of that payment. Consequent to that acceptance the Defendant argues the Plaintiff could not continue to pursue the litigation.
76. The Defendant referred to *Stirling Properties Ltd v Yerba Pty Ltd*¹⁸ in which the Supreme Court of the Australian Capital Territory applied the High Court decision of *George v Cluning*¹⁹ as authority for the proposition that the Plaintiff has accepted the mode of payment by way of cheque and is bound by that acceptance and therefore has no cause of action to pursue for the sum of \$44,000.
77. In fact the comments of Barwick CJ in *George v Cluning* about the tender of a personal cheque in payment of a debt or alike were additional comments made outside the issue to be decided by the court on that occasion. His Honour was of the view that a tender of a personal cheque can be the basis for the discharge of an obligation if the payee takes no objection to the mode of payment even though a cheque is not legal tender. His Honour went on to say that commercial operations had at that time (1979) developed to a stage that payment by cheque had become a commonly accepted form of payment and therefore unless there was an objection to that mode of payment then such a payment would be taken to have been made.
78. It should be noted that in *George v Cluning* the court were not required to consider objections to the cheque on other grounds other than it was not legal tender.
79. In *Stirling Properties Ltd v Yerba Pty Ltd* the question was whether the attempted payment of the cheque by delivering it to the place of

¹⁷ [2012] NSWCA 107

¹⁸ 74 ACTR 1

¹⁹ [1979] 28ALR 57

business was enough to terminate the plaintiff's right to exercise an option to purchase units in the company as set out in the agreement between the companies. In *Stirling Properties* there was a toing and froing between the parties with several attempts by the representative of the Defendant to leave the cheque at the plaintiff's office which was successfully done by that person leaving the cheque with the receptionist. The cheque was not returned to Stirling but was banked into a trust account with the intention of keeping the funds to the plaintiff's credit which would be available to the plaintiff on demand.

80. The basis for banking the funds was made clear to the plaintiff. His Honour found in a particular set of circumstances a creditor who has prevented a debtor from effecting payment should not be able to behave as if payments has not occurred to gain a consequent advantage.²⁰ However His Honour also found in the case before him that the tender and momentary acceptance of the cheque did not amount to a payment.
81. The facts in the present case are that the Plaintiff has never accepted the cheque forwarded to it by the Defendant as payment of the debt owed. The grounds given for non-acceptance were set out in the Plaintiff's solicitor's letter to the Defendant's solicitors as follows:

"Your letter does not make clear the terms on which the cheque is tendered. Further, the cheque enclosed with your letter misspells our client's name and is incapable of being accepted"
82. The letter went on to say if they received a corrected cheque it would only be accepted on the basis of the Defendant also paying costs of the action on an indemnity basis and interest outstanding.
83. It could be argued that the Plaintiff is deliberately obstructing the Defendant from discharging its liability to attain a further advantage of being paid indemnity costs and interest. Putting aside the costs

issue- the Defendant tendered the cheque, which was a personal cheque, on the basis that it discharged its liability under the Deed Poll. The cheque could not totally discharge the Defendant's liability under the Deed as there was still interest owing to the Plaintiff. Therefore the refusal to accept the cheque on the basis there was further interest outstanding was not the Plaintiff seeking to gain an advantage. The claim for indemnity costs is also a matter which the Plaintiff can agitate once the action has been commenced even if the debt is paid.

84. It is also important to note that the cheque has not been banked, which is a further indication it has not been accepted, and further there is no evidence that it would have been or will be honoured.
85. Given the cheque has not been presented and the clear intention not to accept the cheque for reasons that it did not "constitute (the Defendant's) entire obligation under the Deed Poll" and taking into account the past dealings between the Plaintiff and the Defendant I find the delivery of the cheque did not constitute a payment which satisfied the cause of action and therefore the Plaintiff is entitled to continue to sue for the \$44,000.
86. In relation to interest owed under the Deed Poll I note that the statement of claim does not include a claim for interest and so an order cannot be made in favour of the Plaintiff for the outstanding interest. I also note that there has been no claim of set off for the interest paid in advance up to June 2016 and given that monies were held by the Defendant to well past that date I make no order relating to that interest.

²⁰ At page 8, 74 ACTR 1 per Miles CJ

87. Orders:

1. Judgement in favour of the Plaintiff for the sum of \$44,000
2. Costs reserved.

Dated this day of 2016

LOCAL COURT JUDGE