

IN THE PRIVY COUNCIL

No. 21 of 1983

10/6

ON APPEAL FROM THE FULL COURT
OF THE SUPREME COURT OF QUEENSLAND

BETWEEN:

BOHETO PTY. LTD.
(Defendant)

Appellant

-and-

SUNBIRD PLAZA PTY. LTD.
(Plaintiff)

Respondent

RECORD OF PROCEEDINGS

Linklaters & Paines
Barrington House
59/67 Gresham Street
London
EC2V 7JA

Solicitors for the Appellant

WILKINSON KIMBERS & STADDON
HALE COURT
LINCOLN'S INN
LONDON WC2A 3UW

Solicitors for the Respondent

ON APPEAL FROM THE FULL COURT
OF THE SUPREME COURT OF QUEENSLAND

BETWEEN:

BOHETO PTY. LTD.

(Defendant)

Appellant

-and-

SUNBIRD PLAZA PTY. LTD.

(Plaintiff)

Respondent

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1.	Writ of Summons (other than indorsement of Claim)	25 June 1982
2.	Entry of Appearance	8 July 1982
3.	Notice of Appeal	29 September 1982
4.	Entry of Appeal	9 November 1982
5.	Notice of Motion	28 February 1983
6.	Affidavit of Michael Shane McNamara	28 February 1983
7.	Exhibit "A" - Copy letter from Valuer to Cannan & Peterson	24 February 1983

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LIST OF DOCUMENTS ON THE FILE OMITTED
FROM RECORD (Contd.)

No.	Document	Date
8.	Notice of Motion	2 March 1983
9.	Affidavit of Michael Shane McNamara	2 March 1983
10.	Order of Full Court of Supreme Court of Queensland (conditional leave to appeal)	2 March 1983
11.	Draft Index to Record of Proceedings	

IN THE SUPREME COURT
OF QUEENSLAND

The plaintiff's claim is for specific performance of an agreement in writing dated the 27th day of May, 1981 for sale by the plaintiff to the defendant of property in Queensland, namely:

Lot 52 in Building Units Plan No. 4993 County Ward Parish Gilston comprised in Certificate of Title Volume 6304 Folio 143.

SUNBIRD PLAZA PTY. LTD. } Writ of Summons
-v- }
BOHETO PTY. LTD.

J.D. JOHNSON AND COMPANY,
Solicitors for plaintiff
Level 8, MLC Centre,
239 George St., Brisbane.

Telephone No. 229 6811

By authority: The Law Book Company Limited

Writ of Summons
(indorsement of
Claim only)

THIS WRIT was issued by J.D. JOHNSON AND COMPANY,
Solicitors, whose address for service is Level 8,
MLC Centre, 239 George St., Brisbane
for the plaintiff ~~xxxxxxx~~ whose address for
service is care of J.D. Johnson and Company,
Level 8, MLC Centre, 239 George St., Brisbane.

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IN THE SUPREME COURT
OF QUEENSLAND

No. 2969 of 1982

BETWEEN:

SUNBIRD PLAZA PTY. LTD.

Plaintiff

AND:

BOHETO PTY. LTD.

Defendant

SUPREME COURT
OF QUEENSLAND
28 JUL 1982
FILED
BRISBANE

LET ALL PARTIES CONCERNED attend at the Chambers

of the Chamber Judge at the Supreme Court House,
Brisbane on *Wednesday* the *4th* day of *August* 1982,
at 10 o'clock in the forenoon, on the hearing of an
application on behalf of the plaintiff for judgment
in the action pursuant to Order 18A of the Rules in
terms of the minutes of judgment attached hereto;

alternatively, for directions as to the future conduct
of the action, and such further or other orders as
may be just, including an order as to costs.

DATED the *29* day of *July* 1982.

P. J. IRVINE
Registrar.

This summons was taken out by the plaintiff's
solicitors Messrs. J.D. Johnson and Company.

TO: the defendant, BOHETO PTY. LTD.

AND TO: its solicitors, Messrs. McDonald & Company,
37 Connor Street, Burleigh Heads, and to
their Town Agents: Messrs. Cannan & Peterson,
Solicitors, 344 Queen Street, Brisbane in
the State of Queensland.

MEMORANDUM

filed on behalf of
the Plaintiff)

FEE	<i>85.50</i>
ASSESSOR	<i>PS</i>
RECEIPT	<i>161980</i>
ENTERED	<i>MB</i>
CHECKED	<i>[Signature]</i>

D. JOHNSON AND COMPANY,
Solicitors,
Level 8,
C Centre,
39 George Street,
BRISBANE. Q. 4000.

tel: 229 6811

IN THE SUPREME COURT

OF QUEENSLAND

No. 2969 of 1982

BETWEEN:

SUNBIRD PLAZA PTY. LTD.

Plaintiff

AND:

BOHETO PTY. LTD.

Defendant

MINUTES OF ORDER

IT IS THIS DAY ADJUDGED AND DECLARED that the agreement between the plaintiff as vendor and the defendant as purchaser being the agreement dated 27th May 1981 in the writ of summons mentioned ought to be specifically performed and carried into execution.

AND IT IS THIS DAY ORDERED that the defendant within seven days of today do pay into Court to the credit of this action the balance purchase price due under the said agreement, namely \$133,650.00, together with interest upon the said balance purchase price in the sum of \$58.59 per day for each and every day from (and including) 26th June 1982 until (and including) the date when such payment into Court shall be made.

AND IT IS THIS DAY FURTHER ORDERED that an account be taken if either party by its solicitors shall so require by written notice to the other party's solicitors given within three calendar months of today's date as to the adjustment of rates taxes and outgoings provided for in the said agreement.

AND IT IS THIS DAY FURTHER ORDERED that the party by whom any sum shall be found payable to the other on



the taking of such account pay such sum within seven days of the taking of such account by such party to the other party's solicitors.

AND IT IS THIS DAY FURTHER ORDERED that within 14 days after production of the receipt for payment into Court as aforesaid to the plaintiff's solicitors, the plaintiff execute and deliver to the solicitors for the defendant a Memorandum of Transfer in registerable form of an estate in fee simple in Lot 52 on Building Units Plan No. 4993, free of all encumbrances, such transfer to be in favour of a transferee to be nominated by the defendant in writing upon or prior to the production of the receipt as aforesaid, otherwise to be in favour of the defendant; AND that the plaintiff do at the same time deliver to the solicitors for the defendant the Certificate of Title to the said Lot 52 free from all encumbrances and any other documents necessary to enable the transferee to become registered as proprietor of an estate in fee simple in Lot 52 on Building Units Plan 4993 free of all encumbrances; AND that the plaintiff do at the same time deliver vacant possession of the said Lot to the defendant.

AND IT IS THIS DAY FURTHER ORDERED that the plaintiff be at liberty to apply at any time and from time to time on notice to the defendant for an order for the payment out of Court to the solicitors for the plaintiff at such sum or sums as may be necessary to discharge any encumbrance upon the said Lot 52 or to gain possession of the relevant Certificate of Title in order to perform its obligations under the said agreement or this order.



AND IT IS THIS DAY FURTHER ORDERED that the plaintiff do recover its costs of this action including reserved costs to be taxed.

AND IT IS THIS DAY FURTHER ORDERED that any party be at liberty to apply as it may be advised, and that leave be reserved to all parties to move for the making of such further orders for the purpose of specifically performing the said agreement as circumstances may require.



IN THE SUPREME COURT
OF QUEENSLAND

No. 2969 of 1982

BETWEEN:

SUNBIRD PLAZA PTY. LTD.

Plaintiff

AND:

BOHETO PTY. LTD.

Defendant

I, HOWARD BEACONSFIELD of 41 Howitt Road,
Caulfield in the State of Victoria make oath and say
as follows:-

1. The plaintiff is a company duly incorporated
in Queensland and its registered office is, was
throughout May 1981, and has been ever since at the
office of J.D. Johnson and Company, 5th Floor,
29 Elkhorn Avenue, Surfers Paradise in the State of
Queensland.

2. Now shown to me marked "A" is a true copy of a
contract dated 27th May 1981 entered into between the
plaintiff and the defendant for sale by the plaintiff
to the defendant of a unit there referred to as "Unit
14A" being Lot 52 in a Building Units Plan yet to be
registered.

3. Registration of the Building Units Plan (No. 4993)
by the Registrar of Titles occurred on 10th June 1982.

4. Now shown to me marked with the letters set out
alongside respectively are true copies of the following
correspondence passing between J.D. Johnson and Company
solicitors for the plaintiff, and named as such in the

mac Gee

SUPREME COURT
OF QUEENSLAND
23. SEP. 1982
FILED
BRISBANE

*G.N. Williams J.S.
19/8/82
to read in file + exhibits
ASSOCIATE*

H
AFFIDAVIT OF

HOWARD BEACONSFIELD

(Filed on behalf of
the Plaintiff)

5-30 4-00 8-00
H
167549
OB

J.D. JOHNSON AND COMPANY,
Solicitors,
Level 8,

said Contract, and Messrs. Elliott & Associates, solicitors for the defendant, and named as such in the said contract:

	<u>date</u>
"B" letter plaintiff's solicitor to defendant's solicitors	15.2.82
"C" letter plaintiff's solicitor to defendant's solicitors	16.3.82
"D" letter plaintiff's solicitor to defendant's solicitors	19.5.82
"E" telegram plaintiff's solicitor to defendant's solicitors	10.6.82
"F" letter plaintiff's solicitor to defendant's solicitors	11.6.82
"G" letter defendant's solicitors to plaintiff's solicitor	11.6.82
"H" letter plaintiff's solicitor to defendant's solicitors	22.6.82
"I" letter defendant's solicitors to plaintiff's solicitor	24.6.82
"J" telegram plaintiff's solicitor to defendant's solicitors.	25.6.82

5. Now shown to me marked "K" is a true copy of a letter dated 24th June 1982 from the defendant's said solicitors to the plaintiff and of the enclosure therein (which was in the same terms as the enclosure with exhibit "I").

6. The plaintiff was on the 25th June 1982 ready willing and able to effect settlement of the contracts at the offices of J.D. Johnson & Company. J.D. Johnson and Company was in possession of title documents and other documents necessary or appropriate to make the defendant registered proprietor of the said Unit 14A, now Lot 52 on Registered Building Units Plan 4993 and also of instructions from the

plaintiff to effect settlement on that date.

7. Neither the defendant nor any of the guarantors named in the Contract offered settlement of the Contract on 25th June 1982 or at any other time.

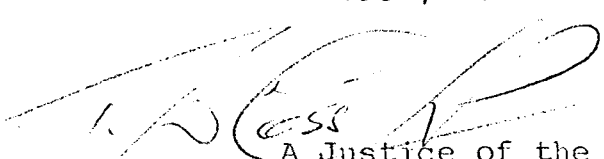
8. In my belief there is no defence to the action.

9. I am a director of the plaintiff and duly authorised to swear this affidavit on its behalf.

10. All the facts and circumstances above deposed to are within my own knowledge save such as are deposed to from information only and my means of knowledge and sources of information appear on the face of this my affidavit.

SWORN by the abovenamed)
Deponent at *Milbourne*)
this *28th* day of *July*)
1982, before me:-)

H. B



A Justice of the Peace
Justice of the Peace



No. 4 - Exhibit "A" - Copy Contract
of Sale of Unit 14A,
Plaintiff to Defendant.
Dated 27 May 1981.

DATE: The 27th day of May 1981
VENDOR: SUNBIRD PLAZA PTY. LTD.
VENDOR'S AGENT: P. R. D. REALTY PTY LTD
PURCHASER: BOHETO PTY LTD
ADDRESS: 31 COOCONG ROAD VAUCLUSE NSW.
UNIT SOLD: No. 14A (Lot No. 52 in Building Units Plan No.) If registered)
Floor: 14TH
Floor Plan: In accordance substantially with the Plan in the Eighth Schedule hereto and edged in blue. The said plan is incorporated in this Agreement for identification purposes only.

PURCHASE PRICE: \$ 148 500 00
DEPOSIT: \$ 148 500 00
BALANCE PURCHASE MONEY: \$ 133 650 00

Handwritten initials and date:
16/6/81

WHEREAS:
(a) The Vendor is or is entitled to be the registered proprietor of certain land described in the First Schedule hereto;
(b) The Vendor intends, subject to the terms hereof, to construct a multi-storey building to be called "SUNBIRD PLAZA" on the said land in accordance with plans and specifications prepared by the Vendors Architect and approved by the Council of the City of Gold Coast, the finishes to be substantially in accordance with the Schedule of Finishes annexed hereto;
(c) The Purchaser wishes to purchase from the vendor the estate in fee simple in that part of the said building hereinafter described as the unit sold and hereinafter referred to as "the said unit";
(d) A separate freehold title to the said unit is to be conveyed to the Purchaser by virtue of the "Building Units and Group Titles Act 1980" as amended.

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. The Vendor shall sell to the Purchaser and the Purchaser shall purchase from the Vendor the estate in fee simple in the said unit free from any mortgage or other encumbrances other than as herein notified in the Fifth Schedule hereto and the easements created or implied by the said Act and together with such rights as are appurtenant thereto.

Handwritten initials and date:
16/6/81

(a) THE PURCHASE PRICE namely (\$148 500) shall be payable as follows:-
1. (a) The sum of (\$148 500) as deposit payable on the signing of this Contract
(b) ~~The sum of (\$148 500) as deposit payable on the signing of this Contract~~
(c) The sum of (\$133 650) payable upon settlement
(ii) The Vendor agrees that the amount paid by way of deposit be paid into an interest bearing account with the Bank or Building Society, nominated by the Vendor and set out in Schedule Twelve (12) hereto in favour of the Purchaser with an irrevocable authority in favour of the Vendors Solicitor to permit the withdrawal of all monies therein upon the Registration of the Building Units Plan such withdrawal to be paid into a Trust Account until settlement. Interest on such monies up to date of withdrawal to be credited against the Purchase Price. In the event of this sale not proceeding the Purchaser forfeits the rights to such interest.

3. Settlement shall take place within 14 days after notice from the Vendor or its Solicitors to be Purchaser or his solicitors that the relevant Building Unit Plan has been registered at the Real Property Office, Brisbane PROVIDED THAT if the Building Units Plan is not registered by the 30th June, 1983, then either party may cancel this Contract by written Notice to the Other or its or his solicitors and on cancellation all moneys paid by the Purchaser hereunder shall be refunded without deduction and neither party shall have any claim against the other party under this Agreement PROVIDED FURTHER that should the construction of the said building be delayed due in whole or in part to one or more of the following:-

(i) Damage and/or delay by fire or explosion or earthquake or lightning storm or tempest war or civil commotion or strikes; (ii) In consequence of proceedings being taken or threatened by or disputes with adjoining or neighbouring owners; (iii) On Account of the delay of any local or other authority in giving necessary approval provided the Vendor has taken all reasonable steps to obtain such approval; (iv) Inclement weather (v) By any other cause matter or thing beyond the control of the Vendor AND IF the Vendors Architect so certifies and states in such certificate the period of the delay so caused, then the Vendor may at any time thereafter by written notice to the Purchaser substitute for the date above-mentioned another date which is not later than the original day by more than the period of the delay certified to by the Architect.

(b) The parties agree that settlement shall be effected at a place in the State of Queensland to be nominated by the Vendor's Solicitors.

(c) On settlement the Vendor will execute and deliver to the Purchaser in exchange for the balance of purchase money a Memorandum of Transfer of the said unit in registerable form (other than for stamping) together with if it is available, the relevant Certificate of Title. The Memorandum of Transfer shall be prepared by the Purchaser and delivered to the vendors Solicitors in sufficient time prior to settlement to permit execution thereof by the Vendor.

(d) If, on settlement, the said unit is subject to any mortgage or charge then the Purchaser will accept an unstamped duly executed release thereof which shall include if necessary a separate Instrument of Partial Release or, a Release by Consent, endorsed on the subject transfer and for the purpose of such endorsement where applicable, the Purchaser agrees to make the subject Transfer available to the Solicitor for the Vendor AND to obtain that release the Vendor may apply the whole or any part of the moneys payable by the Purchaser.

(e) If, on settlement, the Certificate of Title to the said unit is available it shall be delivered to the Purchaser but if it is not available then the Purchaser will accept the undertaking of the Vendor, or its Solicitors, or Mortgagee or its Solicitors as the case may require to produce the relevant Certificate of Title to the Purchaser or the Purchasers Solicitors or to the Real Property Office as may be required by the Purchaser to permit registration of the said Memorandum of Transfer in favour of the Purchaser.

(f) On settlement the Purchaser shall receive vacant possession of the said unit.

(g) The Purchaser shall, with the Memorandum of Transfer tendered pursuant to this Clause, submit to the Vendor's Solicitors, in duplicate, a form of notice to the Body Corporate which shall comply with the requirements of Section 53 (2) (a) of the Building Units and Group Titles Act 1980 as amended (hereinafter called "the Act". Prior to completion the Vendor shall, so far as it be encumbant upon the Vendor, and so far as it be possible at that time, complete the said notice and return the said notice in duplicate to the Purchaser or the solicitors for the Purchaser as the case may require prior to completion.

At completion the Purchaser shall produce to the Vendor a copy of the said notice duly completed in every respect in accordance with the requirements of the said Section 53 (2) (a) and duly executed by the Purchaser. Hereafter the Vendor shall give the said notice duly executed by both the Vendor and the Purchaser to the Body Corporate.

(h) For the purpose of this Clause notice may be given in writing by prepaid post addressed either to the Purchaser at the address shown in this Contract or to the Purchasers solicitors at their usual place of business and shall be deemed to have been received on the day following the day which it was so posted, whether or not it is in fact received by the Purchaser or his solicitors. Notice may be served in any other manner recognised by law.

Handwritten initials and date:
16/6/81

CAR SPACE:

4. The vendor will ensure that prior to settlement the By-Laws of the Body Corporate brought into existence upon the registration of the Building Units Plan will be so amended as to, inter alia, together with any notice required to be given pursuant to such By-Laws, grant to the proprietor for the time being of the said unit the exclusive use of the said unit for exclusive use for car parking and/or storage of that part of the common property outlined in BLUE on the plan in the CAR SPACE SCHEDULE hereto being the Ninth Schedule.

ADJUSTMENTS:

5. (a) All rates, taxes and outgoings with respect to the said unit shall be the Vendor's liability up to the date of possession and thereafter shall be the Purchaser's liability the same if necessary to be apportioned. If a separate assessment of rates, land tax or any other outgoings relating to the whole of the said unit then an apportionment shall be made of the assessment, proposed further in the case of land tax in addition to an apportionment on a unit settlement basis as aforementioned, on the basis that the subject land comprising the site and described hereafter is the only land owned by the vendor in the State of Queensland at any time relevant for the assessment of land tax. Where at the time of completion actual assessments in respect of the abovementioned outgoings have not yet issued the required apportionment or apportionments as the case may be shall be made on the basis of the Vendor's estimate of the outgoing or outgoings to be assessed and the Purchaser shall not be entitled to retain from the moneys payable at completion any amount in respect of any as yet unassessed or unpaid outgoings, the Purchaser relying on the obligation of the Vendor pursuant to this Clause to pay such outgoings up to the date of completion.

(b) The vendors solicitors shall deliver to the Purchaser or the Purchasers Solicitors shortly before the date of completion a Certificate of the Body Corporate under Section 40 (1) (c) of the Act so that such certificate shall be dated as close in time as possible to the date of completion yet giving to the Purchaser or the Purchasers Solicitors prior to completion adequate notice of the contents thereof. The said Certificate shall not in any circumstances be dated more than fourteen (14) days prior to the date of completion.

DEFAULT

6. If the purchaser fails to comply with the conditions of sale herein set out or any of them (in addition to any other remedy available to the Vendor) the Vendor may:-

- (a) Forfeit to the Vendor the moneys paid on account of the purchase price by the Purchaser;
 - (b) Without notice to the Purchaser cancel this Contract and resume possession of the said unit;
 - (c) Without notice to the Purchaser resell the said unit by public auction or by private contract with power to vary or rescind any contract for sale and to buy in at any auction and the deficiency in price on such resale and the expense of and incidental to repossession and to the present sale and such resale and any abortive attempt to resell together with all rates taxes and other outgoings accrued due in respect of the said unit at the date of resale thereof which were payable by the Purchaser under the terms of this Agreement shall be paid to the Vendor by the present Purchaser and shall be recoverable as liquidating damages.
 - (e) Do all or any of the above things at its option.
- The Purchaser will indemnify the Vendor against any loss which the Vendor sustains as a result of the Purchasers default.

DELAY:

7. Should there be any delay in payment of the balance of the purchase money or any instalment thereof by virtue of default on the part of the Purchaser then without prejudice to any other rights of the vendor the Purchaser will pay to the Vendor at completion a sum for liquidated damages equivalent to interest at the rate of sixteen per centum (16%) per annum on the monies so owing from the date for payment thereof until payment shall have been made.

TITLE:

8. (a) The Title to the said land described in the First Schedule will be, prior to settlement, under the Real Property Act of Queensland, the title to the said unit will be or is subject to the provisions of the "Building Units and Group Titles Act 1980" as amended.
- (b) The Purchaser or his solicitors may within seven (7) days from the date of registration of the subject Building Units Plan deliver to the Vendor or its Solicitors requisitions or objections (if any) on or to the Vendors Title. All requisitions or objections not so delivered shall be deemed waived by the Purchaser.
- (c) If the purchaser shall within the said seven (7) days make any valid requisitions or objections on or to the Vendor's title which the Vendor shall be unable or unwilling to remove or comply with, the Vendor or its Solicitors (whether they shall have attempted to remove or comply with same and notwithstanding any negotiation or litigation in respect thereof) may give to the Purchaser or his solicitors notice in writing of the Vendor's intention to rescind the agreement at or before the expiration of seven (7) days without prejudice to any other rights which the vendor may have, unless such requisitions or objections shall be withdrawn or waived within such seven (7) days the Contract shall thereupon be rescinded and the vendor shall repay to the Purchaser all deposit and other moneys received by it or its Agent on account of the purchase money but without interest costs or damages and the same shall be accepted by the Purchaser in full satisfaction of all claims. If the purchaser withdraws or waives his objection or requisition as aforementioned then this agreement shall remain in full force and operate as if such requisition or objection had not been made and the said written notice of rescission had not been given.
- (d) (i) The purchaser acknowledges that he has not relied on any representations by the vendor, the vendors agent or any other person or persons or corporation in and about entering into this contract other than as set out herein and that the conditions and stipulations hereof constitute the only agreement between the purchaser and the vendor.
- (ii) The purchaser shall be entitled to premises with measurements and to a standard and specifications substantially in accordance with those set out in the said specifications and plans and the Schedule of Finishes hereinafter set out.
- (e) Subject to the provisions of clause 8 (f) hereof the vendor warrants that the unit entitlement of the respective units in the said building as shown in the relevant Building Units Plan shall be as set out in the Second Schedule hereto.
- (f) The purchaser shall not be entitled to make any objection, requisition or claim by reason of:-
- (i) Any minor variations as regards the said unit between the Plan as produced to the purchaser and the Building Units Plan as registered by the Registrar of Titles;
 - (ii) Any alterations in the number, size, location or unit entitlement of the lot or lots in the Building Units Plan (other than the lot or lots hereby sold) or in or to the common property provided that the unit entitlement of the lot or lots hereby sold and the aggregate unit entitlement of all lots shall not thereby be varied.
 - (iii) Any alteration or variation in the said plans and specifications accordingly.
 - (iv) Any alteration or variation in the said plans and specifications and in the said Schedule of Finishes as may become necessary during the course of construction by reason of matters beyond the control of the vendor which may result from, inter alia, the requirements and directions of any governmental or semi-governmental authority or as may be required by the practical exigencies of construction either by, but without limiting the generality of the foregoing, the dictates of good building practice and/or the availability of materials, PROVIDED HOWEVER that the vendor shall take all available and reasonable steps to adhere wherever possible to the said plan and specifications and the Schedule of Finishes.
- (g) The Purchaser shall not be entitled to take objection to any easements created or implied by the "Building Units and Group Titles Act 1980" as amended.
- (h) The purchaser agrees that on registration of the Building Units Plan the Vendor as sole proprietor may:-
- (i) Amend the By-Laws of the Body Corporate in accordance with the amendments set out in the Third Schedule hereto and any variation thereof as may in its sole discretion seem desirable PROVIDED HOWEVER that the Vendor shall make no such further amendment as shall materially prejudice the interests of the Purchaser.
 - (ii) Procure the execution by the Body Corporate of the Management Agreement disclosed in the Sixth Schedule hereto for the purpose of better seeing the proper functioning operation and management of the said building and/or for the purpose of letting any part of the building.
- (i) The vendor shall be entitled to grant or procure that the Body Corporate shall be entitled to grant Leases or Licences over common property for the provision of such services as will be of benefit to the body Corporate or to members or future members of the Body Corporate including any Licence or Licences to be granted pursuant to the terms of the said Management Agreement provided for and referred to in subclause (h) (ii) hereof. This provision shall constitute notice to the purchaser as a person having an interest within the meaning of any relevant provision or provisions of the "Building Units and Group Titles Act 1980" as amended and consent by such purchaser to any such proposed Lease or Licence.
- (j) No objection shall be taken or requisition raised by the Purchaser if it should be found that any boundary of the said land be not fenced or that such boundary fence or wall should not be upon or within such boundary.
- (k) No objection shall be taken or requisition raised by the Purchaser in respect of any necessary service easement affecting the property.
- (l) The vendor hereby authorises the purchaser to apply to the Body Corporate for any one or more of the things specified in Section 40 (i) (a) (b) (c) or (d) of the Act and to provide the purchaser, on his request, with the name

and address of the Secretary or Managing Agent of the Body Corporate.

(c) The vendor warrants that as at the due date for settlement, other than is disclosed or indicated in this

Contract:

- (i) The vendor is shown as the proprietor of the lot on the roll;
- (ii) the Body Corporate has insured the building as provided in Division 6 of the Act;
- (iii) no moneys are recoverable from the vendor as proprietor of the said unit pursuant to sections 12 or 33 of the Act;
- (iv) the vendor has no knowledge or notice of any special levy or of an unusual nature or of the existence of any fact which might give rise to or indicate the possibility of such levy;
- (v) no unanimous resolution or resolutions without dissent has been passed;
- (vi) the Court has not made any order for the extinguishment of the plan;
- (vii) no lease of any part of the common property has been granted to any person;
- (viii) no proprietor has been granted the exclusive use and enjoyment or special privileges in respect of any part of the common property;
- (ix) the Body Corporate has not mortgaged or charged any of its assets to secure the repayment of moneys owing or borrowed by it;
- (x) there are no unsatisfied judgements against the Body Corporate;
- (xi) so far as the vendor is aware no proceedings have been instituted against the Body Corporate in any Court.

COSTS

9. All stamp duty and registration fees relating to the transfer and this Contract shall be borne by the Purchaser, but the parties shall otherwise bear their own legal costs.

TIME

10. Time shall be of the essence of this Contract

11. Within thirty (30) days from the date of this Contract the abovenamed Purchaser may give written notice to the vendor or the vendors solicitors that he nominates one (1) or more other person or persons or company or companies as Purchaser under this Contract, accompanied by written acceptance of that nomination by the nominee or nominees together with when the nominee is a corporation or corporations, a duly executed form of Guarantee by at least two (2) of the directors of the nominee or nominees. In the form of the Guarantee set out in the Fourth Schedule of this Agreement and thereafter this Contract will continue in full force as if made between the Vendor and the nominee PROVIDED THAT the purchaser undertakes and guarantees the due and punctual payment of all moneys payable hereunder including but without limitation purchase moneys, rates and other adjustments and moneys payable pursuant to Clause 7 of this Agreement and in the manner and at the times and places herein provided AND ALSO the due and punctual performance and observance by the nominee or nominees of each and every of the terms conditions and agreements hereof AND the vendor may grant time or indulgence to or compound with or release the nominee or nominees from payment or performance without affecting the liability of the Purchaser hereunder AND this Guarantee shall not be determined by the death or winding up of the Purchaser.

12. The vendor covenants with the Purchaser that the building will be finally completed within a reasonable time after practical completion thereof and that any defects shrinkage or other faults which may appear and be notified in writing to the Vendor by the Architect within three (3) calendar months after the date of issue by the Architect of its notice of practical completion and due to materials or workmanship not in accordance with the terms and conditions of the relevant plans and specifications and the building contract entered into by the vendor shall, upon the direction in writing of the Architect and within such reasonable time as shall be specified therein be amended and made good by the vendor at its own cost and the issue of a final certificate by the Architect will be conclusive evidence that this covenant shall have been complied with.

13. If the Council of the City of Gold Coast or other competent authority imposes any condition on the granting of the Town Planning Permit or Building Permit for the land and building subject of this Contract which the vendor shall be unable or unwilling to comply with, then the Vendor may cancel this Contract by written notice to the Purchaser or his solicitors and on cancellation all moneys paid by the purchaser shall be refunded without deduction together with any interest accrued in respect of the deposit, and neither party shall have any claim against the other by virtue of this Contract if its cancellation as aforesaid.

14. On settlement the said unit will contain chattels (if any) of the type described in the Schedule of Finishes hereto and where applicable as described in the Schedule of Chattels hereto. Ownership of these chattels will pass to the Purchaser on settlement free from any encumbrances or adverse claim.

15A. Notwithstanding anything to the contrary herein contained it is hereby agreed by and between the parties hereto that in the event that the vendor obtains the benefit of any interest accrued on the Deposit moneys paid under this contract by the Purchaser hereinbefore provided then the vendor will on the date of settlement give and allow to the purchaser a reduction in the balance purchase moneys then payable of an amount equivalent to the amount of interest accrued as aforesaid.

15B. In the event that this contract is cancelled pursuant to the provisions of Clause 3 (a) hereof then the Purchaser shall be paid, in addition to these moneys payable to him pursuant to the provisions of the said Clause 3 (a) an amount equivalent to the amount of interest (if any) accrued on the said deposit moneys as hereinbefore provided.

16. The purchaser acknowledges that prior to executing this agreement he has received from the vendors agent, (or from the vendor as the case may be) in respect of the Statement referred to in (C) hereunder:-

- (a) a copy of the Statement required pursuant to Section 66 of "the Auctioneers and Agents Act 1971" as amended;
- (b) A copy of the statement required pursuant to Section 67A of "the Auctioneers and Agents Act 1971" as amended;
- (c) The statement to Purchaser by Vendor giving certain particulars in connection with the said unit and this agreement for sale and purchase. Such statement is given by the original proprietor pursuant to the original proprietor's obligation in accordance with Section 49 (1) and Section 49 (3) of the Act. The said statement to purchaser by original proprietor is set out in the Eleventh Schedule to this agreement.

17. In the case where the original purchaser hereunder is a company this Contract shall not be deemed to be final or binding upon the vendor unless and until the form of Guarantee hereto and described as the Fourth Schedule has been executed by at least two (2) Directors and/or Principal Shareholders of the Purchaser.

18. The purchaser expressly acknowledges that at the time the vendor submits the relevant Building Units Plan to the Council of the City of Gold Coast and in turn to the Registrar of Titles, Queensland both the said Council of the City of Gold Coast and the Registrar of Titles have the right to refuse to allow the vendor to use the name SUNBIRD PLAZA as the parcel of land for the purposes of the relevant Building Units Plan. In the event of such refusal no objection thereto and to a change of name will be made by the Purchaser. Such new name if required shall be a matter for the sole discretion of the vendor. The vendor will take all available steps to to reserve so far as possible for the purposes of the subject Building Units Plan the name SUNBIRD PLAZA.

19. Any notices to be given to the provisions of this Agreement save notice given in terms of clause 3 hereof shall be sufficiently given in writing and forwarded by either party to the other or to the other solicitors by ordinary mail to the address of the party shown in this Agreement or in the case of the solicitors to the address of the usual place of business, and such notice shall be deemed to be received on the day following the day on which it was posted, whether or not such notice, is in fact received by the other party or that party's solicitors. Notice may be served in any other manner recognised by law.

20. Notwithstanding the provisions of Clause 4 it is agreed that the vendor may elect to include that the car space in part of each lot in the relevant Building Unit Plan. Should the vendor so elect that it is agreed that the proposed relevant addition to the THIRD SCHEDULE BY-LAWS as set out in the Third Schedule hereto or any necessary replacement thereof shall no longer apply.

21. Notwithstanding the completion of this sale and purchase any general or special conditions or any part or part thereof to which effect is not given by the conveyance and which is capable of taking effect after completion shall remain in full force and effect.

INTERPRETATION: In this Agreement words of masculine gender shall be deemed where necessary to include all genders and words of singular number shall include where necessary the plural and vice versa, and where more than one person is Purchaser, liability shall be several as well as joint. "the Vendor" shall mean SUNBIRD PLAZA PTY. LTD. and its successors and assigns, "the Purchaser" shall mean the person or persons or corporation or corporations named as purchaser at the commencement of this document together with as the case may be, his heirs, successors, executors, administrators and permitted assigns. The "Architect" shall in any clause of this Agreement mean the Architect nominated by the vendor for the purpose of this clause.

FIRST SCHEDULE

That part of the land described hereunder :-

Title	Vol.	Folio	County	Parish	Description	Area
D.G.	5113	53	Ward	Gilston	Allotment 15 of Section 5	759m ²
D.G.	5138	124	Town Ward	Main Beach Gilston	Allotment 16 of Section 5	499m ²
D.G.	4308	225	Town Ward	Main Beach Gilston	Allotment 20 of Section 5	20 perches
D.G.	4308	224	Town Ward	Main Beach Gilston	Allotment 19 of Section 5	20 perches
C.T.	6024	50	Town Ward	Main Beach Gilston	Allotment 13 of Section 5	759m ²
D.G.	6044	243	Town Ward	Main Beach Gilston	Allotment 17 of Section 5	506m ²
D.G.	6044	221	Town Ward	Main Beach Gilston	Allotment 18 of Section 5	498m ²
			Town	Main Beach		

SECOND SCHEDULE

UNIT ENTITLEMENT PER UNIT

UNIT	ENTITLEMENT	UNIT	ENTITLEMENT	UNIT	ENTITLEMENT	UNIT	ENTITLEMENT
1	2	21	2	41	2	63	2
2	2	22	2	42	2	64	2
3	1	23	2	43	2	65	2
4	2	24	2	44	2	66	2
5	2	25	2	45	2	67	2
6	2	26	2	46	2	68	2
7	2	27	2	47	2	69	2
8	2	28	2	48	2	70	2
9	2	29	2	49	2	71	2
10	2	30	2	50	2	72	2
11	2	31	2	51	2	73	2
12	2	32	2	52	2	74	2
13	2	33	2	53	2	75	2
14	2	34	2	54	2	76	2
15	2	34	2	55	2	77	2
16	2	36	2	56	2	78	2
17	2	37	2	57	2	79	2
18	2	38	2	58	2	80	2
19	2	39	2	59	2	81	2
20	2	40	2	60	2	82	2
				61	2	83	2
				62	2		

THIRD SCHEDULE

PROPOSED ALTERATIONS TO THIRD SCHEDULE BY-LAWS

In accordance with the provisions of Clause 8 (h) (i) of the Agreement the Vendor shall as sole proprietor upon registration of the subject Building Units Plan add to the third Schedule By-Laws as set out in the Act the following By-Laws:-

1. Outside wireless and television aerials may not be erected without written permission of the Council.
2. No structural alteration shall be made to any unit (including any alterations to gas, water electrical installations or work for the purpose of enclosing in any manner whatsoever the balcony of any unit including the installations of any airconditioning system without the prior permission of the Council.
3. No external blinds shall be erected without the previous consent of the Council.
4. Windows shall be kept clean and promptly replaced with fresh glass of the same kind and weight as at present if broken or cracked.
5. A proprietor shall see that all water taps in his unit are promptly turned off after use.
6. The water closets, conveniences and other water apparatus including waste pipes and drains shall not be used for any purposes other than those for which they were constructed and no sweepings or rubbish or other unsuitable substances shall be deposited therein. Any costs or expenses resulting from damage or blockage to such water closets conveniences, water apparatus, waste pipes and drains from misuse or negligence shall be borne by the proprietor whether the same is caused by his own actions or those of his household or his servants or agents or guests.
7. A proprietor shall give the Council prompt notice of any accident to or defect in the water pipes, gas pipes, electric installations or fixtures which comes to his knowledge and the Council shall have the authority by its agents or servants in the circumstances having regard to the urgency involved to examine or make such repairs or renovations as they may deem necessary for the safety and preservation of the said building as often as may be necessary.
8. All units shall be kept clean and all practicable steps shall be taken to prevent vermin and/or insects.
9. A proprietor shall not throw or allow to fall or permit or suffer to be thrown or to fall any paper, rubbish, refuse, cigarette butts or other substance whatsoever out of the windows or doors or down the staircase, passages or skylight from balconies, from the roof or in passageways of the building. Any damage or costs for cleaning or repair caused by breach hereof shall be borne by the proprietor concerned.
10. (a) Incinerators and garbage cans shall be placed only where approved by the Council and used only for the purpose for which they are provided.
 (b) Empty bottles, boxes, used containers and similar items shall be stored tidily and, so far as possible, out of sight.
 (c) Car spaces shall be kept tidy and free from all litter.
11. In the event of any infectious disease which may require notification by virtue of any Statute, Regulation or Ordinance affecting any person in any unit the proprietor of such unit shall give, or cause to be given, written notice thereof.

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and any other information which may be required relative thereto to the Council and shall pay to the Council the expenses of disinfecting the building, where necessary and replacing any articles or things the destruction of which may be rendered necessary by such disease.

12. Proprietors shall not bring to, do or keep anything in his unit which shall increase the rate of fire insurance on the building or any property on the land or which may conflict with the laws and/or regulations relating to fires or any insurance policy upon the building or any property on the land or the regulations or ordinances of any public authority for the time being in force.
13. The Council, by majority resolution, may impose on any proprietor a fine not exceeding one hundred dollars (\$100.00) per day in respect of any individual breach of these regulations.
14. Proprietors shall not permit any auction sale to be conducted or take place upon the premises without consent of the Council.
15. All doors and windows to the premises shall be securely fastened on all occasions when the premises are left unoccupied and the Council reserves the right to enter and fasten same if left insecurely fastened.
16. Upon one (1) day's notice in writing the Council and its servants, agents and contractors shall be permitted to inspect the interior of any unit and to test any electrical, gas or water installation or equipment therein and to trace and repair any leakage or defect in the said installations or equipment (at the expense of the proprietor in cases where such leakage or defect is due to any act or default of the said proprietor or his tenants, guests, servants or agents). If not so permitted they may effect an entry. The Council in exercising this power shall ensure that its servants agents and employees cause as little inconvenience to the proprietor as is reasonable in the circumstances.
17. A copy of these By-Laws (or a précis thereof approved by the Council) shall be exhibited in a prominent place in any unit made available for letting.
18. The Council may make rules relating to the common property and in particular in relation to the swimming pool and spa, and the lifts, as the case may be, not inconsistent with these By-Laws and the same shall be observed by the proprietors unless and until they are disallowed or revoked by a majority resolution at a general meeting of the proprietors.
19. The duties and obligations imposed by these By-Laws on a proprietor of a unit shall be observed not only by the proprietor but by the proprietors tenants, guests, servants, employees, agents, children, invitees and licensees.
20. Where the Body Corporate expends money to make good damage caused by a breach of the Act or of these By-Laws by any proprietor or the tenants, guests servants, employees, agents, children, invitees or licensees of the proprietor or any of them, the Council shall be entitled to recover the amount so expended as a debt in an action in any Court of competent jurisdiction from the proprietor of the unit at the time when the breach occurred.
21. A proprietor shall not hang curtains visible from outside the unit unless those curtains have a backing of such colour and design as shall be approved by the Council of the Body Corporate. A proprietor shall not install, renovate and/or replace a curtain backing or window tinting without having the colour and desk of same approved by the Council. In giving such approvals the Council shall ensure so far as practicable that curtain backing and window tinting used in all units presents a uniform appearance when viewed from outside the building.
22. The outdoor swimming pool, tennis court and squash court shall not be used between the hours of 10.00 p.m. and 7.00 a.m.
23. Proprietors shall observe the terms of any notice displayed in the lift by authority of the Council or of any statutory authority.
24. The proprietor for the time being of each unit in the building shall be entitled to the exclusive use for himself and his licensees of the car space or spaces or the storage space or spaces the identifying number or numbers of which shall be notified in writing by _____ to the Council of the Body Corporate within twelve (12) months after the date of registration of the Building Units Plan provided that in respect of those car spaces or storage spaces allocated pursuant to this By-Law, the Council is hereby authorised to vary the allocations so made and to transpose car spaces or storage spaces from one unit to another at any time and from time to time on the written request of the proprietors of the units involved. A sketch plan is set out hereunder for the purpose of clearly identifying the said car spaces or storage spaces.
25. Whilst _____ remains a proprietor of any unit in the building it and its respective servants and/or agents shall be entitled to utilise any unit in the building of which it remains a proprietor as a display unit for the purpose of allowing prospective purchasers of any unit in the said building to inspect such unit or units, and further, shall be entitled to place such signs and other advertising and display material in and about the building and about other parts of the common property other than the subject building, which signs shall in all respects be attractive and tasteful, bearing in mind the general appearance of the building, and shall not at any time, and from time to time, in terms of number and size than is reasonably necessary.

FOURTH SCHEDULE

Vendor: SUNBIRD PLAZA PTY LTD

Unit: A Floor: 14TH

Purchaser: BOHEYO PTY LTD.

Date of Contract:

Me, CYRIL GARDNER MALONEY AND MARGARET MARY CUSAN
of 31 COOLONG ROAD VAUGHAN NSW

being the Directors and/or Principal Shareholders of

Incorporated in the State of

NSW

or

in consideration of SUNBIRD PLAZA PTY LTD

at our request agreeing to sell

Unit

A

Floor

14TH

to the abovenamed Purchaser HEREBY DO JOINTLY AND

SEVERALLY GUARANTEE THE PERFORMANCE BY the said abovementioned Purchaser OF ALL THE TERMS AND CONDITIONS of the Contract including the payment of all moneys payable hereunder by the said abovementioned Purchaser.

SIGNED SEALED AND DELIVERED by the

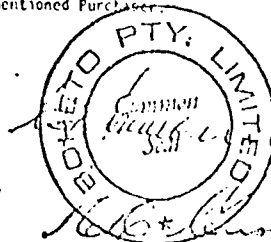
said

in the presence of:

SIGNED SEALED AND DELIVERED by the

said

in the presence of:



DIRECTOR

SECRETARY

FIFTH SCHEDULE

Encumbrances

SIXTH SCHEDULE

Management Agreement

THIS AGREEMENT is made BETWEEN THE PROPRIETORS

having its office in the State of Queensland (hereinafter of

called "the Owner") of the One part AND

(hereinafter called "the Manager-Caretaker") of the Other Part

WHEREAS:

- A. The Owner is a corporation incorporated according to law pursuant to the terms of "The Building Units and Group Titles Act 1980".
- B. The Owner is the appropriate Body incorporated according to law in relation to a building units complex styled erected and situated at (hereinafter such buildings and surrounds are called 'the said complex')
- C. The Caretaker is the Owner of Unit No. 2A being the Manager's Unit in the said complex.

NOW THIS AGREEMENT PROVIDES as follows:-

1. The Owner hereby appoints the Manager-Caretaker as Manager-Caretaker of the Complex subject to the terms hereof on and from the day of such appointment shall continue for a period of three (3) years thereafter.
2. The Manager-Caretaker covenants with the Owner to perform generally the tasks and duties consistent with the position of Manager-Caretaker of a group of units some of which are intended to be let from time to time and some of which are owned by absentee Landlords, such tasks and duties to be performed by the Manager-Caretaker using equipment (and fuel and lubricants where applicable) provided by the Owner at its expense, but with authority to the Manager-Caretaker in the instances hereunder set out to engage qualified tradesmen at the expense of the Owner in respect of work for which qualified tradesmen are legally required or for which the Owner could not reasonably expect the Manager-Caretaker to be responsible, and the Manager-Caretaker shall accordingly as Agent for the Owner supervise the said complex and protect the interests of the Owner and individual proprietors therein in accordance with best accepted methods of managing and caretaking such properties adopted from time to time on the Gold Coast, and without limiting the generality of the foregoing the Manager-Caretaker shall so long as the Council of the Body Corporate requires such duties to be performed by the Manager-Caretaker:-
 - (a) At least yearly, arrange for the inspection by the Chief Fire Officer of the Fire Fighting Equipment installed within the complex. Also the Manager-Caretaker will arrange at intervals of not less than six months or on a more regular basis if the Manager-Caretaker should see fit to do so for the inspection by the suppliers of the Fire Fighting Equipment installed within the complex provided that the charges relative to such inspection or inspections shall be borne by the Owner.
 - (b) At least yearly, renovate the pool furniture.
 - (c) At least monthly check the fire Fighting Equipment and controls and do whatever is necessary to maintain the same in efficient working condition, with liberty to engage a tradesman.
 - (d) At least weekly, externally check and ensure the efficient operation of the drainage and sewerage system including where necessary the cleaning of sand from minor sumps.
 - (e) At least weekly, sweep up all grass leaves rubbish and sand from the car parking areas which are common property and hose such areas at least monthly.
 - (f) At least weekly (weather permitting) during the period 1st October to 31st March in each year and at least fortnightly during the period 1st April to 30th September in each year mow the lawns and generally maintain and tend the gardens, grounds, paved areas and common areas comprised in the property including the removal when necessary of grass and moss from the joints and edges of the driveways and foot paths.
 - (g) At least weekly, check the lights in the common areas and ensure that the same are kept in efficient operation, with liberty to engage a tradesman.
 - (h) At least daily, collect all litter on the property and ensure that the rubbish bins are kept in a hygienic state.
 - (i) At all times when necessary clean the pool and check for correct water condition, and when necessary to chlorinate the same depending on use and generally to keep and maintain the pool in a proper condition at all times.
 - (j) As necessary sprinkle the lawns and gardens in the common areas.
 - (k) As often as may be necessary or when requested by an owner or occupier, attend to handyman maintenance and repairs to the complex and units such as small paint jobs in maintenance, replacement of bulbs and tap washers, replacement of nuts, bolts and screws, and similar jobs not requiring a tradesman's skill or knowledge, provided that the Manager-Caretaker shall not be required to pay for materials from his own resources and provided that this Clause does not apply to the inside of individual units.
 - (l) As promptly as circumstances permit, to notify a member of the Council of any untoward happening, damage or breakdown or any service supplied to the complex or in the functioning of the complex.
 - (m) To co-operate in a courteous manner with unit owners, their visitors or tenants and within reason to be of assistance in any emergency which may arise in the property, in order to promote develop and protect the appeal of the complex to tenants and prospective tenants.
 - (n) As far as the Manager-Caretaker is reasonably able and lawfully capable of doing to keep order on the said property and take such precautions as he sees fit to safeguard the whole of the said property against unlawful entry or accident AND IT IS HEREBY PROVIDED that the Manager-Caretaker has the full authority of the Owner to evict charge and deal with any person creating a nuisance or annoyance on the said property or committing any breach of the By-laws of the Owner to the same extent as that exercisable by the Owner itself, to the intent that the Manager-Caretaker shall take all reasonable steps to ensure quiet and peaceable enjoyment of the living units by all lawful occupants.
 - (o) To account promptly and faithfully to the Owner or to individual proprietors as the case may be all its or their funds or property (if any) coming into his hands or custody.
 - (p) To act in the capacity of Secretary and Treasurer to the Body Corporate and to undertake the responsibilities for such appointments according to the requirements of law.

3. It is agreed that the Unit No. the subject of a certain agreement for the sale and purchase between the parties hereto and dated the day of 19 is to be used by the Manager-Caretaker for the purpose of management and letting pursuant to this agreement and that while there be no breach by the Manager-Caretaker of the terms and conditions of this agreement, the said unit shall be the only unit in the property from which management of the property and letting of units in the property takes place. The Manager-Caretaker shall have at all times the use of any reception desk provided in the foyer of the building.

4. The Owner covenants with the Manager-Caretaker as follows:-

- (a) In consideration of the Manager-Caretaker agreeing to perform the obligations set forth in this Agreement the Owner shall pay the Manager-Caretaker during the currency hereof the sum of (\$) per week by weekly payments in arrears from the day of 198 . On the first day of October in each subsequent year of the term of this Agreement the said total annual amount shall be increased (if applicable) in accordance with the increase in the All Groups Consumer Price Index Number for Brisbane in respect of the quarter ending on the thirtieth day of September in each relevant year as compared with such number in respect of the quarter ending on the thirtieth day of September one year previously, provided

- that the said annual amount shall in no case be less than the amount paid during the previous TWELVE (12) month period, provided further that if the All Groups Consumer Price Index number for Brisbane be discontinued, the said annual amount shall on the application of either party be determined by the President for the time being of the Real Estate Institute of Queensland or such member of the said Institute as may be nominated by him.
- (b) To ensure as far as it is reasonable so to do that no person, firm, company or corporation other than the Manager-Caretaker shall be granted any right or licence to provide the following services to individual proprietors in the complex without the consent of the Manager-Caretaker first had and obtained:
- (i) to hire television sets, cots, mattresses, beds and bedding, linen, cutlery, radiators, prams and strollers, cooking equipment, furniture and the like;
 - (ii) to provide (a) car washing and polishing service on any part of the common areas of the premises and (b) unit cleaning facilities;
 - (iii) to advertise or vend on the premises the provision or sale of any of the above services or any other service or article, or act as travel agent or to vend tours, book trips or the like PROVIDED HOWEVER and it is understood that the individual proprietors and occupiers are free agents and that while the Owner will take all reasonable steps to ensure that there is no interference with the Manager-Caretaker in the provision of such said services to occupiers of during the currency of this Agreement it is not within the scope of the Owner to interfere with the ordinary exercise of choice of such services available to individual occupiers from suppliers of such services operating from outside

- the scope of the Owner to interfere with the ordinary exercise of choice of such services available to individual occupiers from suppliers of such services operating from outside
- (c) If the Manager-Caretaker shall at his own expense obtain the necessary permits, licences or consents lawfully requisite, the Owner shall ensure that the Manager-Caretaker has the sole right during the currency of this agreement to conduct in the said complex the business of Real Estate Agent, Flat Letting Agent, or the like PROVIDED HOWEVER that the conduct of such licences must be carried on according to law strictly observing all statutory requirements and in a manner not to interfere with the quiet enjoyment and occupation of the units and in accordance with the By-Laws or rules thereon as the Owner may prescribe. It is understood that any owner occupier may use the services of any similar business operating from outside the complex and if an Owner or occupier does so the Manager-Caretaker undertakes to assist any outside agent in making any inspection without demanding any payment or commission therefore.

5. In the event of the default on the part of the Manager-Caretaker in performing his duties and obligations hereunder either express or implied then the Owner may immediately or at any time thereafter give to the Manager-Caretaker written notice of such default and requiring the same to be remedied within a reasonable time, and in the event of the Manager-Caretaker failing to completely remedy such default within a reasonable time (which shall not exceed one month in any event) then the Owner may forthwith determine this Agreement by written notice to the Manager-Caretaker PROVIDED HOWEVER that the Manager-Caretaker may assign his interest hereunder subject to the provisions of Clause 6 hereof and upon the requirements of Clause 6 being fully met, this Agreement shall be deemed to continue in force between the Owner and the Assignee.

6. The Manager-Caretaker will devote such time and attention as is necessary to carrying out his duties hereunder and if for any reason beyond their control it is necessary for them to absent themselves temporarily (other than for short periods from time to time) from the complex or if they are unable temporarily to carry out their duties then they may appoint a person or persons approved of by the Body Corporate to carry out their duties during that period. If the Manager-Caretaker wishes to absent themselves from the complex for more than a short interval of time exceeding twelve (12) hours then before doing so they shall obtain such permission from a member of the Council of the Body Corporate. No objection whatsoever shall be taken to the fact that one only of the Manager-Caretakers may be present in the building at any particular time.

7. The Manager-Caretaker shall have the right to appoint a suitable replacement to carry out the Manager-Caretaker's function pursuant to this agreement annually for a period of FOUR (4) weeks for the purpose of allowing the Manager-Caretaker a holiday for that period each year. On each occasion, details of the proposed replacement shall be provided to the Owner at least ONE (1) calendar month prior to the commencement of the Manager-Caretaker's proposed holiday in each year, and the Owner shall as soon as reasonably practicable indicate its assent or otherwise to the proposed replacement. Such assent shall not be unreasonably withheld. It shall be a matter for the Manager-Caretaker to ensure that the replacement or replacements from time to time, adequately perform the functions of the Manager-Caretaker pursuant to this agreement and any breach of this agreement on the part of such replacement or replacements shall be deemed to be a breach by the Manager-Caretaker. Any remuneration payable to such replacement or replacements shall be the responsibility of the Manager-Caretaker.

8. The Manager-Caretaker may assign the benefits and obligations arising to the Manager-Caretaker under the provisions of this Agreement subject to the following terms and conditions:-

That no such Assignment shall be allowable without the consent in writing of the Council of the Body Corporate first had and obtained PROVIDED HOWEVER that the Council shall not unreasonably withhold its consent in the case of a respectable and financially responsible Assignee capable of carrying out the duties referred to herein and the costs of any such Assignment shall be borne by the Manager-Caretaker AND PROVIDED FURTHER that a Meeting of the Council of the Body Corporate shall be held as soon as possible (and in any event within one month) following upon receipt of any request to assign by the Manager-Caretaker AND PROVIDED FURTHER that it shall be deemed to be a condition precedent to the granting of any such consent hereunder that the Owner may require the Manager-Caretaker to pay the Owner's legal costs in connection with or incidental to the giving of such consent and the Owner may require the Manager-Caretaker on or before the due date of any such Assignment to obtain and deliver to the Owner a Deed of Covenant to be prepared by the Owner's Solicitors (but at the expense of the Manager-Caretaker in all respects) whereby any such Assignee will covenant with the Owner to carry out observe perform fulfil and keep all the covenants conditions and agreements herein contained whether positive or negative and on the part of the Manager-Caretaker to be observed performed fulfilled and kept.

(b) No fine, premium or consideration shall be charged by the Owner in respect to any such Assignment.

(c) That the Assignee shall hold a current Real Estate Agents licence entitling him to let units and collect rent in the complex.

(d) That the Assignee shall be the registered proprietor of Unit 1A in the building.

9. The Manager-Caretaker shall not sell transfer or otherwise assign Unit 1A in the complex to any person or corporation other than as Assignee approved of by the Body Corporate pursuant to the preceeding clause.

10. The legal costs incidental to this Agreement and stamp duties hereon shall be borne by the Manager-Caretaker PROVIDED HOWEVER that the Owner shall pay its own professional legal costs of and incidental to this Agreement but accepts no liability as to stamp duty.

11. IT IS HEREBY AGREED by and between the parties hereto and notwithstanding anything elsewhere herein contained that the proprietors of all or any units in the said complex may at their discretion from time to time employ independent persons (other than the Manager-Caretaker) or companies as Agents to effect lettings of their respective units and/or to employ independent persons (other than the Manager-Caretaker) or companies to carry out from time to time the cleaning of their respective units and upon such lettings or events occurring the Manager-Caretaker shall arrange and organize appropriate access to the relevant units by the said agents cleaners and/or unit occupiers as the case may be as far as reasonably practical.

12. In the event of any dispute arising between the Manager-Caretaker and the owner touching upon any matter arising under the terms of this Agreement or incidental hereto or relative to the interpretation of any of the provisions hereof then the same shall be settled by arbitration between the parties. Such arbitration shall be referred to a single arbitrator to be mutually agreed upon between the parties and in the event that there be no agreement then to such arbitrator as may be nominated by the President for the time being of the Queensland Law Society and the decision of such arbitrator shall be final and binding between the parties and such arbitration shall be carried out pursuant to the provisions of the The Arbitration Act 1973.

13. It is acknowledged that no relationship of employer/employee exists between the Owner and the Manager-Caretaker entitling the Manager-Caretaker to conditions of employment in accordance with any particular award, or to holiday pay or long service leave.

14. Where there are two or more Manager-Caretakers the covenants and agreements on the part of the Manager-Caretaker herein contained shall bind them jointly and each of them severally.

IN WITNESS WHEREOF the parties hereto have set their hands the day and year hereinafter appearing.

[Handwritten signature]
1966

SEVENTH SCHEDULE

Schedule of Finishes and Chattels

SUNBIRD PLAZA - MATH BEACH

SCHEDULE OF FINISHES

Living Room, Dining Room, Entry and Bedrooms.

Floor: Reinforced concrete, quality selected carpet.
Walls: Plasterboard sheeting on concrete, masonry or steel stud framed walls painted throughout.
Ceilings: Textured paint finish including coved plaster cornice.
Fittings: Wardrobes, coat cupboards and linen cupboards are provided where shown on plan.

Kitchen.

Floors: Reinforced concrete, vinyl sheeting
Walls: Ceramic tile splashback to benches. All other exposed wall surfaces - painted plasterboard
Ceilings: Textured paint finish including coved plaster cornice
Bench Cupboards: Constructed of particleboard and plywood with selected finish and having a kickboard. Bench tops and edges to be finished with selected laminate. Drawers provided. Cupboards to have floors and intermediate shelves finished with white laminate.
Wall Cupboards: Where shown on plan

Generally: The following items will be supplied and installed.
 - A stainless steel double bowl sink and drainer
 - Electric wall oven and hot plates
 - Dishwasher, garbage disposal and rangehood
 Ground Floor, Unit E has an upright stove in lieu of wall oven and hot plate.

Main Bathrooms.

Floor: Selected ceramic floor tiling
Walls: Selected ceramic tiles to 1200 mm height.
Ceilings: False ceiling constructed with metal framing and sheeted with plasterboard - paint finish.
Generally: A white bath is provided with bricked up and tiled front. Showers enclosed with glazed aluminium screen and sliding door. A white low down suite complete with toilet seat and cover. Internal bathrooms have mechanical ventilation. Paper holder and towel rail provided. Main bathrooms have quality marblestone top vanity basins. Mirror on wall.

Ensuite Bathrooms.

Floor: Selected ceramic floor tiling
Walls: Selected ceramic tiles for shower recess, surrounds and skirting. Where not tiled-painted plasterboard.
Ceilings: False ceiling constructed with metal framing and sheeted with plasterboard - paint finish.
Generally: A white low level toilet suite is fitted where shown on plan. Internal bathrooms have mechanical ventilation. Paper holder and towel rail provided. Bathrooms to have vanity basin and mirror fitted over. Shower recess fitted with a glazed sliding metal door screen.

Laundry.

Floor: Selected ceramic floor tiling
Walls: Selected ceramic tile splashback over laundry tub
 Selected ceramic tile skirting Plasterboard lining
 paint finish elsewhere
Ceilings: False ceiling constructed with metal framing and sheeted with plasterboard paint finish
Generally: Washing machine and clothes dryer installed. Laundry tub and cabinet fitted where shown on plan. Internal laundries have mechanical ventilation.

Hot Water System: All units to have 90 litre mains pressure heater.

Balcony.

Floor: Reinforced concrete - selected quarry tiles
Walls: Paint finish to off-form concrete
Ceiling: Paint finish to off-form concrete
Generally: Balustrading to be constructed of anodised aluminium

Lift Lobbies.

Floor: Reinforced concrete, quality selected carpet
Walls: Plasterboard lined with selected vinyl wallpaper.
Ceilings: Textured paint finish including coved cornice
Lifts: Two lifts, 14 passenger. Standard lift car finishes to manufacturers detail. Speed 1.75 m/s
Fire Stairs. Walls off-form concrete or concrete masonry unpainted. Stair balustrading constructed to detail. Stairs and landings - concrete.

Main Entrance Lobby: Entrance door security system operated electronically from each unit. Intercom system provided to each unit.

Floor: Reinforced concrete - selected quality carpet

Walls: Plasterboard lined with selected vinyl wallpaper

Ceilings: Textured paint finish including coved plaster cornice.

Basement Car Park Fitted with security controlled garage door

Garbage Garbage chute fitted with hopper at each floor level and collection room in basement

Electrical Work As per electrical plans and specification
(including the following)
Light fittings to community outlets only
A double 10 amp General Purpose Outlet on a separate circuit
1 connection for each hot water unit, rangehood, garbage disposal unit, dishwasher, wall oven and hot plate, or upright stove
2 telephone points, 2 T.V. outlets 1 intercom security point
Wiring only for ceiling fans in living room and main bedroom

Building Generally.
External brickwork or masonry as selected
Exposed concrete is off-form and painted
External windows and doors are to be anodised aluminium
Letter boxes are provided

Landscaping. Landscaping is to be carried out to landscape design prepared by the Architect

Facilities.
Squash court - located where shown on plan
Sauna to manufacturers specification.
Adjoining toilets and showers

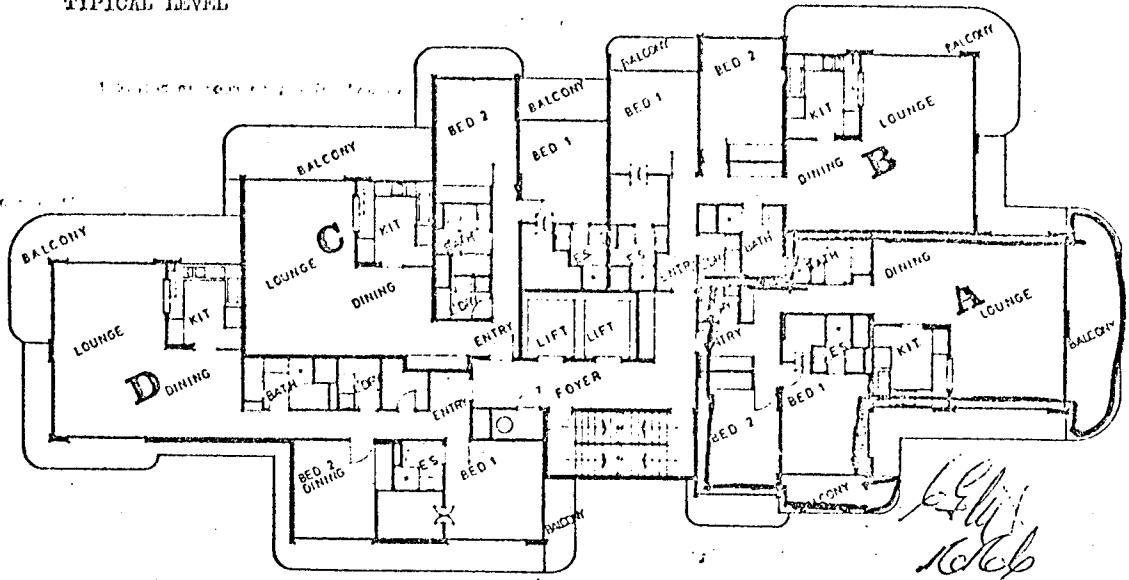
All weather tennis court constructed to Architects specification
Indoor heated swimming pool and spa
Outdoor swimming pool with solar heater
Barbeque Area
Constructed to Architects specification

Fire Protection. All to Fire Brigade requirements
Emergency power for lifts in case of power failure in the building. Stand-by generator.
Emergency lighting in the foyer and stairs
Fire Fighting Equipment:
(a) Car park fully sprinklered with exit emergency signs lit at all times
(b) Fire Brigade booster pump connection at the street in case of water pressure failure
(c) Fire isolated stairway with one hour fire-door at each floor level
(d) Fire sprinklers throughout the building. Alarm at each floor level

The Vendor retains the right to select finishes where alternative finishes are listed. All finishes subject to minor variations. The style and colour of finishes are at the Vendor's selection.

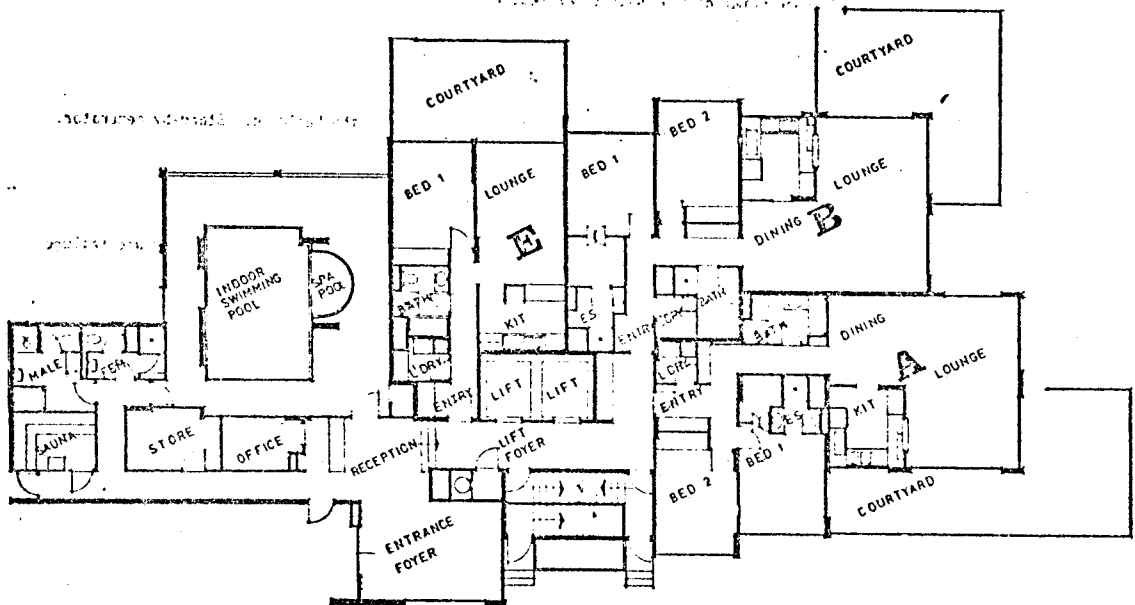
Handwritten signature and initials, possibly 'K. G. H.' and 'K. H. H.'.

TYPICAL LEVEL

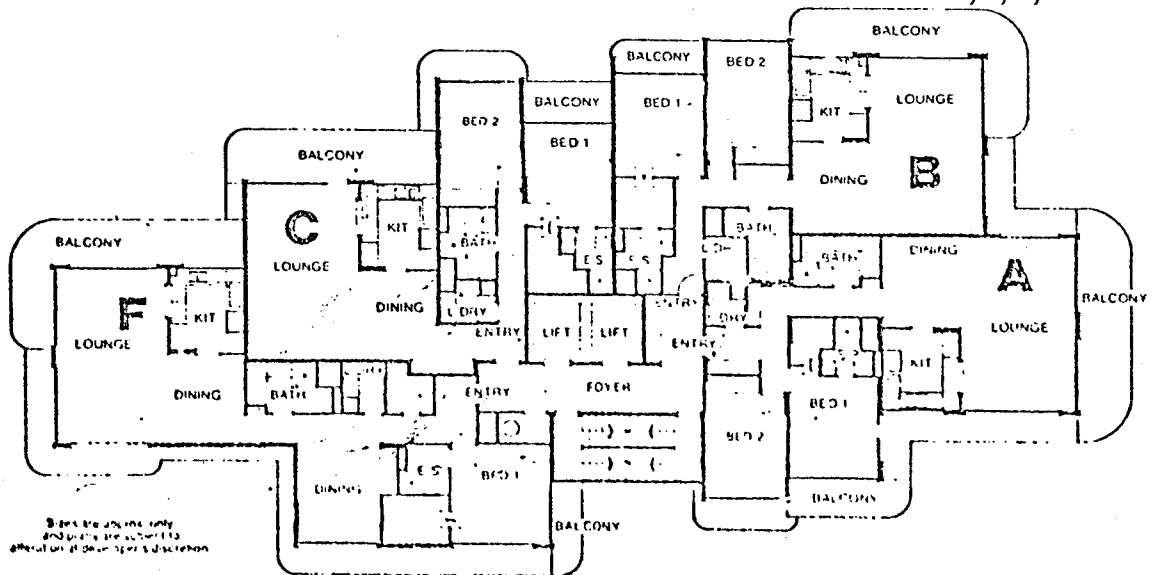


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10/16

LEVEL ONE

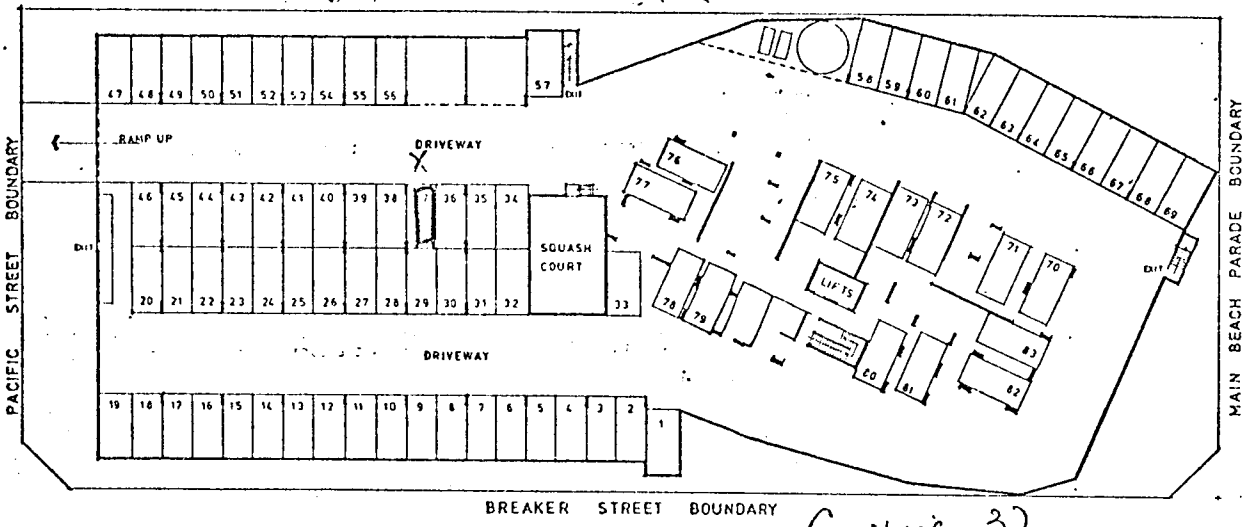


LEVELS 2,3,5,6



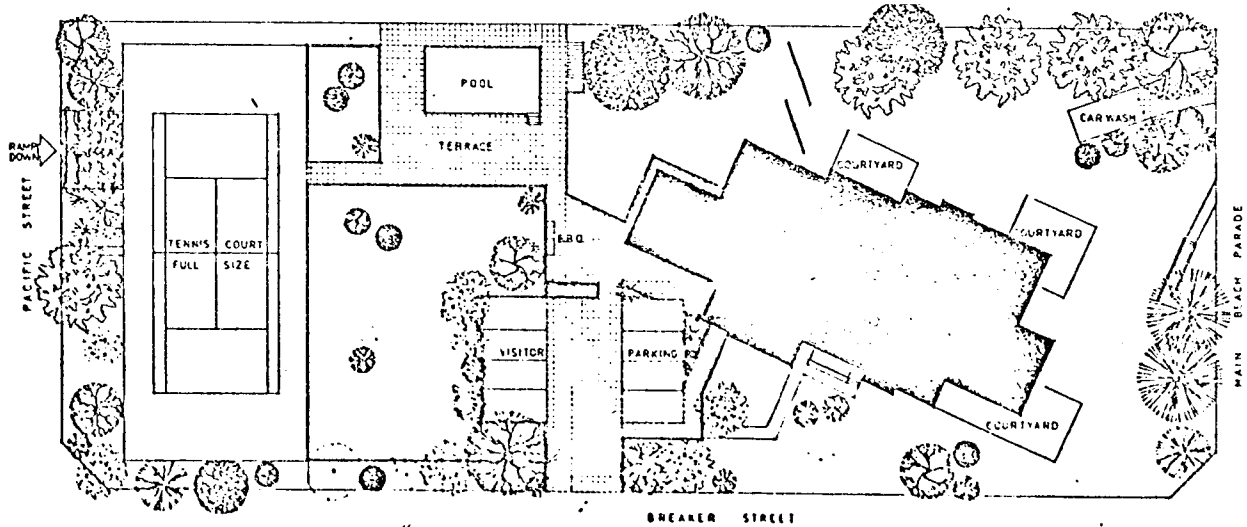
Notes: The original only
and plans are subject to
alteration at developer's discretion

11.
NINTH SCHEDULE



*Car space 37
K.G. 10/66*

TENTH SCHEDULE



K.G. 10/66

ELEVENTH SCHEDULE

STATEMENT BY ORIGINAL PROPRIETOR PURSUANT TO SECTION 49 OF THE "BUILDING UNITS AND GROUP TITLES ACT 1980

- 1. IDENTIFICATION OF UNIT: Unit *A* on *14th* Floor as identified in sketch plan in subject agreement (where Building Units Plan has been registered, Lot *52* in Registered Building Units Plan No. *1*).
 - 2. ORIGINAL PROPRIETOR: SUNBIRD PLAZA PTY. LTD.
 - 3. PURCHASER: *BOHELO PTY LTD*
Name:
31 COOLONG ROAD VAUCLUSE NSW
Address:
 - 4. LOT ENTITLEMENT: In accordance with the second schedule to the subject agreement.
 - 5. BY-LAWS: In accordance with the third schedule to the subject agreement subject only to the provisions of condition 8 (h) (i) of the subject agreement.
- TOTAL UNIT ENTITLEMENT *165* MANAGERS REMUNERATION PER ANNUM
- UNIT *14A* ENTITLEMENT *2* PRO RATA SHARE OF MANAGERS REMUNERATION PER ANNUM

6. EXISTING AGREEMENTS FOR SERVICE OR MAINTENANCE OF COMMON PROPERTY: Any existing agreements in writing for service or maintenance of the common property or any part thereof other than the management agreement are annexed hereto together with a schedule of the cost thereof to each proprietor on the basis of the unit entitlement. Where an existing Agreement for such service or maintenance of the common property has been entered into but is not in writing then details thereof are annexed hereto together with a schedule of the cost thereof to each proprietor on the basis of unit entitlement.

7. DATE OF THIS STATEMENT: *27th May 1981*

SIGNED on the day abovenamed for and on behalf of the original proprietor by *etc* Director duly authorised for that purpose:

[Signature]

Nonmanagement agreement in favor of the date of this contract
1-10-80
166

TWELFTH SCHEDULE

The Bank, Building Society nominated by the Vendor is:-

ANZ BANK SURFERS PARADISE

IN WITNESS WHEREOF this agreement has been executed by the parties on the day and year first hereinbefore written.

SIGNED by and on behalf of the Vendor in the presence of:

[Signature]

For and on behalf of

Sunbird Plaza Pty Ltd

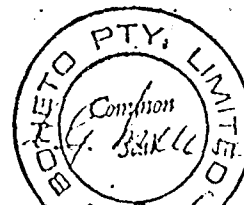
[Signature]
 A Director duly authorised.

SIGNED by the Purchaser in the presence of:

VENDOR'S SOLICITORS:

J. D. JOHNSON AND COMPANY
 5th Floor
 29 Elkhorn Avenue
 SURFERS PARADISE 4217
 (P.O. Box 5063 GOLD COAST MAIL CENTRE 4217)
 Telephone: 388999

PURCHASER'S SOLICITOR
 MIKE ELLIOTT & ASSOCIATE
 46 CAVILLE AV
 SURFERS PARADISE



[Signature] DIRECTOR
[Signature] SECRETARY

No. 5 - Exhibit "B" - Copy letter,
Solicitors for Plaintiff
to then Solicitors for
Defendant.

Dated 15 February 1982.

SUPREME COURT
OF QUEENSLAND

23. SEP. 1982

FILED
BRISBANE

RECORDED
AUG 19
AUG 21

"B"

15th February, 1982.

Messrs Elliott & Associates,
Solicitors,
40 Mill Avenue,
SUNSHINE PARADISE. 4217

EXHIBIT "B"
AFFIDAVIT

WARD

MACONSFIELD

Dear Sirs,

re: C.G. & M. Pty. Ltd. purchase from Sunbird Plaza Pty. Ltd.
- Unit 16A "Sunbird Plaza"

re: Bondi Hotel Pty. Ltd. purchase from Sunbird Plaza Pty. Ltd.
- Unit 15B "Sunbird Plaza"

re: Soluto Pty. Ltd. purchase from Sunbird Plaza Pty. Ltd.
- Unit 14A "Sunbird Plaza"

We note your request of the 11th instant that your client is desirous of purchasing the above properties in the name of C.G. Maloney Pty. Ltd.

We are presently seeking our clients instructions in respect of the same.

We will advise you of the outcome shortly.

Yours faithfully,
J.D. JOHNSON & COMPANY

per:

J.D. JOHNSON AND COMPANY,
Solicitors,
Level 8,
LC Centre,
39 George Street,
BRISBANE. Q. 4000.

tel: 229 6811

No. 6 - Exhibit "C" - Copy letter,
Solicitors for Plaintiff
to then Solicitors for
Defendant.
Dated 16 March 1982.

SUPREME COURT
OF QUEENSLAND

23. SEP. 1982

FILED
BRISBANE

MAIL:SCW:A0617
A0618
A0619

"C"

16th March, 1982.

Messrs Elliott & Co.,
Solicitors,
46 Cavill Avenue,
SURFERS PARADISE. 4217

EXHIBIT "C"
O AFFIDAVIT

Dear Sirs,

HOWARD

BEACONSFIELD

re: Sunbird Plaza Pty. Ltd. sale to Bohete Pty.
Ltd. - Unit 14A "Sunbird Plaza"

re: Sunbird Plaza Pty. Ltd. sale to C.G. Maloney
Pty. Ltd. - Unit 20D "Sunbird Plaza"

re: Sunbird Plaza Pty. Ltd. sale to Bondi Hotel
Pty. Ltd. - Unit 15B "Sunbird Plaza"

We refer to the latest request by your client to have the above Contracts of
Sale re-executed in the name of C.G. & B. Pty. Ltd.

Without prejudice to our clients rights under the existing Contract of Sale,
our client is agreeable to fresh Contracts of Sale being prepared at your
clients expense.

The guarantors of the fresh contracts (if any) are to be twofold:-

- (a) The guarantors of the original contracts
- (b) The original purchasing companies
- (c) The directors of the purchasing companies.

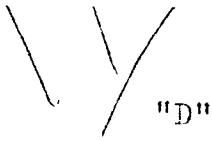
We await your advices as to your clients agreement or otherwise with these
requirements.

Yours faithfully,
J.D. JOHNSON & COMPANY

J.D. JOHNSON AND COMPANY,
Solicitors
per:
Level 8,
MLC Centre,
239 George Street,
BRISBANE. Q. 4000.

Tel: 229 6811

No. 7 - Exhibit "D" - Copy letter,
Solicitors for Plaintiff
to then Solicitors for
Defendant.
Dated 19 May 1982.


"D"

Jeffrey Douglas Johnson
COMMISSIONER FOR AFFAIRS
FOR THE STATE OF VICTORIA
Raymond Keith Johnson
Jeremy James Worcester LL.B.

J. A. Johnson and Company

SOLICITORS

29 Elkhorn Avenue
Surfers Paradise P.O. Box 5063
Gold Coast Mail Centre Qld. 4217
DX 41612 Phone (075) 38 8999
Telex. AA43304 Code: Jelfaw

PLEASE REPLY TO OUR OFFICE

YOUR REF

OUR REF JDJ:GEH: A061:

19 May 1982

Messrs Elliott & Co
Solicitors
46 Cavill Avenue
SURFERS PARADISE 4217

386 x 33

FILED "D" TO COURT
DEPARTMENT OF LAND
AND BEACONSFIELD
23. SEP. 1982
FILED
BRISBANE

Dear Sirs

Re: SUNBIRD PLAZA PTY LTD SALE TO BOHETO PTY LTD
UNIT 14A "SUNBIRD PLAZA"

We confirm that the Building Units Plan for "Sunbird Plaza" was lodged for sealing with the Gold Coast City Council on 5 May 1982. It is anticipated that the plan will be released from Council in the near future.

The sealed Plan will then be lodged for registration in the Titles Office. Settlement will be due within fourteen (14) days of registration of the Building Units Plan.

Our client instructs us to draw to the attention of all purchasers and their solicitors to the provision of the Contract regarding default on delay in settlement and the fact that time is of the essence of the Contract.

We are taking the liberty of preparing Transfer documents and will submit same shortly.

Kindly advise if the spelling of your clients name(s) varies from that shown on the Contract.

Yours faithfully
J D JOHNSON AND COMPANY

per:

No. 8 - Exhibit "E" - Copy telex,
Solicitors for Plaintiff
to then Solicitors for
Defendant.
Dated 10 June 1982.

"E"

PGM BB BNE 015

GA
015
PGM BB BNE 015*
JEFLAW AA43304
SURFERS PARADISE

TF386433
ELLIOTT + CO
SOLICITORS
SURFERS PARADISE

RE: SUNBIRD PLAZA SALE TO BOHETO P/L UNIT 14A

CONFIRM BUP NO. 4993 REGISTERED TODAY 10/6/82. SETTLEMENT
FRIDAY 25/6/82.

J D JOHNSON + COMPANY
SOLICITORS
SURFERS PARADISE

SENT ONE FIN

J. A. Johnson and Company

SOLICITORS

Jeffrey Douglas Johnson
COMMISSIONER FOR APPEALS
FOR THE STATE OF VICTORIA
Raymond Keith Johnson
Jeremy James Worcester

"F"

29 Elkhorn Avenue
Surfers Paradise P.O. Box 5063
Gold Coast Mail Centre Qld. 4217
DX 41612 Phone (075) 38 8999
Telex AA43354 Code: Jelfaw

PLEASE REPLY TO OUR OFFICE

YOUR REF

OUR REF JDJ:GEH

11 June 1982

SUPREME COURT
OF QUEENSLAND
23. SEP. 1982
FILED
BRISBANE

Elliott & Co
Solicitors
111 Avon Avenue
SURFERS PARADISE 4217

Dear Sirs
Re: SUNBIRD PLAZA PTY LTD SALE TO BOHETO PTY LTD
LOT 52 "SUNBIRD PLAZA"

EXHIBIT "F"

FIDAVIT OF
WARD
ACONSFIELD

The Building Units Plan for the above units was registered in the Titles Office on 10 June 1982 and allotted No. 4993. Settlement of the above units are due fourteen (14) days thereafter.

To expedite settlement, we enclose herewith duly executed documents as follows:

1. Memorandum of Transfer duly executed by our client's Attorney, Jeffrey Douglas Johnson under registered Power of Attorney No. G404376.
2. Declaration Form F.
3. Section 48 Declaration.
4. Form 22 under Section 53(2)(a). The mortgagee will provide Section 53(4) at settlement.
5. Section 40 Authority.
6. Declaration re Non-Revocation of Power of Attorney registered No. G404376.

The above documents are furnished to you for stamping purposes only and are to be held on our behalf pending settlement. Should you wish to submit your own transfer documents please do so shortly, and alternatively if a Transfer by Direction is required please return the above documents and submit a duly executed Transfer by Direction.

At settlement you will receive the following documents:

J. JOHNSON
AND COMPANY,
Solicitors,
Level 8,
Centre,
George St.,
BRISBANE. Q.

1. Certificate of Title for the lot being purchased,
2. Duly executed unstamped Partial Release of Bill of Mortgage.
3. Letter undertaking from mortgagee that they will, upon request, produce duplicate Bill of Mortgage at the Titles Office Brisbane to permit registration of the partial release.
4. Copy Fire Certificate.
5. Copy Certificate of Classification.

Page 2

Re: Sunbird Plaza Pty Ltd

11 June 1982

6. Copy Certificate of Currency - insurance policies.

We will advise settlement figures and details of settlement arrangements shortly.

We are instructed that no extension of time for settlement will be granted.

Yours faithfully
J D JOHNSON AND COMPANY

per: 

Encls.

No. 10 - Exhibit "G" - Copy letter,
then Solicitors for
Defendant to Solicitors
for Plaintiff.
Dated 11 June 1982.

SOLICITORS

ELLIOTT & ASSOCIATES

MICHAEL FREDERICK ELLIOTT

OUR REF : MFE/1764

FLOOR 3, CAVILL PARK BUILDING,
48 CAVILL AVENUE,
SURFERS PARADISE
QUEENSLAND

POSTAL ADDRESS:
P.O. BOX 600,
SURFERS PARADISE, Q. 4217
TELEPHONE (075) 38 6433

YOUR REF :

DX41610
Surfers Paradise

SUPREME COURT
OF QUEENSLAND

23. SEP. 1982

FILED
BRISBANE

11th June 1982

Messrs. J.D. Johnson & Company,
Solicitors,
29 Elkhorn Avenue,
SURFERS PARADISE 4217

Dear Sirs,

EXHIBIT "G"

AFIDAVIT OF
WARD BEACONSFIELD

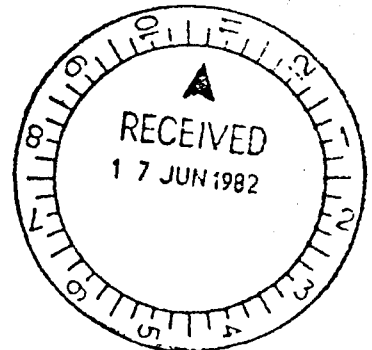
RE: C.G. MALONEY - PURCHASE UNITS 14A,
15B, 16A & 20D SUNBIRD PLAZA

We note your advices that the relevant building units plan has registered and we would be pleased if you could advise whether your client company would be prepared to have the matters proceed in the name of C.G. & M. Pty. Ltd. with guarantees by the former purchaser companies and directors.

Our client is experiencing some financial difficulties at present and has asked us to request an extension of time for settlement for a further three months. Perhaps your clients might be prepared to extend if an attractive rate of interest was paid. Would you kindly seek instructions from the developers and advise as soon as possible.

Yours faithfully,

[Signature]
ELLIOTT & ASSOCIATES



Messrs. J.D. JOHNSON AND COMPANY,
Solicitors,
Level 8,
Centre,
George Street,
BRISBANE. Q. 4000.

No. 11 - Exhibit "H" - Copy letter,
Solicitors for Plaintiff
to then Solicitors for
Defendant.
Dated 22 June 1982.

J. A. Johnson and Company

SOLICITORS

29 Elkhorn Avenue
Surfers Paradise P.O. Box 5063
Gold Coast Mail Centre Qld. 4217
Phone (075) 38 8999
Telex: AA43304 Code: Jeffaw

PLEASE REPLY TO OUR OFFICE

YOUR REF

OUR REF JDJ:86

Jeffrey Douglas Johnson
COMMISSIONER FOR APPEALS
FOR THE STATE OF VICTORIA
Raymond Keith Johnson
XXXXXXXXXXXXXXXXXX

22nd June 1982

SUPREME COURT OF QUEENSLAND
23 SEP 1982
FILED
BRISBANE
Elliott & Co.,
Solicitors
40 Cav 11 Avenue
SURFERS PARADISE 4217

Dear Sirs,

EXHIBIT "H"

FIDAVIT

RE: SUNBIRD PLAZA PTY. LTD. SALE TO BOWETO PTY. LTD.
LOT 52 "SUNBIRD PLAZA"

WARD
ACONSFIELD

We enclose herewith settlement statement. Settlement is to be conducted at our office, Friday 25th June 1982 between the hours of 10.00a.m. and 5.00p.m. . If you wish to make a definite time please advise us accordingly.

Rates are paid to the 30th June 1982 and our client has elected to make no adjustment in this regard. You may hold the sum of \$50.00 in trust pending a land tax clearance and we will advise immediately the same issues.

Kindly advise if you have any queries in respect of the above.

Yours faithfully,
J.D. JOHNSON & COMPANY

J.D. JOHNSON AND COMPANY,
Solicitors,
Level 8,
LC Centre,
39 George Street,
BRISBANE. Q. 4000.

No. 12 - Exhibit "I" - Copy letter,
then Solicitors for
Defendant to Solicitors
for Plaintiff, with copy
notice voiding Contract.
Dated 24 June 1982.

SOLICITORS

ELLIOTT & ASSOCIATES

MICHAEL FREDERICK ELLIOTT
PETER JOHN ELLIOTT (SOLICITORS)

OUR REF : MFE/LJM/1765
YOUR REF : JDJ:GEH

FLOOR 3, CAVILL PARK BUILDING
48 CAVILL AVENUE,
SURFERS PARADISE
QUEENSLAND

POSTAL ADDRESS:
P.O. BOX 600,
SURFERS PARADISE, Q. 4217
TELEPHONE (075) 32 6423

DX41610
Surfers Paradise

24th June, 1982.

Messrs. J.D. Johnson and Company,
Solicitors,
29 Elkhorn Avenue,
SURFERS PARADISE, QLD., 4217

EXHIBIT "I"
TO
AFFIDAVIT OF
HOWARD
BEACONSFIELD

Dear Sirs,

RE: BOHETO PTY. LTD. PURCHASE FROM
SUNBIRD PLAZA PTY. LTD. - UNIT 14A "SUNBIRD PLAZA"

*Vol 52
6/20/82*

We enclose herewith copy Notice that our client voids
the contract in this matter.

The provisions of Section 49 (6) of "The Building
Units and Group Titles Act 1980" provide that the
deposit is to be immediately re-paid. Would you please
advise your client accordingly and we now make demand
that deposit do be repaid forthwith. The deposit
may be either forwarded to our trust account or
alternatively forwarded to our client at 31 Coolong
Road Vaucluse New South Wales.

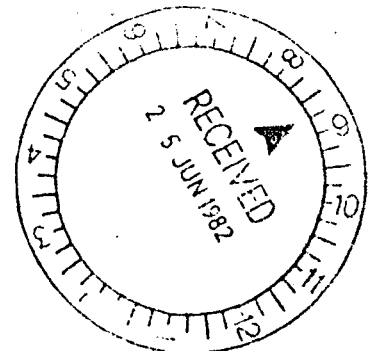
SUPREME COURT
OF QUEENSLAND
23 SEP 1982
FILED
BRISBANE

Yours faithfully,

ELLIOTT & ASSOCIATES

Enc.

J.D JOHNSON AND COMPANY,
Solicitors,
level 8,
MLC Centre,
239 George Street,
BRISBANE. Q. 4000.



Tel: 229 6811

NOTICE UNDER SECTION 49 (5) OF "BUILDING
UNITS AND GROUP TITLES ACT 1980"

RE: BOHETO PTY. LTD. purchase from SUNBIRD
PLAZA PTY. LTD. of C/- 29 Elkhorn Avenue
Surfers Paradise in the State of Queensland.

RE: Contract dated the 27th day of May 1981
in relation to Unit 14A, Main Beach Parade,
Main Beach of the building described in such
contract.

BOHETO PTY. LTD. being the Purchaser under the abovementioned
Contract HEREBY VOIDS the said Contract.

This Notice is given on the basis that the Purchaser became
aware on the Eighteenth day of June 1982 that the Vendor
under the said Contract as original proprietor failed to
give to the Purchaser under the said Contract a Statement
in compliance in every respect with sub-sections (1) (2)
and (3) of the said Section 49 of the said Act in that
the said original proprietor failed to:-

- (a) State the address of the original proprietor.
- (b) Failed to set out or be accompanied by the by-laws
in force in respect of the plan or the proposed by-laws
in respect of the proposed plan.

DATED this 18th day of June 1982.

BOHETO PTY. LTD.

Per: 

ELLIOTT & ASSOCIATES
duly authorised in that
respect.

No. 13 - Exhibit "J" - Copy telex,
Solicitors for Plaintiff
to then Solicitors for
Defendant.
Dated 25 June 1982.

52

SA
015*
JEFLAW AA43304

SA
015
PEM BB SNE 015*
JEFLAW AA43304
SURFERS PARADISE

TF586433
ELLIOTT AND ASSOCIATES
SOLICITORS
SURFERS PARADISE

RE: SUNBIRD PLAZA SALE TO BOHETO PTY LTD LOT 52: BONDI HOTEL
PTY LTD LOT 57: C G AND H PTY LTD LOT 60: C G MALONEY
PTY LTD LOT 79

YOUR CLIENTS HAVE FAILED TO SETTLE IN ACCORDANCE WITH THE TERMS
OF THE CONTRACTS. OUR CLIENT RESERVES ITS RIGHTS TO TAKE SUCH
ACTION AS IT MAY BE ADVISED.

J D JOHNSON AND COMPANY
SOLICITORS
SURFERS PARADISE

SENT ONE FIN

No. 14 - Exhibit "K" - Copy letter,
then Solicitors for
Defendant to Plaintiff,
with copy notice voiding
Contract.

Dated 24 June 1982.

24

SOLICITORS

ELLIOTT & ASSOCIATES

MICHAEL FREDERICK ELLIOTT
PETER ROBERTSON (Solicitors for G.W.)

FLOOR 3, CAVILL PARK BUILDING,
48 CAVILL AVENUE,
SURFERS PARADISE
QUEENSLAND

POSTAL ADDRESS:
P.O. BOX 600,
SURFERS PARADISE, Q. 4217
TELEPHONE (075) 36 6433

SUPREME COURT
OF QUEENSLAND

OUR REF : MFE/LJM/1765

YOUR REF :

23. SEP. 1982

FILED
BRISBANE

DX41810
Surfers Paradise

24th June, 1982.

The Directors,
Sunbird Plaza Pty. Ltd.,
Corner Mainbeach Parade and
Cronin Street,
MAIN BEACH, QLD., 4215

Dear Sirs,

RE: PURCHASE - BOHETO PTY. LTD.
PURCHASE FROM SUNBIRD PLAZA PTY. LTD.
UNIT 14A "SUNBIRD PLAZA"

We enclose herewith Notice pursuant to Section 49 (5)
of "The Building Units and Group Titles Act 1980"
and advise that our client voids that Contract entered
into between itself and yourself in respect of the
matter in which the Notice is given.

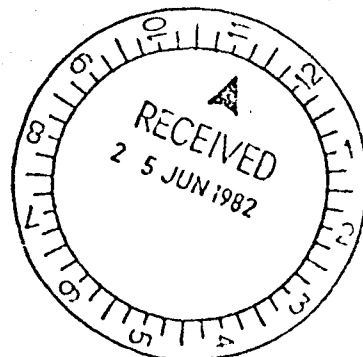
A copy of this letter and Notice has been sent to your
Solicitors Messrs. J.D. Johnson and Company today.
We require immediate return of the deposit and ask that
you authorise the agent accordingly.

Yours faithfully,

ELLIOTT & ASSOCIATES

Enc.

J.D. JOHNSON AND COMPANY,
Solicitors,
Level 8,
ILC Centre,
239 George Street,
BRISBANE. Q. 4000.



tel: 229 6811

EXHIBIT "K"
AFFIDAVIT
OF
HOWARD
MACONSFIELD

NOTICE UNDER SECTION 49 (5) OF "BUILDING
UNITS AND GROUP TITLES ACT 1980"

RE: BOHETO PTY. LTD. purchase from SUNBIRD
PLAZA PTY. LTD. of C/- 29 Elkhorn Avenue
Surfers Paradise in the State of Queensland.

RE: Contract dated the 27th day of May 1981
in relation to Unit 14A, Main Beach Parade,
Main Beach of the building described in such
contract.

BOHETO PTY. LTD. being the Purchaser under the abovementioned
Contract HEREBY VOIDS the said Contract.

This Notice is given on the basis that the Purchaser became
aware on the Eighteenth day of June 1982 that the Vendor
under the said Contract as original proprietor failed to
give to the Purchaser under the said Contract a Statement
in compliance in every respect with sub-sections (1) (2)
and (3) of the said Section 49 of the said Act in that
the said original proprietor failed to:-

- (a) State the address of the original proprietor.
- (b) Failed to set out or be accompanied by the by-laws
in force in respect of the plan or the proposed by-laws
in respect of the proposed plan.

DATED this 18th day of June 1982.

BOHETO PTY. LTD.

Per: 

ELLIOTT & ASSOCIATES
duly authorised in that
respect.

IN THE SUPREME COURT
OF QUEENSLAND

No. 2969 of 1982

BETWEEN:

SUNBIRD PLAZA PTY. LTD. Plaintiff

AND:

BOHETO PTY. LTD. Defendant

SUPREME COURT
OF QUEENSLAND
23 SEP 1982
FILED
BRISBANE

AFFIDAVIT OF
JEFFREY DOUGLAS JOHNSON

Filed on behalf of
the Plaintiff)

I, JEFFREY DOUGLAS JOHNSON of 55 Blair Athol Crescent, Sorrento in the State of Queensland, Solicitor, make oath and say as follows:-

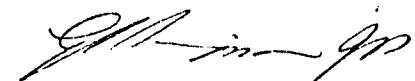
1. I am a member of the firm of Messrs. J.D. Johnson and Company, Solicitors, Level 8, MLC Centre, 239 George Street, Brisbane in the said State, solicitors for the abovenamed Plaintiff Sunbird Plaza Pty. Ltd.

2. I am the duly constituted attorney for the said Sunbird Plaza Pty. Ltd. Now produced and shown to me marked with the letter "A" is a photocopy stamped copy of Form of General Power of Attorney from Sunbird Plaza Pty. Ltd. to myself, this deponent, dated the 20th day of May, 1981.



3. The said Power of Attorney was registered in the Real Property Office Brisbane on the 18th day of August 1981 under dealing number G404376.

4. All the facts and circumstances herein deposed to are within my own knowledge save such as are deposed to from information only and my means of knowledge and sources of information appear on the face of this my affidavit.

SWORN by the abovenamed)
Deponent at Brisbane)
this 3rd day of August,)
1982, before me: -)


A Justice of the Peace

5-504-001-00


167549


J.D. JOHNSON AND COMPANY,
Solicitors,
Level 8,
MLC Centre,
239 George Street,
BRISBANE. Q. 4000.

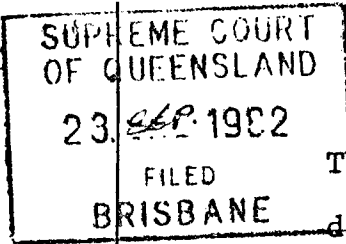
Tel: 229 6811 (RKJ)

EXHIBIT "A" TO
AFFIDAVIT OF
JEFFREY DOUGLAS JOHNSON

FORM 16

FORM OF GENERAL POWER OF ATTORNEY

Property Law Act 1974, Section 170 (1)

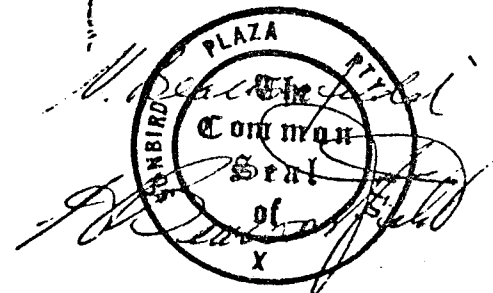


This General Power of Attorney is made this ^{20th}
day of May 1981 by SUNBIRD PLAZA PTY LTD
of C/- J D Johnson and Company, 5th Floor, 29
Elkhorn Avenue Surfers Paradise in the State of
Queensland.

I appoint JEFFREY DOUGLAS JOHNSON of 5 Ibis Court,
Sorrento to be our Attorney in accordance with Section
170 (1) of the Property Law Act 1974.

IN WITNESS WHEREOF we have hereunto set our hands
and seal this ^{20th} day of May 1981.

SIGNED SEALED AND DELIVERED)
by the said SUNBIRD PLAZA)
PTY LTD on the day abovenamed)
in the presence of:)



J.D. JOHNSON AND COMPANY,
Solicitors,
Level 8,
MLC Centre,
239 George Street,
BRISBANE. Q. 4000.

Olga Panzic J.P.

A Justice of the Peace

Tel: 229 6811(RKJ)

IN THE SUPREME COURT

SUPREME COURT
OF QUEENSLAND
- 6. AUG. 1982
FILED
BRISBANE

Plaint No. 2969 of 1982

BETWEEN:

SUNBIRD PLAZA PTY. LTD.

Plaintiff

AND:

BOHETO PTY. LIMITED

Defendant

AFFIDAVIT

- by -

MICHAEL
FREDERICK
ELLIOTT

I MICHAEL FREDERICK ELLIOTT of 50 Old Burleigh Road Surfers
Paradise in the State of Queensland Solicitor being duly sworn
MAKE OATH AND SAY as follows:

(Filed on behalf
of the Defendant)

1. I am a principal of the firm of Solicitors acting for the
abovenamed Defendant in the conveyance in respect to the purchase
of Unit 14A "Sunbird Plaza" and being Lot 52 in Registered
Building Units Plan No. 4993.

2. MY firm received from the Agent in the sale P.R.D.
Realty Pty. Ltd. the original Contract on the 1st day of June 1981.

3. I this Deponent have the conduct of this conveyancing
matter and neither myself or any other persons in my employment
became aware of any defect in the Section 49 Certificate on Page 12
of the original Contract at the time of receipt of the Contract.

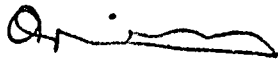
4. FOLLOWING upon discussions with my client on the 18th
day of June 1982 I then became aware of a defect in the Section 49
Certificate which was set out on Page 12 aforesaid and I informed
by the Defendant Company BOHETO PTY. LIMITED of such defect.

CANNAN &
PETERSON
Solicitors
44 Queen Street
BRISBANE.
QLD. 4000


Town Agents for:

McDONALD &
COMPANY
Solicitors
7 Connor Street
BURLEIGH HEADS.
QLD. 4220

Telephone:
5 1822 (075)


Deponent


FIRST SHEET


A Justice of the Peace

5. FOLLOWING upon my advice to the Defendant the Defendant Company having become aware of the defect upon my advice on the 18th day of June 1982 instructed my firm to give notice to the Vendor to rescind the Contract and a Notice of Rescission was prepared and executed on the 24th day of June 1982 and delivered to the Registered Office of the Vendor on that date.

6. THE abovenamed Defendant has not raised the question of the defect with myself this Deponent or my firm since I communicated to the Defendant that I had served a Notice to void the Contract pursuant to Section 49 of the Building Units and Group Titles Act 1980.

SWORN at Surfers Paradise in)
the State of Queensland by the)
abovenamed MICHAEL FREDERICK)
ELLIOTT this 3rd day of August)
1982 before me:)


.....
A Justice of the Peace

ERA40/P LLP

IN THE SUPREME COURT OF QUEENSLAND

COURT OF QUEENSLAND

- 6. AUG. 1982

FILED
BRISBANE

Plaint No. 2969 of 1982

BETWEEN:

SUNBIRD PLAZA PTY. LTD.

Plaintiff

AND:

BOHETO PTY. LIMITED

Defendant

AFFIDAVIT

- by -

I LINDA LORRAINE PHELPS of 22 Westari Court Currumbin in the State of Queensland Solicitor being duly sworn MAKE OATH AND SAY as follows:

1. I am a partner of the firm of Solicitors acting for the abovenamed Defendant and as such I have the conduct of this matter.

2. ON the 3rd day of August 1982 I telephoned Raymond Keith Johnson Solicitor of Messrs. J.D. Johnson & Company the Solicitors for the Plaintiff. I asked the said Raymond Keith Johnson the name of the person who signed the Section 49 Statement in the Eleventh Schedule of the Contract of Sale between the Plaintiff as Vendor and the Defendant as Purchaser bearing date the 27th day of May 1981.

3. THE said Raymond Keith Johnson informed me that the signatory was Jeffrey Douglas Johnson the duly appointed Attorney of the Plaintiff. I then asked the said Raymond Keith Johnson the date of the instrument appointing the said Jeffrey Douglas Johnson

FIRST SHEET

L. L. Phelps

Deponent

Robert J.P.

A Justice of the Peace

MANNAN &
ETERSON
Solicitors
44 Queen Street
BRISBANE.
QLD. 4000
Sole Agents for:
McDONALD &
COMPANY
Solicitors
77 Connor Street
BURLEIGH HEADS.
QLD. 4220
Telephone:
55 1822 (075)

as Attorney of the Plaintiff. The said Raymond Keith Johnson then informed me that to the best of his recollection the said Jeffrey Douglas Johnson was appointed under Power of Attorney bearing date the 20th day of May 1981. Such Power of Attorney being registered at the Real Property Office Brisbane in the State of Queensland under Dealing No. G404376.

4. I further asked the said Raymond Keith Johnson as to whether the Plaintiff had entered into a Management Agreement since giving a Statement pursuant to Section 49 of the Building Units and Group Titles Act 1980 as set out in the said Contract. I was informed by the said Raymond Keith Johnson that the Plaintiff had executed a Management Agreement since the date of giving the Purchaser such Statement.

5. FOLLOWING upon discussions with the Defendant on the 3rd day of August 1982 I became aware of further defects in the Section 49 Statement which was set out in the said Contract. I informed the Defendant of such defects.

6. FOLLOWING upon my advice of the 3rd day of August 1982 the Defendant instructed my firm to serve a further Notice pursuant to Section 49 of the Building Units and Group Titles Act 1980 upon the Plaintiff.

7. ON the 3rd day of August 1982 I this Deponent caused a further Notice pursuant to Section 49 of the Building Units and Group Titles Act 1980 to be served on the Plaintiff at its Registered Office at the Office of Messrs. J.D. Johnson & Company Solicitors 5th Floor 29 Elkhorn Avenue Surfers Paradise in the State of Queensland. Now shown to me and marked with the letter "A" is a

SECOND SHEET

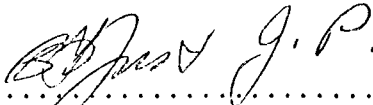
L. L. Phelps
Deponent

John J. P.
A Justice of the Peace

true copy of the said Notice.

8. ALL the facts and circumstances above deposed to are within my own knowledge save such as are deposed to from information only and my means of knowledge and sources of information appear on the face of this my Affidavit.

SWORN by the abovenamed)
Deponent at *Burleigh Heads*)
in the State of *Queensland*)
this *3rd* day of *August*)
1982 before me:)



.....
A Justice of the Peace

ERA4Q/R LLP

"A"

FURTHER NOTICE UNDER SECTION 49(5)

- of the -

Building Units and Group Titles Act 1980

BOHETO PTY. LIMITED of C/- Messrs. McDonald & Company Solicitors 37
Connor Street Burleigh Heads in the State of Queensland

- purchase from -

SUNBIRD PLAZA PTY. LTD. of 5th Floor 29 Elkhorn Avenue Surfers
Paradise in the State of Queensland

Re: Contract dated the 27th day of May 1981 in relation to Unit 14A on
the 14th Floor in a building known as "Sunbird Plaza" situate at
Breaker Street Main Beach in the State of Queensland

BOHETO PTY. LIMITED hereby gives a further Notice pursuant to Section
49 of the Building Units and Group Titles Act 1980 in the abovementioned
matter. This Notice is given without prejudice to a Notice given herein
dated the 24th day of June 1982 without in any way affirming the said
Contract, the said Contract is hereby voided on the grounds that the
original proprietor within the meaning of Section 49 of the Building Units
and Group Titles Act 1980 failed to give to the Purchaser a Statement in
compliance in every respect with Sub-Sections (1), (2) and (3) of Section
49 of the said Act. Without prejudice to the generality of the foregoing
the Statement in writing purportedly provided under Section 49 of the
said Act:

- (a) Did not clearly or at all identify the lot or the proposed lot to
which the Statement relates.
- (b) Failed to state the date upon which the Statement was given.
- (c) The Statement was not signed by the original proprietor or on
his behalf by a person authorised in writing by the original
proprietor in that regard.

DATED this 3rd day of August 1982.

BOHETO PTY. LIMITED
by its duly authorised Agent

.....
McDonald & Company
Solicitors
37 Connor Street
BURLEIGH HEADS. QLD 4220

IN THE SUPREME COURT
OF QUEENSLAND

SUPREME COURT
OF QUEENSLAND
12. AUG. 1982
FILED
BRISBANE

Plaint No. 2969 of 1982

BETWEEN:

SUNBIRD PLAZA PTY. LTD.

Plaintiff

AND:

BOHETO PTY. LIMITED

Defendant

AFFIDAVIT

- by -

MARGARET MARY
CUSSAN

(Filed on behalf
of the Defendant)

I MARGARET MARY CUSSAN of 26 Coolong Road Vaucluse in the State of New South Wales Company Director being duly sworn MAKE OATH AND SAY as follows:

1. I am a Director of the Defendant Company BOHETO PTY. LIMITED a Company duly incorporated in the State of New South Wales (hereinafter referred to as "the Defendant") and I am duly authorised to make this Affidavit on its behalf.

2. THE Defendant entered into a Contract with the Plaintiff to purchase from the Plaintiff a unit described as Unit 14A on the fourth floor in a multi-storey building to be called "Sunbird Plaza". I refer to Exhibit "A" in the Affidavit of Howard Beaconsfield and state that Exhibit "A" therein is a true copy of the said Contract entered into between the Plaintiff and Defendant.

3. UNDER cover of letter dated the 3rd day of April 1981 P.R.D. Realty forwarded to BOHETO PTY. LTD. at 31 Coolong Road Vaucluse in the State of New South Wales the said Contracts in duplicate together with Statements pursuant to Sections 66 and

CANNAN &
ETERSON
Solicitors
44 Queen Street
BRISBANE.
QLD.4000

Town Agents for:

McDONALD &
COMPANY
Solicitors
7. Connor Street
BURLEIGH HEADS.
QLD.4220

Telephone:
5 1822 (075)

M. M. Cussan
Deponent

FIRST SHEET

L. J. Phipps JP
A Justice of the Peace

67A of the Auctioneers and Agents Act 1971-1980. In the said letter the Defendant was requested to execute the said Contracts and the said Statements at all the places indicated by the crosses. Once this was completed then the Defendant was to return those documents together with the deposit of FOURTEEN THOUSAND EIGHT HUNDRED AND FIFTY DOLLARS (\$14,850.00). Now shown to me and marked with the letter "A" is a true copy of the said letter from P.R.D. Realty to BOHETO PTY. LTD.

4. THE Defendant executed the said Contracts and Statements within a couple of days of the receipt of same. It then returned the said documents to P.R.D. Realty together with a cheque in the sum of FOURTEEN THOUSAND EIGHT HUNDRED AND FIFTY DOLLARS (\$14,850.00) being the deposit required. At the time the said documents were forwarded to P.R.D. Realty by BOHETO PTY. LTD. neither the said Contracts or what I now know to be the Section 49 Statement under the Building Units and Group Titles Act 1980 were executed by the Plaintiff or any Agent duly authorised on its behalf. I note that the said Contract and said Section 49 Statement have been dated the 27th day of May 1981 however the Defendant executed the said Contract in April and returned same to the Vendors Agent the said P.R.D. Realty in that same month of April 1981.

5. IN the said Contract the Defendant Company nominated Messrs. Elliott & Associates Solicitors of Cavill Avenue Surfers Paradise aforesaid to act on its behalf in handling the conveyance. In due course the said Contract then executed by all the parties

SECOND SHEET



Deponent



A Justice of the Peace

thereto was received by the said Messrs. Elliott & Associates.

6. DURING the construction of the said building and pending the registration of the Building Units Plan little transpired in relation to the said Contract of Sale. However, in June 1982 on behalf of the Defendant I had some discussions with the Defendants Solicitors concerning the said Contract. On or about the 18th day of June 1982 the Defendant was informed by its Solicitors that the Section 49 Statement which was set out in the Eleventh Schedule of the said Contract was defective in that the said Statement failed to comply with Sub-Sections 1, 2 and 3 of Section 49 of the Building Units and Group Titles Act 1980.

7. THE Defendant was further informed that as a consequence of the failure of the original proprietor to supply the Defendant as Purchaser with a valid Section 49 Statement the Defendant had the right to void the said Contract within thirty (30) days from becoming aware of any defect in the said Statement. Accordingly, the Defendant instructed its Solicitors to serve a Notice to void the Contract upon the same day that the Defendant became aware of the said defect, that is the 18th day of June 1982. The Defendant was informed by its Solicitors that such a Notice was forwarded under of cover of letter dated the 24th day of June 1982 to the Plaintiff and to the Plaintiffs Solicitors. I refer to Exhibits "I" and "K" in the Affidavit of the said Howard Beaconsfield and believe these Exhibits to be true copies of the letters and Notice referred to above.

8. THE Defendant Company was totally unaware as to the

THIRD SHEET

M. M. Cussan

Deponent

L. L. Phelan J.D.

A Justice of the Peace

significance of a Section 49 Statement until its discussions with its Solicitors on the 18th day of June 1982. In fact none of the Directors of the Defendant Company had heard of or read Section 49 of the Building Units and Group Titles Act 1980 prior to its aforementioned discussions with its Solicitors on the 18th day of June 1982.

9. ALL the facts and circumstances above deposed to are within my own knowledge save such as are deposed to from information only and my means of knowledge and sources of information appear on the face of this my Affidavit.

SWORN by the abovenamed)
Deponent at *Brisbane*)
in the State of *Queensland*)
this *4th* day of *August*)
1982 before me:)



L. L. Phelps JP
.....
A Justice of the Peace

ERA4I/J LLP

No. 21 - Exhibit "A" - Copy letter,
P.R.D. Realty Pty. Ltd.
to Defendant.
Dated 3 April 1981.



1211 BORN AVE.
SURFERS PARADISE
QUEENSLAND 4071
PHONE (07) 381109
Lic No 10387

DIRECTORS
DOUGLAS A H 35697
A N DOUGLAS B Com, A A D C
A H 34024
A A McWILLIAM, B Com, A A D C
A/H 32314

REGISTERED
PUBLIC
S. P. H. 11
QUEENSLAND

"A"

CLIENT COMPANY
AF:jkc

April 3, 1981.

Boneto Pty. Ltd.,
31 Coolong Road,
VAUCLUSE. 2030

Re: Unit 14A "Sunbird Plaza" PRICE \$148500 - CD

Dear Sir/Madam,

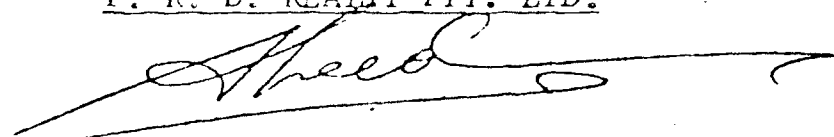
Enclosed are contracts together with Section 66 and 67A for your perusal. Kindly sign where indicated and initial all "X" Markings and return to our office together with your 10% deposit as soon as possible.

Please note Section 66 and 67A must be attached to the contract to enable us to pr

Thanking you,

Kind regards,

Yours faithfully,
P. R. D. REALTY PTY. LTD.


ANNA FREEDOM,
Project Marketing Manager.

AN & PETERSON
CITORS
QUEEN STREET
BANE Q. 4000
Agents for
NALD & COMPANY
CITORS
ONNOR STREET
EIGH HEADS Q. 4220
e 351822 (075)

REAL PROPERTY MANAGING AGENTS - MARKETING - CONSULTANTS

IN THE SUPREME COURT

OF QUEENSLAND

Plaint No. 2969 of 1982

SUPREME COURT
OF QUEENSLAND
- 6. AUG. 1982

BETWEEN:

SUNBIRD PLAZA PTY. LTD.

Plaintiff

SUPPLEMENTARY
AFFIDAVIT

by AND:

BOHETO PTY. LIMITED

Defendant

MARGARET MARY
CUSSAN

(Filed on behalf
of the Defendant)

I MARGARET MARY CUSSAN of 26 Coolong Road Vaucluse in the
State of New South Wales Company Director being duly sworn

MAKE OATH AND SAY as follows:

Handwritten signature

Handwritten initials

1. I am a Director of the Defendant Company BOHETO PTY.
LIMITED a Company duly incorporated in the State of New South
Wales (hereinafter referred to as "the Defendant") and I am
duly authorised to make this Affidavit on its behalf

2. On the 3rd day of August, 1982 I received a telephone
call from the company's solicitor LINDA LORRAINE PHELPS
of Messrs. McDonald & Company Solicitors of Burleigh Heads
in the State of Queensland. I was informed by the said
LINDA LORRAINE PHELPS that there were a further three
defects in the Section 49 statement as set out in the
Eleventh Schedule of the contract of sale between BOHETO PTY.
LIMITED as purchaser and SUNBIRD PLAZA PTY. LTD. as vendor
bearing date 27th day of May, 1981.

3. I was informed that the said Section 49 statement
is defective upon the following grounds:-

ANNAN &
PETERSON
Solicitors,
4 Queen St.,
BRISBANE.
D. 4000

own Agents for:

MCDONALD &
COMPANY
Solicitors
7 Connor St.,
BURLEIGH
HEADS

FIRST SHEET

- (a) Did not clearly or at all identify the lot or the proposed lot to which the Statement relates.
- (b) Failed to state the date upon which the Statement was given.
- (c) The Statement was not signed by the original proprietor or on his behalf by a person authorised in writing by the original proprietor in that regard.

4. The defendant was not aware of these further defects until the said telephone conversation with the said LINDA LORRAINE PHELPS until the 3rd day of August, 1982.

Upon becoming aware of the said defects I instructed the said LINDA LORRAINE PHELPS to serve a further notice pursuant to Section 49 of the Building Units and Group Titles Act 1980 without prejudice to the notice served by the company's former solicitors Messrs. Elliott & Associates of Surfers Paradise aforesaid voiding the said contract.

SWORN by the abovenamed)
)
 Deponent at Brisbane)
)
 in the State of Queensland)
)
 this 4th day of August,)
)
 1982 before me:)

M. M. Cussan

L. L. Phelps

A Justice of the Peace

No. 2969 of 1982

BETWEEN:

SUNBIRD PLAZA PTY. LTD.

Plaintiff

AND:

BOHETO PTY. LTD.

Defendant

JUDGMENT - G.N. WILLIAMS A.J.

Delivered the *20th* day of September, 1982.

By contract in writing bearing date 27th May 1981, Sunbird Plaza Pty. Ltd. (hereinafter referred to as "the applicant") therein described as the vendor, agreed to sell to Boheto Pty. Ltd. (hereinafter referred to as "the respondent"), therein referred to as the purchaser, the unit designated 14A in a multi-storey building which the contract stipulated the applicant was to construct and to be named Sunbird Plaza. The purchase price was \$148,500.00. Both the preamble and clause 8(a) referred to the fact that title would be given subject to the provisions of the "Building Units and Group Titles Act 1980" as amended (hereinafter referred to as "the Act").

There are many references in the contract to provisions of the Act; it is sufficient if I refer to the following: Clauses 3(g), 8(e), 8(g), 8(h), 8(l), 16(c), the Third Schedule, and the Eleventh Schedule. No-one could properly understand the contract, and those specified provisions in particular, without reading (and having some understanding of) the Act, or at least those parts to which particular reference is made. It is of more importance for immediate purposes to note that the "Eleventh Schedule" is described as a "Statement By Original Proprietor Pursuant To Section 49" of the Act.

The relevant Building Units Plan (No. 4993) was registered on 10th June 1982, and in consequence the date for completion became 25th June 1982. Between May 1981 and the beginning of June 1982 there was no indication from the respondent that it wished to be relieved of its obligations under the contract. Indeed its solicitors wrote to the applicant's solicitors in February and March 1982 seeking the concurrence of the applicant to the nomination of another company to take the conveyance of the subject unit and two others. The first hint of "trouble" came in the letter from the respondent's solicitors of 11th June 1982; it suggested the respondent was "experiencing some financial difficulties at present" and asked for an extension of time for completion. That was not granted. On 24th June 1982 the solicitors for the respondent forwarded to the solicitors for the applicant a notice purporting to "void" the contract pursuant to s. 49 of the Act.

On 25th June 1982 the applicant caused a writ to be issued seeking an order for specific performance of the contract. After an appearance was entered, an application was made under O. 18A seeking a summary order for specific performance of the contract. The respondent has resisted that summons, asserting that the contract was lawfully "voided" by the notice given pursuant to s. 49 of the Act.

Section 49, so far as is relevant, provides:-

"(1) An original proprietor shall give to the purchaser of a lot or of a proposed lot a statement in writing in compliance in every respect with the requirements of this section.

(2) A statement in writing under this section shall -

- (a) clearly identify the lot or proposed lot to which the statement relates;
- (b) state the names and addresses respectively of the original proprietor and the purchaser;
- (c) set out or be accompanied by particulars of -
 - (i) the lot entitlement of every lot and the aggregate lot entitlement; or

- "
- (ii) the proposed lot entitlement of every proposed lot and the proposed aggregate lot entitlement;
- (d) set out or be accompanied by details of -
- (i) any management agreement that the original proprietor has entered into in respect of the plan or proposed plan; and
 - (ii) any existing agreement for service or maintenance of the common property or any part thereof, including the terms and conditions of that agreement and the estimated costs thereof to the proprietor of each lot;
- (e) set out or be accompanied by the by-laws in force in respect of the plan or the proposed by-laws in respect of the proposed plan;
- (f) state the date on which the statement is given; and
- (g) be signed by the original proprietor or on his behalf by a person authorised in writing by the original proprietor in that regard.

(3) A statement in writing under this section shall -

- (a) be given by the original proprietor to the purchaser before the purchaser signs any contract, agreement or document whatsoever legally binding or intended to bind the purchaser legally in respect of the sale; or
- (b) form part of a contract, agreement or document referred to in paragraph (a).

...

(5) If the original proprietor fails to give to a purchaser -

- (a) a statement in compliance in every respect with sub-sections (1), (2), and (3); or

...

the purchaser may void the contract, agreement or other document signed by him in relation to the original proprietor by notice in writing given to the original proprietor within 30 days after he becomes aware of the failure.

...

(6) Upon the voidance of a contract referred to in this section the original proprietor shall be liable at law for the repayment to the purchaser of all monies paid by him under the contract and such monies shall be recoverable, by action as for a debt, by the purchaser accordingly.

"...

(10) In any civil proceedings arising out of or connected with a contract, agreement or document to which this section relates the onus of proving that the statement referred to in sub-section (2) was duly given shall lie upon the party so alleging."

It should also be noted that if certain variations are made to particulars given in the statement between the date of the contract and the date of registration of the plan, the original proprietor must forthwith give notice to the purchaser of such matters, and "if the rights of the purchaser have been materially affected (proof of which shall lie on him)" he may "void the contract" within 30 days of the receipt by him of such notice (sub-section 4). Failure to give such notice gives the purchaser a right to "void the contract" provided "he proves that his rights have been materially affected" thereby (sub-section 5), but such step must be taken "within 30 days after he first becomes aware of the failure". Provided the purchaser can bring himself within the ambit of sub-section (8) he may "void" the contract notwithstanding the fact that the transaction has been completed and he has become registered as proprietor of the land.

M.M. Cussan, a director of the respondent, swore two affidavits, and these were principally relied on by the respondent as raising a triable issue based on s. 49 of the Act. That affidavit material establishes that the contract was forwarded to the respondent for execution under cover of a letter dated 3rd April 1981. The contract was executed "within a couple of days" and returned. At that time the contract was not executed by or on behalf of the applicant, nor was the s. 49 statement (the Eleventh Schedule) signed or dated. It would appear that the applicant executed the contract and signed that statement on or about 27th May 1981, before forwarding it to the respondent's solicitors. In an affidavit, M.F. Elliott, the respondent's solicitor, swears to the fact that he received the

contract on 1st June 1981. Paragraph 8 of the affidavit of M.M.

Cussan is important; it reads:-

" The defendant company was totally unaware as to the significance of a section 49 statement until its discussions with its solicitors on the 18th day of June 1982. In fact none of the directors of the defendant company had heard of or read section 49 of the Building Units and Group Titles Act 1980 prior to its aforementioned discussions with its solicitors on the 18th day of June 1982".

The affidavit deposes to the fact that on 18th June 1982 the respondent was informed by its solicitors of some "defects" in the s. 49 statement. In consequence the respondent gave instructions that a notice "voiding" the contract be forwarded to the applicant's solicitors.

As I have already noted, the respondent's solicitors received the contract on 1st June 1981. Mr. Elliott goes on to depose:-

" I, this deponent have the conduct of this conveyancing matter and neither myself or any other person in my employment became aware of any defect in the section 49 certificate on page 12 of the original contract at the time of receipt of the contract."

He swears that it was only during discussions "with my client" on the 18th day of June 1982 that he became aware of a "defect" in the section 49 certificate. Material filed on behalf of the respondent alleges that some further "defects" in that Statement were unearthed on 3rd August 1982.

Mr. Pincus Q.C. who appeared for the applicant conceded that grounds need not be expressly stated in a notice of avoidance served pursuant to s. 49(5), and that in consequence if grounds were stated the purchaser was not limited to them in proceedings such as these. Mr. Skoien, counsel for the respondent, relied on five alleged breaches of s. 49, which he particularised as follows:-

- (i) failure to state the address of the original proprietor;
- (ii) failure to set out in full the by-laws;

- (iii) failing to clearly identify the lot;
- (iv) failing to state the date of the notice;
- (v) failing to give a signed statement in accordance with the requirements of s. 49.

Before considering the legal implications of those matters it is necessary to look carefully at the contract and to define in each instance the alleged failure more particularly. I will deal with each allegation in the order listed.

(i) The Eleventh Schedule, which is said to be the statement pursuant to s. 49, does not contain an address for the original proprietor, though it does contain an address for the purchaser. However the Eleventh Schedule is on page 12 of the contract, and it is on that page that the signatures appear which constitute the due execution of the contract by the parties. Just below that there appears the following notation:-

"Vendor's solicitors:
J.D. Johnson & Co.
5th Floor,
29 Elkhorn Avenue,
Surfers Paradise. 4217
(P.O. Box 5063 Gold Coast Mail Centre. 4217)".

Clause 19 of the contract provides:-

"Any notices to be given to (sic) the provisions of this Agreement save notice given in terms of clause 3 hereof shall be sufficiently given in writing and forwarded by either party to the other or to the other solicitors by ordinary mail to the address of the party shown in this Agreement or in the case of the solicitors to the address of the usual place of business, and such notice shall be deemed to be received on the day following the day on which it was posted, whether or not such notice is in fact received by the other party or that party's solicitors. Notice may be served in any other manner recognised by law."

Clause 3 of the contract, so far as is relevant provides that in certain circumstances "either party may cancel this contract by written notice to the other or to its solicitors". It should also be noted that though the vendor's agent is named in the contract (P.R.D. Realty Pty. Ltd.) no address for the agent appears.

In those circumstances it is alleged there has been a failure to comply with s. 49(2)(b) of the Act.

(ii) Clause 8(h)(i) and the Third Schedule of the contract deal with the by-laws of the Body Corporate. The clause provides:-

"The purchaser agrees that on registration of the Building Units Plan the Vendor as sole proprietor may:-

- (i) amend the By-Laws of the Body Corporate in accordance with the amendments set out in the Third Schedule hereto and any variation thereof as may in its sole discretion seem desirable Provided However that the Vendor shall make no such further amendment as shall materially prejudice the interests of the Purchaser."

The Proposed Alterations as set out in the Third Schedule are introduced by the following statement:-

"In accordance with the provisions of clause 8(h)(i) of the Agreement the Vendor shall as sole proprietor upon registration of the subject Building Units Plan add to the Third Schedule by-laws as set out in the Act the following By-Laws:-"

So far as is relevant s. 30 of the Act provides:-

"(1) Except as provided in this section the by-laws set forth in the Third Schedule shall be the by-laws in force in respect of each plan.

(2) ...a body corporate...may...make by-laws amending, adding to or repealing the by-laws set forth in the Third Schedule or any by-laws made under this subsection."

The Eleventh Schedule does not set out in full the By-Laws set forth in the Third Schedule to the Act, and that constitutes the alleged failure to comply with s. 49(2)(e) of the Act.

(iii) In the Eleventh Schedule to the contract, against the marginal heading "Identification of Unit", the following appears:-

"Unit A on 14th floor as identified in sketch plan in subject agreement (where Building Units Plan has been registered lot 52 in registered Building Units Plan no.)".

Later in that schedule the unit is referred to as "14A". In the description of property sold at the outset of the contract the unit is described as "No. 14A" and as being on the 14th floor. The

floor plan of the unit is that edged in blue and initialled by the parties and as appearing in the Eighth Schedule of the contract.

In those circumstances a failure to comply with s. 49(2)(e) is alleged.

(iv) On its face the Eleventh Schedule is dated 27th May 1981, which is also the date of the contract. However, as appears from the affidavits of M.M. Cussan referred to above, the contract was executed by the respondent at least a month prior to that date; and when the contract was executed by the respondent no date appeared for that Schedule.

In those circumstances failure to comply with s. 49(2)(f) is alleged.

(v) On its face the Eleventh Schedule is signed by J.D. Johnson, a solicitor, who was duly constituted attorney for the applicant by a General Power of Attorney dated 20th May 1981. In view of the affidavit material of M.M. Cussan referred to above, it would appear that such signature was placed on that Schedule after the contract was executed by the respondent, and the clear inference is that it was placed there on or about 27th May 1981. As noted above, the fully executed document was forwarded to the respondent's solicitors on or about 1st June 1981.

In those circumstances the respondent alleges a breach of s. 49(2)(g) of the Act.

Mr. Skoien submitted that difficult questions of law were involved and that, following Theseus Exploration N.L. v. Foyster (1972) 126 C.L.R. 507 and Caltex Oil (Australia) Pty. Ltd. v. Bawden (1979) Qd.R. 62, I should not determine the matter summarily, but should send the matter to trial. However, all relevant questions were fully argued before me, and evidence (including cross-examination) would not alter the basic facts material for a determination of the issues raised. The matter would in any event

be determined by a single Judge at first instance, and there seems nothing to be gained by adjourning the matter to the civil sittings list. It was submitted by its counsel that the applicant would be severely prejudiced by the necessary delay in awaiting trial at a civil sittings, and that there was no sufficient reason for my declining to determine the matter. In all the circumstances, I consider it appropriate to deal with the matter on the application for summary judgment.

Mr. Pincus submitted that upon a proper construction of s. 49 there was no "failure" by the applicant such as would give the respondent a right to "void" the contract under s. 49(5). His argument commenced with an analysis of s. 49(3). That sub-section clearly provides an alternative procedure for the giving of the relevant statement to the purchaser. It may be given as a separate document before the purchaser signs any contract binding him to the purchase. In that event the document itself would have to meet all of the requirements of s. 49, and would have to be signed and dated by the original proprietor before it was given to the prospective purchaser. Alternatively, the "statement" may "form part of the contract". Where that procedure is followed the better course would always be to designate that "part of the contract" which is said to meet the requirements of s. 49. That was attempted in this case by incorporating the Eleventh Schedule into the contract. However it was argued before me, and I accept the argument, that there may be compliance with s. 49 provided all of the required information is clearly set out somewhere in the contract. A contract, including its schedules, must be read as a whole, and I can find nothing in s. 49 (particularly sub-section (3)(b)) which would displace that general principle. I also accept the applicant's argument that, where the statement forms part of the contract, it is not necessary that there be a relevant date and signature of the original

10

proprietor prior to the execution of the contract by the purchaser. Where s. 49(3)(b) is relied on the operative signature and date may be the date of final execution of the contract and the signature of the original proprietor effecting such execution. The "statement" is then "given to the purchaser" when he is provided with a copy of the executed contract. That follows from the clear difference in wording between paragraphs (a) and (b) of sub-section (3). If the legislature intended that, where the statement forms part of the contract, the original proprietor's signature should be on the contract before it is executed by the purchaser then it could have and would have said so expressly. Where a "statement in writing" before contract is relied on, signature and date is necessary so that the document can be identified and its date is known; the latter is important because its accuracy is to be established as at that date.

On that construction of s. 49 there is no substance in grounds (iv) and (v) relied on. Further, when one refers to the contract as a whole, there is no failure to state the address of the original proprietor. It was conceded by both counsel before me (each making reference to the Shorter Oxford English Dictionary) that "address" in the section meant "the direction or superscription of a letter"; in other words, an address for service. The applicant (original proprietor) is a corporation, and as such (arguably) can have no residence (c.f. Australasian Temperance & General Mutual Life Assurance Society Ltd. v. Howe (1922) 31 C.L.R. 290). The address of a corporation for purposes of s. 49 must clearly be an address where notices and letters intended for it may be sent with some assurance that they will be received (c.f. Dolcini v. Dolcini (1895) 1 Q.B. 898). In the circumstances there is no reason why the address for the original proprietor could not be care of its solicitors, and that is precisely what the contract, read as a whole,

provides.

As pointed out above the contract does not set out in full the By-Laws to be found in the Third Schedule of the Act. Mr. Pincus submitted that "set out" meant "defined with sufficient certainty". It seems to me that there is much to support that argument. As I have pointed out above no-one could properly understand the provisions of the contract without reading (and having some understanding of) the Act. The intention of the legislature was clearly to ensure that a purchaser should be aware of any alterations made to the standard By-Laws found in the Third Schedule to the Act. The applicant in this case has clearly met that requirement by setting out in full all of the alterations so made. In so setting out the alterations reference is made to the By-Laws contained in the Third Schedule to the Act, and it is difficult to see how a purchaser could comprehend those alterations without a reference to the Schedule to the Act. If a purchaser was not concerned enough to read the Schedule in the Act, it is unlikely that he would be concerned enough to read a further Schedule to the contract. In the circumstances I hold that the By-Laws have been defined with sufficient certainty and that in consequence they have been "set out" as required by s. 49.

Finally, I cannot see any basis on the evidence before me for holding that there has been a failure "to clearly identify the lot". It was submitted for the respondent that the contract related to a "large and confusing piece of property" and that in consequence the developer should take particular care in relation to the identification of the lot, the subject of the contract. Even assuming that such description is accurate, I am satisfied that by marking the floor plan and having it initialled, the parties clearly identified the lot which was the subject of their contract.

It follows that on the proper construction of s. 49 there has

been no failure on the part of the applicant (original proprietor) which would give the respondent (purchaser) the right to "void the contract" pursuant to sub-section (5).

There is another reason for holding that the respondent has not established a triable issue on the facts it has alleged. It will be observed that sub-section (5) requires the purchaser to "void the contract" within 30 days "after he first becomes aware of the failure". Argument was addressed to me on the proper construction of that latter expression. Mr. Skoien submitted that a purchaser would not be "aware of the failure" until he knew all of the facts and all the legal implications which flowed therefrom by virtue of the operation of s. 49. When one considers the effect of sub-section (8) it is clear that such a construction would have a drastic effect on contracts subject to the Act. Counsel did not shrink from his argument because of that consideration, and asserted that though it was "draconian", the legislature obviously intended that there should be extreme protection for purchasers in situations to which the Act applied. On the other hand Mr. Pincus submitted that a purchaser was "aware of the failure" when he was "aware of the facts constituting the failure". It appears to me that the section must be construed as contended for by Mr. Pincus. If the section were not so construed a purchaser could "keep his options open" by knowing the facts but deliberately not bothering to look at the section. He could then elect, even after completion, to "void the contract" when he subjectively for the first time became "aware" of the law. If the respondent's submission is correct, it would be necessary for the original proprietor to establish that the purchaser had an understanding of the section - it would not be sufficient even to establish that the purchaser had read the section. I do not consider that the legislative provision overturns the long established principle that everyone is assumed to know the law. The Courts have

held that that such principle is not necessarily overturned by a remedial provision (c.f. s. 31 of the Limitation of Actions Act 1974 and Re Ex parte Bolewski (1981) Qd.R. 54 at 59-60 per W.B. Campbell J. (as he then was) and Harris v. Gas and Fuel Corporation of Victoria (1975) V.R. 619 at 624).

Further, the Court has no power to excuse a failure to comply "in every respect" with s. 49(1), (2) and (3); that is to be contrasted with a failure to comply with sub-section (4) where the purchaser must prove "that his rights have been materially affected" by the failure. If the respondent's suggested construction was adopted the consequences would be so unjust that one would seek to find some other construction more consistent with existing principles of contract law. Such considerations re-inforce my view that the applicant's suggested construction is correct.

If, then, there be failure to comply with s. 49 (contrary to my findings above) such failure was obviously known to the respondent when it received the contract. The affidavit material asserts, for example, that the Eleventh Schedule was neither dated nor signed when initially received. If that be a relevant failure then it was known to the respondent in or about the month of April 1981, and time would have commenced to run from then. Even without recourse to the presumption that "when a man signs a deed he is acquainted with its contents" (c.f. In Re Cooper; Cooper v. Vesey (1882) 20 Ch.D. 611 at 629) it is obvious in this particular case that the respondent was aware of any relevant failure in or about April 1981, and in consequence could not validly "void the contract" pursuant to s. 49 in June 1982.

In construing sub-section (5) the observation of Knox C.J. and Gavan Duffy J. in Australasian Temperance & General Mutual Life Assurance Society Ltd. v. Howe at 294 is apposite:-

"The rule is that words used by the Legislature should be given their plain and natural meaning unless it is manifest from the general scope and intention of the statute that injustice and absurdity would result from so construing them."

The construction I have placed on the section is arguably in accordance with the "plain and natural meaning" of the words, but if it were to be said that the "plain and natural meaning" favoured the respondent's construction, "injustice and absurdity would result" (particularly where sub-section (8) came into play) and in consequence that construction ought to be avoided if there is some other meaning which the section fairly and properly may bear. Construing the section as I have gives ample protection to a purchaser. The legislature could not have intended to overthrow the basic principles of inviolability of contracts to the extent which would flow from an adoption of the alternative construction.

I hold that the respondent has not established a triable issue and that the applicant is entitled to the judgment it seeks.

IN THE SUPREME COURT
OF QUEENSLAND

No. 2969 of 1982

BETWEEN:

SUNBIRD PLAZA PTY. LTD.

Plaintiff

AND:

BOHETO PTY. LTD.

Defendant

BEFORE THE HONOURABLE MR. ACTING JUSTICE G.N. WILLIAMS
THE TWENTIETH DAY OF SEPTEMBER 1982

The defendants having appeared to the Writ of Summons herein and the plaintiff having applied for summary judgment under Order 18A Rule 1 of the Rules of Court AND UPON HEARING on the Nineteenth day of August 1982 Mr. Pincus of Queen's Counsel with him Mr. Robin of Counsel for the plaintiff and Mr. Skoien of Counsel for the defendant AND UPON READING the Summons filed on the Twenty-eighth day of July 1982, the affidavit of HOWARD BEACONSFIELD filed on the Nineteenth day of August 1982 by leave, the affidavit of JEFFREY DOUGLAS JOHNSON filed on the Nineteenth day of August 1982 by leave, the affidavits of MARGARET MARY CUSSAN filed on the Sixth day of August 1982 and the Twelfth day of August 1982, the affidavit of MICHAEL FREDERICK ELLIOTT filed on the Sixth day of August 1982 and the affidavit of LINDA LORRAINE PHELPS filed on the Sixth day of August 1982 IT IS THIS DAY DECLARED that the agreement between the plaintiff as vendor and the defendant as purchaser being the agreement dated the Twenty-seventh day of May 1982 in the Writ of Summons mentioned ought to be specifically performed and carried into execution and IT IS ORDERED AND ADJUDGED the same accordingly.

4987
SUPREME COURT
OF QUEENSLAND
18. OCT. 1982
FILED
BRISBANE

ORDER

42.00
169688
J.D JOHNSON AND COMPANY,
Solicitors,
Level 8,
MLC Centre,
239 George Street,
BRISBANE. Q. 4000.
Tel: 229 6811 (RKJ)

AND IT IS THIS DAY ORDERED that the defendant within fourteen days of today do pay into Court to the credit of this action the balance purchase price due under the said agreement, namely \$133,650.00, together with interest upon the said balance purchase price in the sum of \$58.59 per day for each and every day from (and including) 26th June 1982 until (and including) the date when such payment into Court shall be made

AND IT IS THIS DAY FURTHER ORDERED that an account be taken if either party by its solicitors shall so require by written notice to the other party's solicitors given within three calendar months of today's date as to the adjustment of rates taxes and outgoings provided for in the said agreement

AND IT IS THIS DAY FURTHER ORDERED that the party by whom any sum shall be found payable to the other on the taking of such account pay such sum within seven days of the taking of such account by such party to the other party's solicitors

AND IT IS THIS DAY FURTHER ORDERED that within fourteen days after production of the receipt for payment into Court as aforesaid to the plaintiff's solicitors, the plaintiff execute and deliver to the solicitors for the defendant a Memorandum of Transfer in registerable form of an estate in fee simple in Lot 52 on Building Units Plan No. 4993, free of all encumbrances, such transfer to be in favour of a transferee to be nominated by the defendant in writing upon or prior to the production of the receipt as aforesaid, otherwise to be in favour of the defendant; AND that the plaintiff do at the same time deliver to the solicitors for the defendant the Certificate of Title to the said Lot 52



free from all encumbrances and any other documents necessary to enable the transferee to become registered as proprietor of an estate in fee simple in Lot 52 on Building Units Plan 4993 free of all encumbrances; AND that the plaintiff do at the same time deliver vacant possession of the said Lot to the defendant AND IT IS THIS DAY FURTHER ORDERED that the plaintiff be at liberty to apply at any time and from time to time on notice to the defendant for an order for the payment out of Court to the solicitors for the plaintiff at such sum or sums as may be necessary to discharge any encumbrance upon the said Lot 52 or to gain possession of the relevant Certificate of Title in order to perform its obligations under the said agreement or this order.

AND IT IS THIS DAY FURTHER ORDERED that the plaintiff do recover its costs of this action including the costs of the application for Judgment to be taxed.

AND IT IS THIS DAY FURTHER ORDERED that any party be at liberty to apply as it may be advised, and that leave be reserved to all parties to move for the making of such further orders for the purpose of specifically performing the said agreement as circumstances may require.

AND IT IS THIS DAY FURTHER ORDERED that if a Notice of Appeal is lodged within fourteen days of today's date there be a stay pending the determination of such appeal.

By the Court


Deputy Registrar.

No. 25 - Reasons for Judgment of
Full Court of Supreme
Court of Queensland
pronounced by The Chief
Justice and Matthews and
McPherson JJ.
Dated 10 February 1983.

IN THE SUPREME COURT
OF QUEENSLAND

Writ No. 2969 of 1982

BETWEEN:

SUNBIRD PLAZA PTY. LTD.

(Plaintiff)
(Respondent)

AND:

BOHETO PTY. LTD.

(Defendant)
(Appellant)

THE CHIEF JUSTICE
MATTHEWS J.
McPHERSON J.

Judgment delivered by The Chief
Justice, Matthews J. and McPherson J.
on the 10th February, 1983.

"APPEAL DISMISSED WITH COSTS."

Reasons for Judgment
of Full Court of
Q'land

IN THE SUPREME COURT
OF QUEENSLAND

No. 2969 of 1982

BETWEEN:

SUNBIRD PLAZA PTY. LTD.

(Plaintiff)

Respondent

-and-

BOHETO PTY. LIMITED

(Defendant)

Appellant

JUDGMENT - THE CHIEF JUSTICE

Delivered the Tenth day of February, 1983.

I agree that the appeal should be dismissed for the reasons given by McPherson J. I agree with those reasons except for one matter which makes no difference to the order proposed by him. I have reached the conclusion that, in the circumstances of this case, there has not been a failure on the part of the respondent to comply with the requirements of s.49(2)(e) of the *Building Units and Group Titles Act 1980* ("the Act"). This provision is to the effect that the written statement shall "set out or be accompanied by the by-laws in force in respect of the plan or the proposed by-laws in respect of the proposed plan". The statement is the eleventh schedule to the contract, that schedule being headed "STATEMENT BY ORIGINAL PROPRIETOR PURSUANT TO SECTION 49 OF THE 'BUILDING UNITS AND GROUP TITLES ACT 1980'", and para. 5 of the statement reads "BY-LAWS: In accordance

with the third schedule to the subject agreement subject only to the provisions of condition 8(h) (i) of the subject agreement". That condition reads as follows:-

"The purchaser agrees that on registration of the Building Units Plan the Vendor as sole proprietor may:-

(i) Amend the By-Laws of the Body Corporate in accordance with the amendments set out in the Third Schedule hereto and any variation thereon as may in its sole discretion seem desirable PROVIDED HOWEVER that the Vendor shall make no such further amendment as shall materially prejudice the interests of the Purchaser."

The third schedule to the agreement is headed "PROPOSED ALTERATIONS TO THIRD SCHEDULE BY-LAWS" and commences with the words:- "In accordance with the provisions of Clause 8(h) (i) of the Agreement, the Vendor shall as sole proprietor upon registration of the subject Building Units Plan add to the Third Schedule By-Laws as set out in the Act the following By-Laws". There then follows a set of 25 by-laws. In my opinion the eleventh schedule statement clearly and unequivocally designates or identifies the by-laws which are in force in respect of the relevant building units plan. The third schedule to the agreement, read with para. 5 of the statement, makes it plain, in my opinion, that the 25 new by-laws are being added to the by-laws which are contained in the Third Schedule to the Act. Clause 8(h) (i) constitutes an agreement by the appellant purchaser that the respondent may amend the by-laws on the registration of the plan in accordance with the third schedule, and the third schedule constitutes an agreement or undertaking by the respondent vendor that it will so amend the by-laws.

It was submitted that, in order to comply with s.49(2) (e) of the Act, all of the by-laws must be either attached to the statement or delivered with it, and reliance was placed upon the judgment of the High Court in *Evans v. Crichton-Browne* (1981) 55 A.L.J.R. 287, at p. 291.

There the Court was concerned with s.185(a) of the *Commonwealth Electoral Act 1918*, as amended, which provided that every petition disputing an election or return shall "set out the facts relied on to invalidate the election or return". Three proceedings under that Act were each commenced by a separate petition, and one petition (that of Evans) in para. 30 of it stated that "Full particulars of such statements have been given in other petitions presented to this Honourable Court". It appears from the reasons of the Court (at p. 288) that, in the course of the hearing, counsel for Evans did not attempt to support para. 30. In its reasons for judgment the Court said, at p. 291:-

"Paragraph 30 of the petition of Mr. Evans incorporates by reference the contents of other petitions, and does not set out the statements of which complaint is made. In that respect the petition does not comply with the provisions of s.185(a)"

In my opinion, the facts in *Evans v. Crichton-Browne* are distinguishable from those in the present case. There the petition merely attempted to incorporate facts by reference to those stated in separate petitions instituting separate proceedings, whereas here the written statement refers clearly to by-laws "in accordance with the third schedule to the subject agreement". The statement does, as is permitted by the Act, "form part of" the agreement (s.49(3)(b)), and I can see no reason why regard may not be had to the other parts of the agreement in order to ascertain what are the by-laws made applicable to the plan or proposed plan.

Had the eleventh schedule to the agreement stated with sufficient clarity that the by-laws were "in accordance with those contained in the Third Schedule to the Act", I consider that it would have complied with the provisions of s.49(2)(e). I do not think that the words "set out" in the context of the Act, mean "set out in full". Sub-section (2) of s.49 should be read together with sub-s. (3)(b) and

ss. 30 and 49(4)(b) of the Act. Section 30(1) provides that, except as provided in the section, the by-laws set forth in the Third Schedule shall be the by-laws in force in respect of each plan. Section 49(4)(b) requires that an original proprietor who has given a statement in writing to the purchaser in respect of the sale of a lot and who, before the registration of that purchaser as the proprietor of the lot, makes a by-law other than one which is the same as a proposed by-law that was set out in or accompanied the statement given to the purchaser, amends, adds to or repeals any by-law, the original proprietor shall forthwith give to the purchaser notice in writing "disclosing full particulars thereof".

The several phrases used in s.49(2), namely, "clearly identify" the lot, "state" the names and addresses, "set out" the lot entitlement, "set out" any management agreement, "set out" the by-laws, "state" the date on which the statement is given, and the words used in s.49(4) "notice in writing disclosing" full particulars disclose a legislative intention that the purchaser of a lot shall be given such information which it is considered desirable that he should obtain. When the statement forms part of the contract itself, as in this case, it seems to me that the purchaser has been given all the necessary information as to the contents of the by-laws. It is not without significance that s.31 provides that where any lot is leased otherwise than to a proprietor of a lot, the lessor shall "provide the lessee with a copy of the by-laws for the time being in force in respect of the plan". The significance of this wider provision - "a copy of the by-laws" - is that a lessee would not necessarily have seen a copy of the original s.49 statement or a copy of the original contract of sale.

We were referred to dictionary definitions of the phrase "set out", but little help can be gained from this loosely and widely used expression in the construction of the meaning of ordinary words in

a statute dealing with arrangements or information of a commercial nature to be made or contained in contracts of sale. However, I mention that one of the meanings of the phrase in the *Oxford English Dictionary* (Vol. IX p. 545) is "To declare, proclaim, show forth, reveal", in *Webster's New International Dictionary* (2nd Ed.) (Vol. 2 p. 2291) one meaning is "To recite, describe, or state at large; as facts carefully set out", and in the *Macquarie Dictionary* (p. 1576) one is "To state or explain methodically". If anything, such definitions support the view that general words and phrases should be construed in accordance with the legislative intention.

In my opinion, the eleventh schedule to the subject agreement described or explained adequately to the appellant what were the by-laws in respect of the material building units plan.

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BETWEEN:

SUNBIRD PLAZA PTY. -LTD.

Plaintiff

(Respondent.)

AND:

BOHETO PTY. LTD.

Defendant

(Appellant)

JUDGMENT - MATTHEWS J.

Dated the 10th day of July, 1983.

I have had the advantage of reading the reasons for judgment of McPherson J. and because in the course of those reasons the relevant sections of the Building Units and Group Titles Act 1980 (the Act) and the facts relevant to the appeal are detailed, it is unnecessary for me to set them out. I agree with McPherson J. that the appeal should be dismissed for the reason that the attempt by the appellant to rely on rights conferred on it by s. 49(5) of the Act, is unsupported by evidence which would bring it within the terms of that subsection. In my opinion a person desirous of making use of that subsection becomes aware of the proprietor's failure to comply with s. 39(2) of the Act when he knows the facts which disclose a breach.

I also agree with His Honour's conclusion (and his reasons for that conclusion) that in the instant case there had been a failure by the respondent to "set out" in the section 49 statement the by-laws in force in respect of the plan; in these circumstances it may be unnecessary for me to discuss the further matters raised on the appeal but I do so because in respect of some of them, my

views differ from those expressed by McPherson J. I would mention in passing the appellant's submission to us that the learned Judge of first instance should, because of the complexity of the matter have refrained from coming to any conclusions and should have sent it to trial. Such a submission to an appellate Court which hears the merits argued has little appeal but in any event it does not seem to me that the discretion of His Honour in any way miscarried.

Except in those cases where an accompanying document containing particulars or details is permitted by the Statute, I think that the statement contemplated by s. 49 of the Act is to be self-contained in the sense that where given before any contract is signed by the purchaser or given to the purchaser as part of the contract accepted by him, it must within its own confines give the information required by s. 49(2) of the Act. In my opinion the original proprietor is not free to give that information as part of the contract by giving it in such a way as will require the purchaser to look for it throughout the tendered contract, but this does not mean that he may not identify the lot by reference as was done in this case.

The relevant difficulties of the section arise because pursuant to s. 49(2)(f) the proprietor is to state the date on which the statement is given and because s. 49(3) enables the giving of a statement before the signing of a contract by the purchaser, (which clearly envisages a separate document complete in itself) whilst allowing as an alternative that the statement form part of the contract. This alternative is provided by s. 49(3)(b) which, when regard is had to s. 49(1), must be understood as providing another means of giving the required statement. There is little

room to doubt that the statement (whichever means of giving it be adopted) is not "given" to a purchaser until it is received by him and therefore if the correct date of giving the statement is to be a matter of certainty, (again whichever means of giving it be adopted) the original proprietor and the prospective purchaser would need to be in each other's presence when the statement is given. This would make for an absurd situation and to avoid it I would suggest that the requirement of stating the date of the giving of the statement would be satisfied by some circumlocution, in a form such as "this statement is made on (giving the date) and will be given on the date of its receipt by the purchaser". I appreciate the awkwardness of this approach and adopt it only to avoid what in many cases would render compliance with the section impossible.

Because, as I have said, the section contemplates a statement complete in itself, neglect to supply the address of the proprietor within it, amounts to non-compliance with s. 49(2). I appreciate, with respect, the force of the argument that in the circumstances one would consider the address to be stated in the light of the purpose of the requirement of the Statute (Blackwell v. England (1857) 8 E. & B. 541, 120 E.R. 202) and, having regard to Cl. 19 of the contract, the address for service of the parties may well be the address of their solicitors but one comes back to this, that the address is not in the statement and I do not see that it is to the point that one should then look at the solicitors' address elsewhere in the contract, with the object of filling the gap created by the omission from the statement.

IN THE SUPREME COURT

OF QUEENSLAND

No. 2969 of 1982

BETWEEN:

SUNBIRD PLAZA PTY. LTD.

(Plaintiff)

Respondent

-and-

BOHETO PTY. LIMITED

(Defendant)

Appellant

JUDGMENT - McPHERSON J.

Delivered the day of 1983.

This is an appeal against a judgment of G.N. Williams A.J. (as he then was) by which His Honour ordered specific performance of a written contract dated 27th May, 1982 for the sale by the plaintiff as vendor (who is the respondent to this appeal) to the appellant defendant as purchaser of a building unit no. 14A, being Lot 52 in a building units plan which the vendor proposed to register under the Building Units and Group Titles Act 1980 ("The Act"). The application for judgment was made pursuant to 0.18A of the Rules of the Supreme Court which since 1965 have provided for summary judgment for specific performance. The application was heard in Chambers by His Honour, who delivered a reserved judgment some four weeks later.

The submissions before the learned judge and in this court raised once again the question of the proper interpretation of s. 49 of the Act as well as the further question whether the

requirements of that section had been complied with in the instant case. The material provisions of s. 49 are as follows:-

"49. (1) An original proprietor shall give to the purchaser of a lot or of a proposed lot a statement in writing in compliance in every respect with the requirements of this section.

(2) A statement in writing under this section shall -

- (a) clearly identify the lot or proposed lot to which the statement relates;
- (b) state the names and addresses respectively of the original proprietor and the purchaser;
- (c) set out or be accompanied by particulars of -
 - (i) the lot entitlement of every lot and the aggregate lot entitlement; or
 - (ii) the proposed lot entitlement of every proposed lot and the proposed aggregate lot entitlement;
- (d) set out or be accompanied by details of -
 - (i) any management agreement that the original proprietor has entered into in respect of the plan or proposed plan; and
 - (ii) any existing agreement for service or maintenance of the common property or any part thereof, including the terms and conditions of that agreement and the estimated costs thereof to the proprietor of each lot;
- (e) set out or be accompanied by the by-laws in force in respect of the plan or the proposed by-laws in respect of the proposed plan;
- (f) state the date on which the statement is given; and
- (g) be signed by the original proprietor or on his behalf by a person authorized in writing by the original proprietor in that regard.

(3) A statement in writing under this section shall -

(a) be given by the original proprietor to the purchaser before the purchaser signs any contract, agreement or document whatsoever legally binding or intended to bind the purchaser legally in respect of the sale; or

(b) form part of a contract, agreement or document referred to in paragraph (a).

(4) . . .

(5) If the original proprietor fails to give to a purchaser -

(a) a statement in compliance in every respect with subsections (1), (2) and (3); or

(b) . . .

the purchaser may void the contract, agreement or other document signed by him in relation to the original proprietor by notice in writing given to the original proprietor within 30 days after he first becomes aware of the failure . . ."

Before us it was submitted by Mr. de Jersey Q.C. for the appellant purchaser that the vendor, who within the meaning of the section was the "original proprietor", had failed to give to the latter a statement in compliance in every respect with the requirements of s. 49. The four respects in which the vendor was said to have fallen short of its statutory duty are: (1) failure clearly to identify the lot or proposed lot: subs.(2)(a); (2) failure to state the address of the original proprietor: subs.(2)(b); (3) failure to set out the by-laws or proposed by-laws in respect of the plan or proposed plan: subs.(2)(e); and (4) failure to state the date on which the statement was given: subs.(2)(f). in consequence of all, or one or more of these deficiencies, the purchaser was pursuant to s. 49(5) said to be entitled to

and had given, within 30 days of its becoming aware of the failure or failures to comply with the statutory requirements, written notice of his election to "void" the contract, and consequently was not liable in respect thereof. It was also argued that, because similar submissions had been advanced before the judge and raised difficult questions of law, the judge had wrongly exercised his discretion in determining those questions as he did on an application for summary judgment, instead of ordering that the action be sent for trial in the ordinary way.

It is convenient to deal first with the last of these grounds of appeal. Difficult questions of law frequently arise in matters before the judge sitting in Supreme Court Chambers. There is authority for saying that in such instances the judge has a discretion which he may properly exercise by declining to determine such matters of law in Chambers for reasons such as pressure of work, the complexity of the issues involved, or the quality (or lack of it) of the submissions presented by counsel. But to require that a judge should invariably refrain from determining what are said to be difficult questions of law in Chambers, even though he may be ready, willing and able to undertake the task, is to deprive him of the discretion which the Rules unquestionably confer upon him in relation to such matters. The only likely result of this form of enforced judicial inertia is the kind of lengthy

and unnecessary delay that is traditionally identified with a denial of justice. However, whatever may be the merits or demerits at first instance of the course urged by the purchaser, the repetition of that submission before an appeal court tends to be self-defeating. If the true complaint is that the circumstances and atmosphere prevailing in Chambers are not conducive to clarity of argument or judgment on matters of law, then on appeal the purchaser has all the advantages that he previously hoped for from a formal trial. In place of a trial before only one judge, the appellant now has the advantage of a determination by three. In Theseus Exploration N.L. v. Foyster (1972) 126 C.L.R. 507, which was the principal authority relied upon in support of the submission on this point, the High Court determined finally an application for summary judgment which had raised questions of law of some difficulty. In doing so, the court reversed the decision of the primary judge, and ordered that judgment be entered in favour of the plaintiff for the sum claimed, Stephen J. remarking that "it would be contrary to good sense and to justice now, after full argument, to permit the action to go to trial in the Supreme Court, followed perhaps by an appeal". In the present case we should, if we are not in any event bound to do so, follow that precedent.

Before turning to the matters of substance in dispute, it is desirable to refer briefly to the contract itself. It is in a printed form, which, although not perhaps standard, may

nevertheless be said to be typical of the contracts now in common use in Queensland for the sale of units, whether already constructed or to be constructed. It embodies on the first page of the document a date, which as I have said is 27th May, 1981; the name of the vendor; of its agent; and of the purchaser, together with the address of the latter, and particulars of the unit sold. By cl. 3 of the contract settlement is to take place within 14 days after notice from the vendor or its solicitors that the relevant building unit plan (which has the effect of creating the lots and associated common property) has been registered in the Titles Office. In accordance with the practice followed in Queensland, time is expressed to be of the essence of the contract: cl. 10. Clause 19 authorizes the sending of notices "to be given [pursuant] to the provisions of" the contract to the address of the usual place of business of the solicitors for the parties. Incorporated at page 12 of the contract, and forming the eleventh schedule thereto, is a "statement by original proprietor pursuant to section 49 of the Building Units and Group Titles Act 1980". This schedule contains provision for the insertion of particulars in conformity with the requirement of s. 49 of the Act, and it bears the date 27th May, 1981 above a signature which, it appears not to be disputed, is that of an attorney for the vendor acting under general power of attorney dated 20th May, 1981. It is necessary that the schedule be here set out in full; but, before doing so, it is relevant to observe that the eleventh schedule occupies only part of the page on which it appears; it is followed on the same page by a brief twelfth schedule, and then by the testimonium embodying the signatures of the

parties, and by the name, address, postal address, and telephone number, of the solicitors for the vendor. The eleventh schedule is in the following form and terms:-

" ELEVENTH SCHEDULE

STATEMENT BY ORIGINAL PROPRIETOR PURSUANT TO SECTION 49 OF THE 'BUILDING UNITS AND GROUP TITLES ACT 1980

1. IDENTIFICATION OF UNIT: Unit A on 14TH Floor as identified in sketch plan in subject agreement (where Building Units Plan has been registered, Lot 52 in Registered Building Units Plan No.).
2. ORIGINAL PROPRIETOR: SUNBIRD PLAZA PTY. LTD.
3. PURCHASER:
Name: BOHETO PTY LTD
Address: 31 COOLONG ROAD VAUCLOSE NSW
4. LOT ENTITLEMENT: In accordance with the second schedule to the subject agreement.
5. BY-LAWS: In accordance with the third schedule to the subject agreement subject only to the provisions of condition 8 (h) (i) of the subject agreement.
- TOTAL UNIT ENTITLEMENT 165 MANAGERS REMUNERATION PER ANNUM
- UNIT 14A ENTITLEMENT 2 PRO RATA SHARE OF MANAGERS REMUNERATION PER ANNUM
6. EXISTING AGREEMENTS FOR SERVICE OR MAINTENANCE OF COMMON PROPERTY: Any existing agreements in writing for service or maintenance of the common property or any part thereof other than the management agreement are annexed hereto together with a schedule of the cost thereof to each proprietor on the basis of the unit entitlement.

Where an existing Agreement for such service or maintenance of the common property has been entered into but is not in writing then details thereof are annexed hereto together with a schedule of the cost thereof to each proprietor on the basis of unit entitlement.

7. DATE OF THIS STATEMENT: 27th May 1981

SIGNED on the day abovenamed for and on behalf of the original proprietor by its Attorney duly authorised for that purpose:

(signature)
.....

Written vertically in the left hand margin opposite the eleventh schedule and signed or initialled are the words "No management agreement entered into at the date of this contract". Nothing turns on this addition, which was evidently inserted in response to the provisions of s. 49(2)(d).

Of the four alleged deficiencies relied on by Mr. de Jersey the first is the lack of clear identification of the subject lot. The eleventh schedule records it as unit 14A. On the first page of the contract the unit sold is also identified as No. 14A and, more fully, as Lot 52 on the building units plan, floor 14th, with floor plan "in accordance substantially with the plan in the eighth schedule hereto and edged in blue. The said plan is incorporated in this Agreement for identification only". It is conceded that the appropriate edging in blue appears on the plan in the eighth schedule. However, two points are

made about the foregoing means of identification of the lot in question. The first is that it does not indicate the location of the unit, or, more accurately, the building of which the unit forms a part, in relation to the land on which that building stands. This it is said, means that it cannot be determined where, in relation to the points of the compass, the unit is located. However, there are, in the case of a building not yet constructed, obvious difficulties in describing and identifying the precise compartment of airspace into which the constructed unit will fit, and I am satisfied that by s. 49(2)(a) the legislature does not require this to be done. The lot is sufficiently identified by the unit number, lot number, the floor on which it is intended to be, and the detailed drawing contained in the eighth schedule. That is not to say that a purchaser has no need to be, or in the present case has not been, informed of the geographical aspect of the unit which he has agreed to buy. Ordinarily one would expect him before contract to make inquiries or perhaps ask to see a plan of the building to determine its location on the land. But it is quite a different matter to suggest that the incorporation of such information is required in order to "identify" the lot. In my opinion, s. 49(2)(a) does not impose such a requirement.

The second point is of somewhat greater consequence. It is that what is contemplated by s. 49 is a statement which is "self-contained"; that is to say, one which contains within its physically discernible limits each of the matters required

to be stated by paragraphs (a) to (f), and which is also signed in conformity with s. 49(2)(g). However, the section does not, as do some other similar legislative provisions such as those found in the Auctioneers and Agents Act 1971-1978, expressly require that the relevant statement or statements be located in a single place or on a single piece of paper without the addition of other matter. An argument for implying such a requirement might perhaps arise if, as in the case of that other legislation, the statement was capable only of being "given". But s. 49(3)(b) enables the statement or statements to "form part of the contract, agreement or document" legally binding the purchaser in respect of the sale, and it was this course that was followed in the case of the present contract. There is no necessary inconsistency with the requirements of s. 49(2)(a) to (f), if the relevant statements appear in different places in the contract, either by express reference to particular schedules; or even without such reference; although in the latter instance it may be that burying the required matter in fine print at an unexpected place in the contract, where it could not readily be discovered, would have the consequence that it was not a "statement" within the meaning and intendment of the legislation.

The second of the alleged deficiencies consists of the failure to state, as required by s. 49(2)(b), the address of the vendor as original proprietor. There is some authority

for saying that the word "address" in a statute prima facie refers to postal address: cf. R. v. Bishop [1959] 2 All E.R. 787, 791. But at least where the statutory requirement is that an address be stated, the meaning of the word is to be determined by the express or implied purpose of the requirement in question: see Blackwell v. England (1857) 8 E. & B. 541; 120 E.R. 202. Viewed in that way, it seems unlikely that what was here required was a residential address, or in the case of a corporate proprietor its registered address, which might well be in Hong Kong or even further afield. What the judge accepted here, and what I decided in a similar case of Sunbird Plaza Pty. Ltd. v. Aurisch Investments Pty. Ltd. (no. 3518/1982; unrep. 16/11/82), is that the purpose of the requirement in s. 49(2)(b) that the original proprietor's address be stated is to identify a place to which a notice under s. 49(5), or other notices or communications under the contract, can be effectively directed. On this footing, and in the light of cl. 19 of the contract, it appears to me, as it did in the foregoing case and to His Honour in this, that the statement on p. 12 of the name and address of the vendor's solicitors is, for this purpose, a sufficient compliance with s. 49 (2)(b).

I propose momentarily to pass over the third matter of complaint and come to the fourth, which is that, contrary to s. 49(2)(f), there was a failure to state the date on which the statement was given. Superficially this complaint is a little perplexing because the eleventh schedule has as the

"date of this statement" the date 27th May 1981, which incidentally is also the contract date. However, the submission rests in part upon the fact that 27th May 1981 is not expressly stated to be the date on which the statement was "given", even if it is the date which the statement bears; and in part also upon the circumstance that the purchaser executed the contract documents (and presumably returned them) within a "couple of days" of their receipt through the post in New South Wales under cover of a letter dated 3rd April 1981 from the vendor's agent (see paragraphs 3 and 4 of M.M. Cussan's affidavit). At the date of such receipt the contract had not been signed by the vendor (para. 4 of that affidavit), and the only reasonable conclusion, therefore is that formally the contract was not concluded until at the earliest, the vendor signed it, or at the latest when the fact of its having done so was communicated to the purchaser.

The date of the contract is, on ordinary principles, presumed to be the date (27th May 1981) that it now bears unless and until the contrary is demonstrated. No attempt has been made to challenge the contract date or to suggest that it is not the date on which the contract was concluded. That being so, 27th May 1981 is necessarily also the relevant date for the purpose of s. 49(2)(f). This is because the vendor here chose the course of making the statement "form part of the contract" in accordance with s. 49(3)(b) instead of giving it before any contract, etc., was signed by the

purchaser in accordance with s. 49(3)(a). It would be impossible for a statement under s. 49(3)(b) to be given before the contract is concluded because, until it is concluded, there will be no contract of which it can "form part". And to attempt to incorporate it after the conclusion of the contract will involve the risk that the contract itself will be rendered void, or voidable by the purchaser, on the ground of material alteration. It was for these reasons that in Brisbane Unit Development Corporation Pty. Ltd. v. Winshaven Investments Pty. Ltd. (No. 3025/1982: unrep. 5/11/82) I reached the conclusion that the date required to be stated by s. 49(2)(f) cannot be other than the date of the contract. If this means that such date may be different from the date on which the statement was "given" (assuming that to mean "delivered"), then it is consistent with the terms of s. 49(3)(b), which provides not that the statement be "given" as under s. 49(3)(a), but that it "form part of the contract". If in this respect there is a resulting inconsistency between the terms of s. 49(2)(f) and s. 49(3)(b), then that inconsistency should be resolved by reading the former as subject to the latter provision.

The final, which is the third, deficiency alleged is the failure in accordance with s. 49(2)(e) to set out the by-laws or proposed by-laws, or to ensure that they accompanied the relevant statement. It is not in dispute that all that was done by the vendor was to set out in the third schedule to the contract the "proposed alterations to third schedule by-laws". The third schedule last referred to is the Third Schedule to the

Act, although the contract fails to make this clear. Section 30(1) of the Act provides that the by-laws set forth in that Schedule shall, except as the section provides, be the by-laws in force in respect of each building units plan. Those by-laws may be amended by special resolution of the body corporate:

s. 30(2). Because in the early stages after registration of the plan the original proprietor may be the only member of the body corporate, it is possible for him to amend the by-laws so as to ensure that they serve his interests alone. It was no doubt because of this that s. 49(2)(e) and s. 49(4)(b) impose the requirements which they do. It may have been the awareness of this that led the framer of the present contract to set out only those by-laws or alterations which added to or diverged from the statutory norm. Nevertheless, I do not consider it possible, consistently with the provisions of s. 49(2)(e), to support the course adopted as being in accordance with the requirements of those provisions. Quite apart from the ordinary meaning of "set out" (as to which, see Evans v. Crichton-Browne (1981) 55 A.L.J.R. 287, 291) the logical extension of that method is that, if no departure from the Third Schedule by-laws is proposed, then no by-laws at all need be set out in conformity with s. 49(2)(e), and that is not what the legislation says. For all that has been said against s. 49, its requirements are at least relatively simple to comply with.

My conclusion, although differing on this point from that of His Honour, is that the vendor here failed to comply with s. 49(2)(e) of the Act in the matter of setting out the by-laws. In consequence a right to "void" (which I take to mean "avoid") the contract arose under s. 49(5) in favour of the vendor, and endured for a period of 30 days after he first became aware of the vendor's failure in that regard. Much argument was in this case, as it has been in others, directed to the meaning of the expression "becomes aware of the failure". Does it require or imply, as a condition precedent to a loss of the right to avoid, actual knowledge of the law and, in particular, of the provisions of s. 49(2) of the Act? Or is the rule that everyone, including a purchaser in Queensland of a building unit, is presumed to know the law?

In my view the answer to both these questions is in the negative. There is no presumption that everyone knows the law (cf. Evans v. Bartlam [1937] A.C. 473, 479); if there were, it would be readily rebuttable; but, in any event, human experience and particularly that of members of the legal profession demonstrates that the truth is otherwise. The true rule is that ignorance of the law, particularly in the realm of criminal law, ordinarily does not excuse wrongful or misguided conduct. Nevertheless, there is, as Mr. Pincus Q.C. submitted and I accept, a tendency to construe statutory provisions as referring to facts, and not law, when they make

awareness of illegality relevant: cf. Iannella v. French (1968) 119 C.L.R. 84, 101, 112, 113. It would be surprising if the legislature had in the present context intended, in enacting s. 49(5), to confer on the purchaser a right to avoid a contract for the sale of a unit, costing many tens and often some hundreds of thousands of dollars; and to protect that right even after he became the registered proprietor (see subs. (8) of s. 49) until some unpredictable future date when the purchaser became fully versed in the details of s. 49(1), (2) and (3) of the Act, of which the precise effects are only now being worked out by the courts.

I therefore reject the argument that a purchaser does not "become aware of the failure" of the original proprietor to comply with those subsections simply because he does not know of the requirements which in law they impose. The problem does not, however, end there because the words in s. 49(4) seem to require as a minimum that the purchaser should at least be aware of the fact that the statutory particulars are not stated, or in this case that the by-laws were not set out in full. In this connexion, we were invited by Mr. Pincus to act on a remark of Sir George Jessel to the effect that there is a presumption that "when a man signs a document he is acquainted with its contents": Re Cooper (1882) 20 Ch. D. 611, 629. Such a presumption would certainly be contrary to universal human experience, and I am not satisfied that this isolated dictum even of the learned Master of the Rolls can

be regarded as establishing any such presumption or proposition. A person is bound by a written but unread contract which he has signed, not because of any supposed presumption that he has read it or is acquainted with its terms, but because, by signing it, he manifests his assent to the terms it contains (see Roe v. R.A. Naylor Limited [1917] 2 K.B. 712, 716, per Atkin J.), whether or not he has read or knows of those terms, and subject only to certain exceptional circumstances recognized by law such, for example, as give rise to a defence of non est factum or operative mistake in the law of contract. The present case therefore is not one in which it can be said that the purchaser can, by reason of its having executed the contract documents in early April 1981, be presumed to know the contents of the Third Schedule or its deficiencies. On the other hand, I do consider that the purchaser, who is otherwise admittedly bound by the contract, is obliged, if he wishes to rely on his having avoided it pursuant to s. 49(5), to establish that he elected to do so within 30 days of his becoming aware of the relevant failure to comply; and here this means within 30 days of having become aware of the fact that the third schedule to the contract failed to set out the proposed by-laws in full. Of this there is not the least evidence. The purchaser's solicitor first came into possession of the executed contract on 1st June 1981. It was not until 18th June in the following year that he discussed with the purchaser the alleged deficiencies in the statements under s. 49 and received instructions to give the notice of avoidance,

which was dated and served on the vendor on 24th June 1982. Whether, during the interval of over a year between receipt of the contract and service of that notice, the vendor did or did not become aware of the fact that the by-laws were not set out does not appear from the affidavits filed on its behalf. This led me to wonder whether, in these circumstances, the defendant might not be entitled to leave to defend; but, I accept the submission that a duty rests upon a defendant who, in resisting summary judgment, relies on facts giving rise to what is said to be a triable issue, to demonstrate the existence or at least the possible existence of those facts. Otherwise a trial may be ordered for the purpose of determining issues that do not exist, or which insidiously creep into existence only after the action is sent for trial. In my opinion, the judge who heard the application was, on the material placed before him, right not to be satisfied that in the terms of O.18A, r. 3 there was an issue or question in dispute which ought to be tried, or that there ought for some other reason to have been a trial of the action.

It follows that in my opinion the appeal should be dismissed with costs.

IN THE SUPREME COURT
OF QUEENSLAND

No. 2969 of 1982

BETWEEN:

SUNBIRD PLAZA PTY. LTD. (Plaintiff)
Respondent

AND:

BOHETO PTY. LIMITED (Defendant)
Appellant

FULL COURT BEFORE: THEIR HONOURS THE CHIEF JUSTICE
SIR WALTER CAMPBELL, MR. JUSTICE MATTHEWS AND
MR. JUSTICE MCPHERSON

THE TENTH DAY OF FEBRUARY, 1983

FULL COURT JUDGMENT

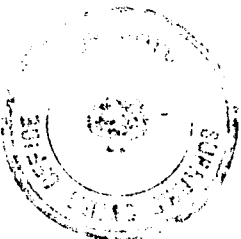
This action having on the Thirtieth day of November 1982 and the First and Second days of December 1982 come on for hearing by way of appeal from the judgment of the Honourable Mr. Acting Justice G.N. Williams pronounced at Brisbane on the Twentieth day of September 1982, whereby it was adjudged that the agreement between the plaintiff as vendor and the defendant as purchaser being the agreement dated the 27th day of May 1981 and in the Writ of Summons mentioned ought to be specifically performed and carried into execution and Orders made to give effect to that judgment and whereby the defendant was ordered to pay the plaintiff's costs of the action and of the application including reserved costs to be taxed
AND UPON HEARING Mr. De Jersey of Queen's Counsel with him Mr. Muir of Counsel for the Appellant and Mr. Pincus of Queen's Counsel with him Mr. Robin of Counsel for the Respondent

IT IS THIS DAY ORDERED that the said Appeal be dismissed with costs.

By the Court
DEPUTY REGISTRAR

D. JOHNSON AND COMPANY,
Solicitors,
Level 8, MLC Centre,
9 George Street,
BRISBANE. Q. 4000.

1: 229 6811 (RKJ)



No. 27 - Order of Full Court of
Supreme Court of Queensland
granting final leave to
appeal.

Dated 2 March 1983.

IN THE SUPREME COURT
OF QUEENSLAND

No. 2969 of 1982

IN THE MATTER of the Rules
Regulating Appeals to Her Majesty
in Council from the State of
Queensland (Imperial Order in
Council of 18th October, 1909)

- and -

IN THE MATTER of Applications for
leave to appeal to Her Majesty in
Council by BOHETO PTY. LIMITED
from the judgments and orders of
the Full Court of the Supreme
Court of Queensland in action
number 2969 of 1982 between
BOHETO PTY. LIMITED, plaintiff
and SUNBIRD PLAZA PTY. LTD.,
defendant

FULL COURT: BEFORE THEIR HONOURS

THE HONOURABLE MR JUSTICE DOUGLAS
THE HONOURABLE MR JUSTICE SHEAHAN
THE HONOURABLE MR JUSTICE CONNOLLY

ORDER

The Second day of March 1983

UPON MOTION this day made unto this Court by Mr de Jersey
of Queen's Counsel with him Mr Muir of Counsel for BOHETO
PTY. LIMITED ("the applicant") AND UPON HEARING Mr Pincus
of Queen's Counsel with him Mr Robin of Counsel for
SUNBIRD PLAZA PTY. LTD. ("the respondent")

AND UPON READING the Notice of Motion filed herein on the
Twentyeighth day of February 1983 and the affidavit of
MICHAEL SHANE McNAMARA filed herein by leave this day and
the order of the Full Court made herein this day
AND UPON THE APPLICANT BY ITS COUNSEL UNDERTAKING that the
defendant will with all reasonable speed take all
necessary steps for the purpose of procuring the despatch
of the Record to England

THIS COURT DOTH ORDER that the appeal to Her Majesty in
Council from the judgment and orders of the Full Court of

(36)

SUPREME COURT
OF QUEENSLAND
-2.MAR.1983
FILED
BRISBANE

42
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Agents for:
DONALD & COMPANY
licitors
Connor Street

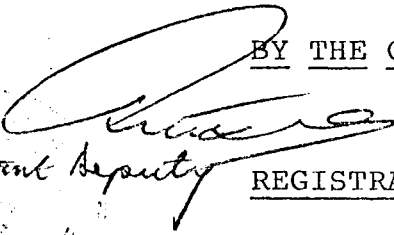
the Supreme Court of Queensland made in action number 2969 of 1982 in this Honourable Court whereby:

1. It was ordered that the appeal of the applicant against the judgment of the Supreme Court of Queensland pronounced by the Honourable Mr Acting Justice Williams on the 20th day of September 1982 be dismissed;
2. It was ordered that the applicant pay to the respondent its costs of the said appeal to be taxed

be allowed to be made.

AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the costs of and incidental to this motion abide the event unless Her Majesty in Council should otherwise order
AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the costs of and incidental to this motion be paid by the applicant in the event of the said appeal not being proceeded with or being dismissed for want of prosecution.



BY THE COURT

Assistant Deputy REGISTRAR

IN THE PRIVY COUNCIL

No. of 1983

ON APPEAL FROM THE FULL COURT
OF THE SUPREME COURT OF QUEENSLAND

BETWEEN:

BOHETO PTY. LTD.

(Defendant)

Appellant

-and-

SUNBIRD PLAZA PTY. LTD.

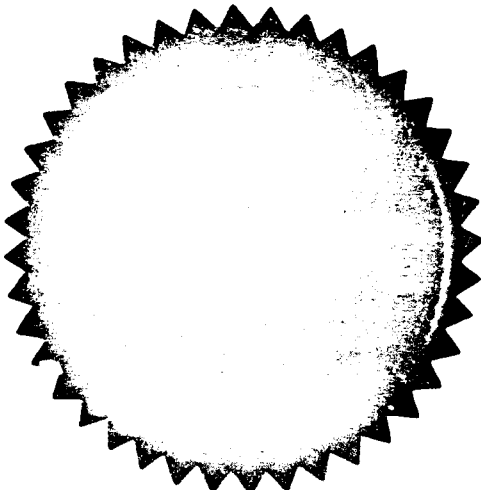
(Plaintiff)

Respondent

I, MERVYN JOHN CAMPBELL, Registrar of the Supreme Court of Queensland at Brisbane DO HEREBY CERTIFY that this Record contains a true copy of all proceedings, judgments and orders had or made in this matter so far as the same have relation to the cause in which BOHETO PTY. LTD. is the Appellant and SUNBIRD PLAZA PTY. LTD. is the Respondent so far as the same have relation to the matter of the judgment of the Full Court of the Supreme Court of Queensland pronounced in Action No. 2969 of 1982 on the 10th day of February 1983 and an Index of Reference of all papers and documents in the said action (except documents of a merely formal character or otherwise immaterial for the purposes of an Appeal to Her Majesty in Council), and a list of the said formal and immaterial documents which have been omitted.

IN FAITH AND TESTIMONY WHEREOF I

have hereunto affixed my Seal of Office and also the Seal of the Supreme Court of Queensland in the State of Queensland the fourteenth day of April One thousand nine hundred and eighty-three.



REGISTRAR