IN THE SUPREME COURT OF QUEENSLAND No. 2521 of 1988

COMMERCIAL CAUSES JURISDICTION

BETWEEN:

BAPTIST JERRY ROMANO and PATRICIA ROMANO and GRAYLOR PTY. LTD. Plaintiffs

AND:

GREGG LEWIS CHAPPLE First Defendant

AND:

REMLEX PTY. LTD. Second Defendant

AND:

STATEWIDE PAGING AND COMMUNICATIONS PTY. LTD. (In liquidation) Third Defendant

AND:

RICHARD HAROLD SEYMOUR Fourth Defendant

No. 2522 of 1988

BETWEEN:

GRAYLOR PTY. LTD. Plaintiff

AND:

GREGG LEWIS CHAPPLE First Defendant

AND:

RICHARD HAROLD SEYMOUR Second Defendant

AND:

WINTERPOINT PTY. LTD. (In liquidation) Third Defendant

AND:

RANCRAY PTY. LTD. Fourth Defendant

No. 2523 of 1988

BETWEEN:

BAPTIST JERRY ROMANO Plaintiff

AND:

GLASS DOUGLAS PTY. LTD. First Defendant

AND:

GALT FINANCE PTY. LTD. Second Defendant

AND:

GREGG LEWIS CHAPPLE Third Defendant

AND:

DAVID ALEXANDER GLASS Fourth Defendant

AND:

WINTERPOINT PTY. LTD. Fifth Defendant

AND:

RICHARD HAROLD SEYMOUR Sixth Defendant

AND:

DAVID GREGORY WILLIAMS Seventh Defendant

No. 2524 of 1988

BETWEEN:

BAPTIST JERRY ROMANO & PATRICIA ROMANO First Plaintiffs

AND:

GRAYLOR PTY. LTD. — Second Plaintiffs

AND:

GREGG LEWIS CHAPPLE — First Defendant

AND:

RICHARD HAROLD SEYMOUR — Second Defendant

AND:

WINTERPOINT PTY. LTD. (In liquidation) — Third Defendant

AND:

ASSOCIATED MEDICAL SERVICES PTY. LTD. — Fourth Defendant

AND:

FRANPORT PTY. LTD. — Fifth Defendant

No. 2534 of 1988

BETWEEN:

SOLMIST PTY. LTD. — First Plaintiff

AND:

GRAYLOR PTY. LTD. — Second Plaintiff

AND:

BAPTIST JERRY ROMANO & PATRICIA ROMANO — Third Plaintiffs

AND:

GREGG LEWIS CHAPPLE — First Defendant

AND:

RICHARD HAROLD SEYMOUR — Second Defendant

AND:

DAVID GREGORY WILLIAMS — Third Defendant

AND:

WINTERPOINT PTY. LTD. — Fourth Defendant

AND:

RANCRAY PTY. LTD. — Fifth Defendant

AND:

FRANPORT PTY. LTD. — Sixth Defendant

REASONS FOR JUDGMENT - MOYNIHAN J.

Delivered the 8th day of March, 1991

Counsel: Mr. Bell for the Plaintiffs in all actions
Mr. P. Dutney for the Second Defendant in Action 2522, 2529 and 2534 of 1988
Mr. T. Rafter for the Third Defendant in Action 2534 of 1988
Mr. Glass appeared on his own behalf in Action 2523 of 1988
Mr. J. Sullivan for the Third and Fourth Defendnats in Action 3039 of 1988
Mr. C. Jones for the Fourth Defendant in Action 2524 of 1988

Solicitors: Messrs Hopgood & Ganim for the Plaintiffs in all actions
Messrs. Connolly Suthers for the Second Defendant in Action 2522, 2529 and 2534 of 1988
Messrs. Cleary & Hoare for the Third Defendant in Action 2534 of 1988
Messrs. Gilshenan & Luton for the Third and Fourth Defendnats in Action 3039 of 1988
Messrs. McNamara & Smith for the Fourth Defendant in Action 2524 of 1988

Hearing
Dates:

IN THE SUPREME COURT OF QUEENSLAND No. 2521 of 1988

COMMERCIAL CAUSES JURISDICTION

BETWEEN:

BAPTIST JERRY ROMANO and PATRICIA ROMANO and GRAYLOR PTY. LTD. Plaintiffs

AND:

GREGG LEWIS CHAPPLE First Defendant

AND:

REMLEX PTY. LTD. Second Defendant

AND:

STATEWIDE PAGING AND COMMUNICATIONS PTY. LTD. (In liquidation) — Third Defendant

AND:

RICHARD HAROLD SEYMOUR — Fourth Defendant

No. 2522 of 1988

BETWEEN:

GRAYLOR PTY. LTD. — Plaintiff

AND:

GREGG LEWIS CHAPPLE — First Defendant

AND:

RICHARD HAROLD SEYMOUR — Second Defendant

AND:

WINTERPOINT PTY. LTD. (In liquidation) — Third Defendant

AND:

RANCRAY PTY. LTD. — Fourth Defendant

No. 2523 of 1988

BETWEEN:

BAPTIST JERRY ROMANO — Plaintiff

AND:

GLASS DOUGLAS PTY. LTD. — First Defendant

AND:

GALT FINANCE PTY. LTD. Second Defendant

AND:

GREGG LEWIS CHAPPLE Third Defendant

AND:

DAVID ALEXANDER GLASS Fourth Defendant

AND:

WINTERPOINT PTY. LTD. Fifth Defendant

AND:

RICHARD HAROLD SEYMOUR Sixth Defendant

AND:

DAVID GREGORY WILLIAMS Seventh Defendant

No. 2524 of 1988

BETWEEN:

BAPTIST JERRY ROMANO & PATRICIA ROMANO First Plaintiffs

AND:

GRAYLOR PTY. LTD. Second Plaintiffs

AND:

GREGG LEWIS CHAPPLE First Defendant

AND:

RICHARD HAROLD SEYMOUR Second Defendant

AND:

WINTERPOINT PTY. LTD. (In liquidation) Third Defendant

AND:

ASSOCIATED MEDICAL SERVICES PTY. LTD. Fourth Defendant

AND:

FRANPORT PTY. LTD. Fifth Defendant

No. 2534 of 1988

BETWEEN:

SOLMIST PTY. LTD. First Plaintiff

AND:

GRAYLOR PTY. LTD. Second Plaintiff

AND:

BAPTIST JERRY ROMANO & PATRICIA ROMANO Third Plaintiffs

AND:

GREGG LEWIS CHAPPLE First Defendant

AND:

RICHARD HAROLD SEYMOUR Second Defendant

AND:

DAVID GREGORY WILLIAMS Third Defendant

AND:

WINTERPOINT PTY. LTD. Fourth Defendant

AND:

RANCRAY PTY. LTD. Fifth Defendant

AND:

FRANPORT PTY. LTD. Sixth Defendant

JUDGMENT - MOYNIHAN J.

Introduction:

These five actions were heard together. The evidence in any one was received as evidence in such other or others of the actions to which it was relevant and in which it was admissible.

The five actions are brought by a number of plaintiffs against a number of defendants. As will emerge not all defendants participated in the trial and not all who did participate could be described as full participants. The actions deal with a variety of transactions spread over a number of years. Each action and a number of transactions, in varying degrees, gives rise to issues requiring some separate consideration. The actions however share some common features and it is convenient to deal with these before turning to a consideration of matters specific to particular actions or transactions.

Common Features:

The plaintiffs in the actions, some times alone and some times in various combinations, are Baptist ("Bap") Romano, his wife Patricia ("Pat") Romano ("the Romanos"), Graylor Pty. Ltd. ("Graylor") and Solmist Pty. Ltd. ("Solmist"). The latter plaintiffs are companies controlled by the Romanos. In the course of these reasons it is convenient from time to time to refer to the Romanos and various of the entities which they control as "the (or "a") Romano interest" or similar. By the same token it is convenient to refer to money claimed by one or other of the plaintiffs or a combination of plaintiffs to have been fraudulently misappropriated by the defendant Chapple as "Romano money".

In each of the actions the essence of the plaintiffs case is that Gregg Lewis Chapple, who was a defendant in

each of the actions, fraudulently misappropriated Romano money. The actions seek one way or another to recover from Chapple, from his partners Seymour and Williams and from the various other entities into which or into the property of which Romano money is said to have found its way as a consequence of Chapple's fraudulent misappropriation. It is not for present purposes necessary to become involved in a more detailed consideration of the relief sought against the various parties in the various actions.

A number of the defendants raised defences, some common to one or more actions, which will require consideration later and there are claims between various defendants.

A feature of the proceedings was that only the plaintiffs and Franport Pty. Ltd. (Franport) which was a defendant in actions 2524 and 2534/88 and Rancray Pty. Ltd. (Rancray) a defendant in actions 2522 and 2534/88 participated fully throughout the hearing. They were represented by counsel (the same counsel) throughout. In the circumstances to which I will refer in a moment counsel for Franport and Rancray found himself cast in the role of the plaintiffs principal antagonist.

What may be conveniently referred to as "the Glass Interest" was represented by David Alexander Glass ("Sandy Glass"). He is an accountant and appeared to be a person of some intellectual ability and acuity who did the best that could be expected in the circumstances to advance the cause of the interests he represented. The nature and extent of Sandy Glass's implication in Chapple's misappropriation is very much an issue in the proceedings. For this reason and on account of his lack of appropriate expertise and the absence of logistic support in complex and protracted proceedings Sandy Glass on occasion found himself in some difficulty in discharging the task which he undertook. Nevertheless he performed reasonably well. His co-operation with counsel and solicitors and in the pre trial directions process facilitated the matter being disposed of more

expeditiously and less expensively than would otherwise have been the case.

The remaining defendants were either not represented at the trial (some were in default one way or another) or were represented by counsel or solicitor who was not present throughout the trial but who, in accordance with leave I gave at the outset of the proceedings, came and went and participated in the proceedings as their appreciation of their particular client's interest dictated. It was made clear to those participating on this basis that the nature and extent of their participation was entirely their responsibility. Such an approach is doubtless unsatisfactory but I permitted it and the parties concerned sought to pursue it because the cost of engaging solicitors and briefing counsel to fully participate in the proceedings would have been prohibitive to the parties who took advantage of the arrangement.

I should mention that by the time the action came to trial Chapple's defences had been struck out for non-compliance with orders previously made. He was not represented at nor did he participate at all in the trial. He was however called as a witness by the solicitor appearing for his former partner Seymour. I had previously resisted submissions on behalf of various defendants that I should call Chapple to give evidence. Chapple's being called in the circumstances to which I have referred provided an opportunity for him to be cross-examined by counsel for what I will call the principal antagonists in the proceeding; for the plaintiffs on the one hand and Franport and Rancray on the other.

In making the findings which follow I have been conscious of the fact that Chapple was not represented and did not participate in the proceedings and of the limitations of the representation of the Glass Interests to which I have already referred. In other words I have been more cautious in my approach to and evaluation of the evidence insofar as it bears on findings against Chapple

and Glass in particular than I might have been had they been participants and professionally represented throughout.

It was apparent at the outset of the proceeding that any prospect of recovery by a successful plaintiff was essentially dependent upon recourse to the law societies fidelity fund who effectively insisted on the matters proceeding to judgment after trial. For this reason there was little point to the plaintiffs' proceeding to judgment short of a trial. For the same reason Franport and Rancray were cast in the role of principal antagonists rather than relatively minor players. There was much that was unsatisfactory about all this but Chapple's attitude probably made it inevitable.

As will emerge there does not seem to me to be the slightest occasion to doubt that Chapple fraudulently misappropriated Romano money as well as money belonging to Joan Besh a longstanding friend of his mother in particular and of the Chapple family and to his brother-in-law Dr. John Goldstone. The findings of fraudulent misappropriation by Chapple and as to his lies to conceal that misappropriation emerge essentially from the painstaking reconstruction of the largely contemporaneous documentation undertaken by the plaintiffs advisers and presented in evidence. The position was so clear on the face of the documents that by the end of the trial the interests participating to one degree or another in the proceedings had acknowledged it as beyond argument. I mention, because of matters which emerged in the course of the trial, that in cases such as this such work is essential before legal advice can be of much use to the likes of the Romanos, Mrs. Besh and Dr. Goldstone.

<u>The Central Common Feature; Baptist Jerry Romano and Gregg Lewis Chapple</u>:

Crucial to the outcome of each of the actions I tried is the relationship between Chapple and Bap Romano and the credibility of their respective versions of the reasons

behind the transactions giving rise to the proceeding. The evidence leaves little occasion to doubt that Chapple dealt with Romano money the subject of the various actions substantially as pleaded and particularised. Chapple maintained that he acted with Romano's authority. Romano however contended that Chapple's dealings were not authorised.

Somewhere in early 1984 Bap Romano was introduced to Gregg Chapple by a mutual acquaintance. Romano was a successful property developer and motor racing driver. Acting through various entities and funded from various sources Romano pursued a course of acquiring land in areas of expending population on the southern and western outskirts of the city of Brisbane and developing the land by building townhouses on it. Romano's primary qualification was as a builder. The townhouse developments were subsequently rented or sold individually or in packages depending on the circumstances. Chapple's first business and professional connection of any consequence with Romano was in respect of the financing (or refinancing) of a Romano's townhouse project in a way designed to take advantage of then favourable exchange rates for the Australian dollar in a climate of high domestic interest rates. The refinancing was intended to provide some cash surplus to be utilised by Romano to acquire land for use in further projects. In fact changes in the position with respect to the exchange and interest rates led Romano into financial difficulties and ultimately litigation with the bank providing the finance. As will emerge the cash surplus provided Chapple with an opportunity for fraudulent misappropriation which he was not slow to take advantage.

Various legal entities were used by Romano in respect of his various activities. In addition to the development activities to which I have referred these included building construction, a timber company and motor racing on a large scale among others. It seems that funds were largely channelled through one bank account. As I have said

Romano's experience and qualification was essentially as a builder. He found no necessity to follow, and indeed had no particular interest in, the intricacies of the arrangements for the conduct of his affairs involving various legal entities. These were no doubt designed not least to minimise the incidence of his potential exposure to taxation and the risks arising out of his activities. Ultimately Bap Romano was the directing mind of the various activities and hence that behind the various entities. He however concentrated rather on his building activities and on identifying suitable sites for development, negotiating to acquire them than the organisation of his financial affairs. He had what was in effect a partner in the timber business to which I have referred on whom he relied for the day to day conduct of that business. His wife also provided advice and assistance. Romano relied essentially on professional advice for the arrangement and conduct of his affairs and to put in place what had been determined to be the appropriate arrangements. Although he was a successful and shrewd businessman he was impatient of the intricacies of such arrangements. In this area he relied on his accountant James Haworth and, increasingly as their relationship developed, on Chapple.

Chapple was a solicitor in private practice in partnership with others notably the defendants Seymour and Williams. It is convenient to refer to the practice and the partnerships as “Chapple Seymour”. Chapple became the solicitor for Romano and his various interests. Work in that behalf became Chapple's major professional preoccupation. The relationship between Chapple and Romano progressed far beyond that of solicitor and client. Romano increasingly relied and even depended on Chapple. A close and strong personal relationship developed between Romano, his wife Pat and Chapple. This relationship was enhanced, for example, by Chapple's apparent solicitude for Romano after Romano suffered serious injury in a motor accident. The Romanos were to be guests at Chapple's wedding. Not least as a function of their respective personalities Romano became dependent upon and completely trusted Chapple

in a professional, business and personal relationship which was a major source of work for Chapple and through him Chapple Seymour. Chapple exploited this relationship to fraudulently misappropriate Romano money and relied on it to conceal his misappropriation from Romano and others acting on Romano's behalf. On account of the relationship Romano was more accepting of Chapple than might otherwise have been the case. In this context I am prepared to accept that the Romanos did not appreciate Chapple's misappropriations until 27 October, 1987 when Romano confronted Chapple at the latter's Twine Street residence although Pat Romano had probably become suspicious somewhat earlier. Chapple on that occasion when cornered finally admitted to Romano to the effect that there was no Romano money held in Chapple Seymour's trust account although Romano had occasion to expect there was a considerable sum and that he (Chappie) would repay what should have been there.

It seems to me that this exploitation of a personal relationship is one of the more despicable aspects of Chapple's activities revealed by the evidence. He also exploited a personal relationship with Mrs. Besh and Dr. Goldstone in a similar way. Indeed it seems to me that there is more than little support for the view that Chapple deliberately cultivated Mrs. Besh to gain access to money generated by the estate he believed she had inherited on the death of her husband. He used Mrs. Besh's money without or contrary to her authority for his own advantage while representing to her that it was advantageously invested in the “prestigious” Winterpoint Private Unit Trust and readily accessible. As will emerge Chapple then used other people's money to present to Mrs. Besh an appearance that her money was invested and accessible as he had represented. To a degree and subject to subsequent findings Chapple used Sandy Glass and he certainly betrayed his partners.

Another example of despicable activity by Chapple was his extorting from the Romanos an agreement to lend him

$300,000.00 for one month from September, 1986. Chapple was in financial difficulties and in fact had already misappropriated $300,000.00 of Romano money. In essence he told the Romanos that unless they provided him with $300,000.00 to get him out of his difficulties he would not be in a position to be involved in preparation for impending litigation relating to the foreign exchange transaction to which I earlier referred or to give evidence in that case. In fact the case was to commence in Melbourne on 9 September, 1986. As Chapple well knew success in the action was important if not crucial to the Romano's financial position and they justifiably regarded his participation in the preparation and his attendance to give evidence at that trial as crucial to their success in the action. Chapple sought to justify abandoning his clients and friends in their hour of need by saying he would have to devote his time to extricating himself from his self imposed financial difficulties rather than their affairs.

I cannot resist a final remark on an aspect of Chapple's activities which, although peripheral to the transactions in issue, seems to me to manifest an extraordinarily inappropriate attitude by a solicitor to his client's interest. Once the Romanos found themselves in financial difficulty, essentially on account of the foreign exchange transaction and Chapple's misappropriations, Chapple apparently accepted remuneration from the Romano's financiers to “mediate” between them and his clients.

As I have already indicated I am satisfied that in respect of the transactions the subject of the various actions with which I am concerned Chapple shamelessly exploited the professional and personal relationship he developed with the Romanos to systematically fraudulently misappropriate Romano money. I should say what I intend to convey when I use the phrase fraudulently misappropriate in connection with Chapple's use of Romano money. The money in question was received by Chapple as a member of Chapple Seymour in the course of practice as solicitor for one or other of the Romano interests and in the ordinary course of

the firm's business. Before Chapple dealt with it in the manner complained of it was usually credited to an appropriate Romano interest in the trust account of Chapple Seymour. Chapple then dealt or caused to be dealt with the money so credited in his own interest and so that the Romano interest was deprived of it. He did so without any authority from the Romanos or the appropriate Romano interest. On occasion he acted contrary to his client's express instructions. On the other occasions he acted contrary to the express implicit basis on which the money was provided by the Romano's interest and received by Chapple Seymour. Where the acts which effected the misappropriation were not carried out by Chapple himself they were done at his direction by others innocent of knowledge of his improper purpose. Unless it is expressly stated otherwise I use fraudulent misappropriation or misappropriation in the sense I have just expounded without repeating details such as I have set out above in the case of each transaction. Having misappropriated Romano's (and others) money Chapple persistently lied to conceal his misappropriation. These lies included lying on oath on the occasion, for example, to resist an application for summary judgment in proceedings brought against him.

When called at the trial it was only when confronted with the irrefutable documentary evidence of his dealings and lies that Chapple occasionally felt constrained to admit his deprivations in respect of Romano money and the money of others including notably Mrs. Besh and Dr. Goldstone. Chapple's persistent refusal to acknowledge his fraudulent misappropriation of his client's money and his advancing what, in my view he well knew was a false justification for the use of the funds, necessitated the pursuit of this enormously expensive litigation.

Chapple's attempted justification for his fraudulent misappropriation of Romano's money was to maintain to the effect that Bap Romano had authorised his (Chapple's) dealings with Romano money which are the subject of the various proceedings. In essence Chapple contended that the

transactions were authorised to protect the Romano's financial position by insuring that Romano interest assets were not available to creditors since they were hidden away in the various transactions carried out by Chapple. There was said to be documentation to support such a contention but none was ever produced. There was an attempt to introduce a flavour that the documentation had been abstracted by someone associated with the Romano interest. So far as the evidence reveals however there is every reason to conclude that Chapple lied in asserting that there was any such documentation.

It is true, as Chapple knew, that Romano was concerned to protect certain assets notable the timber business to which I have earlier referred (he felt an obligation to his "partner" and was pressed by the latter in this regard), the family home and some other assets. This was at a time when he (Romano) and other Romano interests were under pressure from creditors and involved in substantial litigation in respect of refinancing arrangements referred to earlier and at risk of a substantial judgment. Bap Romano took advice in respect of this specific aspect of his affairs from counsel who were instructed by Chapple and that advice was put into effect. That was the end of the matter. It cannot for a moment be seriously contended that the advice is reflected in a single one of the transactions the subject of these proceedings. I do not for a moment accept that Romano authorised the transactions the subject of these actions or that Chapple ever believed that he did. Chapple's involvement in Romano's affairs in the particular respect to which I have just referred however provided him with the opportunity to fabricate a story to seek to conceal and avoid the consequences of his misappropriations. In the transactions exposed by the evidence in these proceedings Romano money was used by Chapple for example to contribute to the purchase of a pleasure boat for himself, towards the acquisition of restaurants in which Chapple but not Romano had an interest and in other matters to Chapple's personal advantage; it

was also used by Chapple to get himself out of financial difficulties.

It will no doubt be already clear that I do not regard Chapple as a witness of any credibility. He is exposed by these proceedings to be a liar, probably a perjurer, a thief and a disgrace to the legal profession. I commend to the relevant authorities a consideration of the question of whether Chapple ought to be afforded the benefit of an automatic discharge from his bankruptcy. No doubt my findings will be borne in mind in the event of any attempt by Chapple to regain admission as a solicitor or to attain any other professional standing. I commend to the relevant authorities consideration of prosecution of Chapple for criminal offences, perjury and associated with his misappropriation of property disclosed in the proceedings. While I can understand the reluctance of the authorities to embark on the considerable commitment of resources necessary to investigate Chapple's deprivations and to prosecute him the work now seems largely to have been done by the plaintiffs and their advisers.

I accept the Romanos and Haworth in particular as being creditable witnesses in respect of matters bearing on the essential issues in these proceedings.

Other entities:

I have already mentioned some of the principal players in the events giving rise to these proceedings. It is appropriate to say something more about some of the players.

Franport Pty. Ltd. (Franport) and Rancray Pty. Ltd. (Rancray):

I have already mentioned these companies of which Chapple and Ian James Mathewson were shareholders and directors. The companies were involved in the acquisition or operation of restaurants called “Somewhere to Eat” at Kangaroo Point and Rosalie respectively. It is alleged to

the effect that Romano money misappropriated by Chapple was utilised to the benefit of these companies and hence of Chapple and relief is sought against them by several of the actions.

It will subsequently be necessary to consider various defences raised by those companies and for that purpose to characterise the relationship of Chapple and Mathewson to the companies and their businesses.

The Glass Interests - David Alexander Glass, Glass Douglas Finance Pty. Ltd. (Galt Finance Pty. Ltd.) and Glass Douglas Pty. Ltd:

As I have said it is convenient to refer to these entities collectively as the Glass Interests. They are defendants in action 2523/88. The corporate entities is effectively controlled by Sandy Glass so far as these actions are concerned. Chapple was a director but Glass was the beneficial owner of the share capital of the companies. The business of Glass Douglas Pty. Ltd. (Glass Douglas) relevantly for present purposes was said by Sandy Glass to be to receive money by way of deposit. Glass Douglas Finance Pty. Ltd., originally Galt Finance - its name was changed - was a subsidiary of Glass Douglas. Again relevantly for present purposes its function was said to be to lend out money received by Glass Douglas.

It is alleged that the Glass Interests were involved in and had the benefit of certain of Chapple's misappropriation of Romano money. It will be necessary for me to deal with the extent to which Glass himself was knowingly implicated in Chapple's misappropriation of Romano money and with certain defences bearing on the Glass Interest in due course.

Ian Douglas Mathewson:

See Franport and Rancray

Remlex Pty. Ltd.:

Remlex was a company controlled by Chapple and used by him in the misappropriation, the subject of action 2521.

Richard Harold Seymour and David Gregory Williams:

As I have said each was Chapple's partner in his legal practise. Seymour was a partner throughout the period of the transactions canvassed in this litigation whilst Williams was a partner from 1 March, 1985 to 31 July, 1986. For this reason Seymour is a defendant in each action while Williams is a defendant only in actions 2523 and 2534/88.

Each was represented by different counsel throughout the hearing although their counsel were not present continuously throughout the proceedings. Neither was consciously implicated in Chapple's misappropriations and obtaining judgment against them depends essentially on their having the misfortune of being Chapple's partner. I will deal further with any particular considerations in dealing with the action in which it arises. I will in due course deal with the defences they raise.

Statewide Paging and Communications Pty. Ltd. (in liquidation):

This company is a defendant in action number 2521/88. Relevantly for present purposes it may be regarded as effectively controlled by Glass and Chapple. Each of them had ambitious plans for the company. In this they were disappointed and relief of the companies (and their own) consequent financial difficulties was a material consideration in the misappropriation of Romano's money which has given rise to these proceedings. No doubt Chapple pressed Bap Romano to invest in the company in order to give it and himself some relief. There is equally no doubt that Romano refused to be involved. Notwithstanding that refusal Chapple purported to use $300,000.00 of fraudulently misappropriated Romano's Interest moneys "Re: Acquisition of shares in Statewide Paging and Communications Pty. Ltd." so as to give himself and Glass the benefit of those funds.

Winterpoint Pty. Ltd:

This company, is a defendant in actions 2522, 2523, 2524 and 2534/1988. It operated as the trustee of the Winterpoint Private Unit Trust. Chapple and Glass gave various accounts as to the holding of units in this trust. The variations were designed to suit the particular circumstances in which they were given rather than reflect the truth. At the times relevant to the proceedings the company and the trust were effectively controlled by Chapple. The trust was utilised by Chapple in his misappropriation of Mrs. Besh's money and of Romano money and its role will be considered further when I deal with the individual transactions.

At the outset of the trial Winterpoint was represented by counsel. Its defence has however been struck out for non-compliance with certain orders and on 19 July, 1990, the fourth day of the trial, the plaintiff obtained judgment in money sums against Winterpoint in each of the actions in which it was a defendant.

The judgments were in satisfaction of all claims made against Winterpoint by the plaintiffs. This led to an application by Rancray to amend its defence in action 2522 to raise the issue of an election precluding the plaintiffs from further pursuing their claim against it. I will grant the application - the papers will need to be put in order - and deal with the defence raised and the question of costs in due course.

The Separate Actions:

I turn to deal with the plaintiffs' claims in the separate actions. I will subsequently deal with the defences raised and ultimately with the outcomes. In this section of these reasons I am essentially concerned with the plaintiffs' position so far as the defendant Chapple is concerned. Generally speaking there does not seem to have been any issue as to a particular plaintiff's title to the funds claimed in a particular action.

Action 2521 of 1988:

The plaintiffs in this action are the Romanos and their company Graylor whilst the defendants are Chapple, Remlex, Statewide and Seymour.

On 7 July, 1986 Chapple Seymour in the ordinary course of their business as solicitors placed $729,852.74 of Romano money held by them with First National Limited. The investment was made on Romano's instructions in the name of Chapple Seymour as trustees for Graylor. Without any authority from his client Chapple effected the withdrawal of $300,000.00 thus invested and effected its deposit in the Chapple Seymour trust account in an account style "Graylor Pty. Ltd. Advance to Remlex Pty. Ltd." Chapple then effected the withdrawal and its credit in the trust ledger to Remlex Pty. Ltd. "Re: Acquisition of shares in Statewide". The money was then withdrawn from the trust account by a cheque payable to Statewide. These transactions took place on 29 August, 1986 and constituted fraudulent misappropriation of $300,000.00 of Romano money.

I do not accept that Romano ever authorised an investment of Romano money in Statewide. On 3 September, 1986 however Chapple pressed Romano for $300,000.00 to be invested in Statewide. This was necessary to relieve the financial difficulties in which that company found itself. The Romanos agreed to lend Chapple the money for a month in circumstances which I have already referred. These circumstances relate to Chapple's threat to no longer involve himself in preparation for a trial in Melbourne or to give evidence at that trial. It was not pleaded that this constituted any ratification of the earlier unauthorised dealings with Romano Interest money and it is difficult to see how it could.

In the circumstances the plaintiffs are entitled to judgment against Chapple, Remlex and Statewide in the amount of $300,000.00 and I am prepared to declare that Chapple fraudulently misappropriated the $300,000.00 held by Chapple Seymour and Company in its trust account on

account of Graylor Pty. Ltd. on 29 August, 1986. The plaintiffs seek to have interest included in the judgment sum and are entitled to it.

Action 2522/1988

In this action Graylor sues Chapple, Seymour, Winterpoint and Rancray. The circumstances of Chapple's fraudulent misappropriation in this case are these. By 8 December, 1987 Chapple Seymour held a total of $245,000.00 in its trust account to the credit of "Graylor Pty. Ltd. re: sale Jasi Australia Pty. Ltd.". The money constituted a deposit pursuant to a contract of sale of land dated 3 September, 1987 whereby Graylor agreed to sell one of Romano's townhouse development projects to Jasi. By the terms of the agreement between Graylor and Jasi, Chapple Seymour, who were the vendor's solicitors, were to hold the money as stakeholder. The contract between Graylor and Jasi settled on 6 May, 1988 and Jasi, by letter of that date, authorised and directed Chapple Seymour to pay the deposit moneys to Graylor. The moneys had however already been fraudulently misappropriated by Chapple.

On 18 December, 1987 Chapple procured the payment of $100,000.00 of the moneys to which I have referred to the trust account to the credit of "Winterpoint Pty. Ltd. re: Rancray Pty. Ltd." and procured two further sums totalling $68,236.05 to be paid to the Bank of New Zealand for the benefit of Rancray. The bank, exercising its power of sale as mortgagee sold to Rancray a restaurant at Rosalie which came to be known as "Somewhere to Eat".

As a consequence of the transaction to which I have referred Chapple fraudulently misappropriated $168,236.05 from moneys held on account of Graylor. Of this $100,000.00 was held purportedly to the credit of Winterpoint. On 23 December 1987 Chapple procured $68,236.05 to be paid purportedly as a repayment to Chapple as trustee for Graylor.

The Jasi deposit moneys were held in trust account ledger number 51211. On 12 January, 1988 Chapple caused $144,743.54 to be drawn against it to be held in the trust account to the credit of "Jadebridge Pty. Ltd. re: purchase from Jestar Pty. Ltd.". Jadebridge was a company controlled by the Romanos and it contracted to purchase a home unit at Rainbow Bay, Coolangatta from Jestar.

At the time of the settlement of the contract for the purchase of the unit at Rainbow Bay, following on the confrontation between Chapple and Romano of 27 October, 1987 to which I have previously referred Chapple in effect conceded and he would repay $950,000.00 to Romano. In the context of the settlement of the contract with Jestar Chapple purported to repay Romano from his (Chapple's) resources $144,736.54 but the money in fact came from the Jasi deposit moneys.

As a consequence of the transactions to which I have referred Chapple fraudulently misappropriated the following moneys:—

(a) 18.12.1987 - $100,000.00 paid on account of Winterpoint

(b) $68,236.05 to the benefit of Rancray for the acquisition of the "Somewhere to Eat" Restaurant at Rosalie

(c) 12.1.1988 - $144,743.34 in the context of the Rainbow Bay transaction as a purported partial discharge of Chapple's liability to Romano.

Action 2523/88

In this action Bap Romano in addition to suing Chapple and his partners Seymour and Williams sues the Glass interests (Sandy Glass, Glass Douglas and Glass Douglas Finance) and Winterpoint.

Sandy Glass sought to paint the picture that at the times relevant to present consideration Glass Douglas was expanding its business by moving from acting as a finance broker to that of a finance company in the business of taking deposits from members of the public, paying them interest and lending the money through its wholly owned subsidiary Glass Douglas Finance. He swore to that effect in an affidavit to meet an application for summary judgment brought by Romano in this action. In fact so far as the evidence reveals and as Glass must have known the only deposit "from a member of the public" of any consequence Glass Douglas ever received was the deposit by Romano which gives rise to this action. That was made in the following circumstances.

On 8 November, 1985 Natwest Australia Investments Pty. Ltd. ("Natwest") paid $876,754.00, part of a $1.1 million advance made by it to Romano into the Chapple Seymour Trust Account. The payment was credited in the trust ledger to "B. Romano re: offshore borrowing". I have already referred to Romano entering into such a transaction with a view to taking advantage of the perceived favourable exchange rate of the Australian dollar in a climate of high domestic interest rates. Chapple was heavily involved in these arrangements.

Romano was prevailed upon by Chapple to invest an amount ultimately of $500,000.00 with Glass Douglas which company was favourably represented by him to Romano and which Romano was told would use the money for short term leasing. Chapple well knew that Romano wished the money to be readily available in order that he (Romano) might take advantage of any opportunities for the acquisition of property said or for development or perhaps for any other investment opportunity which arose. Chapple did not tell Romano that he was a director of Glass Douglas or that he obtained a personal benefit from the deposit of the moneys with that company. Chapple procured Romano's written authorisation to pay moneys held in the trust account "to Glass Douglas Pty. Ltd. the sum of $500,000.00 by way of

interest bearing deposit in terms of their letter of even date." There is in evidence a letter of 5 November, 1984 from Sandy Glass on behalf of Glass Douglas to Chapple referring to a recent discussion and confirming Glass Douglas preparedness to accept a deposit of $300,000.00 on terms:—

"Lender:	To be nominated
Borrower:	Glass Douglas Pty. Ltd.
Amount:	$300,000.00
Terms:	12 months
Interest Rate:	18 per cent
Interest Payable:	Quarterly in arrears commencing three months from the date of lodgment of funds
Security:	Court's guarantee of Glass Douglas and personal guarantee of Sandy Glass."

The provenance of this document in terms of the authorisation is somewhat dubious - it seems to have remained in Glass' possession. Other documents purporting to have passed between Glass and Chapple at the time have a similar dubious air. On the other hand the loan itself is significantly undocumented.

As I have already indicated and as Chapple well knew Romano would not have been prepared to consent to a term of 12 months. It may, for what it is worth, well be that Chapple led Glass to believe the deposit was for 12 months.

Glass cross examined Chapple on the basis that the guarantees referred to in the letter of 5 December, 1984 were not given because although he (Glass) was prepared to give them in respect of a deposit of $300,000.00 he was not in respect of a deposit of $500,000.00. In his affidavit to meet Romano's application for summary judgment he deposed that the guarantees were not given because they were not required by Chapple. In the course of his evidence he suggested that Seymour, who he said arranged for documentation of these transactions, had overlooked the necessity for the preparation of the guarantees. When

pressed in cross examination he fell back, as he did in comparable circumstances in respect of other aspects of the case, on the claim that he could not remember.

Before leaving the affidavit to meet Romano's application for summary judgment it is convenient to mention that Romano's money deposited with Glass Douglas found its way into Winterpoint. Although at the material time Glass was and had for some months been a director and shareholder of Winterpoint and, on one version which he promulgated, a unit holder in the Winterpoint Private Unit Trust he deposed that on account of the investment of what was in truth Romano's money in the Winterpoint Private Unit Trust he took a position on the board of Winterpoint as a director without any shareholding or beneficial interest in the company with a unit trust "in order to be in a position to oversee the use to which the loan funds were put".

It is true that under Chapple's influence Romano originally contemplated lending $300,000.00 to Glass Douglas and was persuaded to increase that to $500,000.00. Glass Douglas, having got its hand on Romano's money, did not invest it through its wholly owned subsidiary Glass Douglas Finance. Rather it was dispersed to Chapple and Glass's benefit and both lied to conceal the misappropriation.

The deposit of Romano's money with Glass Douglas was, so far as Chapple and Glass were concerned, a device to enable them to get control of Romano's money and use it to their benefit. This they proceeded to do. I have mentioned some indications pointing to this. There are others. For example, it is noteworthy that although Glass Douglas provided a report to a major shareholder and backer for the year ended 30 September, 1985 no reference was made to the Romano deposit. Moreover although it was suggested that the moneys were advanced by Glass Douglas to Glass Douglas Finance who then advanced them to Winterpoint there is no reference to such a transaction in Glass Douglas balance

sheet for the relevant periods and Glass seemed unable to explain the omission.

As I have indicated I have no doubt that Romano's money deposited with Glass Douglas was fraudulently misappropriated by Chapple and Glass. For example, $119,000.00 was used to pay out a debt owed by Glass Douglas Finance to A.G.C. in respect of a property. This was said to be for Winterpoint's benefit but the relevant title was never transferred to Winterpoint and the property was then sold to members of the Chapple family for $160,000.00.

In an affidavit apparently to resist an application for summary judgment on Romano's behalf, Glass swore that a sum said to have been lent to Winterpoint could not be specifically related to the funds deposited by Romano. In cross examination Glass ultimately accepted that this was a lie. He also swore that interest due from Glass Douglas to Romano and in fact paid by Winterpoint was paid from the ordinary trading account of Glass Douglas.

Payments from the deposit with Glass Douglas included $35,000.00 to Chapple personally and $115,000.00 towards the purchase of a boat by Chapple. Moneys were used in payment of the indebtedness of Chapple and of Glass Douglas to various creditors, to pay Mrs. Besh and to make other payments in the ordinary course of the business of Glass Douglas. The payment to Mrs. Besh was part of the charade that her funds were invested in Winterpoint.

As I mentioned Romano signed an authority in respect of the deposit of $500,000.00. That was however never more than a sham to permit Chapple and Glass to get their hands on his money and Romano never for a moment authorised a deposit for a term of 12 months or for the moneys to be used to Chapple's and to Glass' advantage in the various ways in which it was.

Romano, in the belief that his money was deposited on a short term basis with Glass Douglas, began to press for

its repayment. $250,000.00 was repaid to keep him quiet apparently from Chapple and Glass's own resources.

Chapple and Glass then fabricated the story of a compromise to account for the non payment of the balance. This was in essence that Romano was to take units in Winterpoint in lieu of the balance. Glass says that in November 1985 Chapple said not to worry about Romano's demands as Romano was taking up units in Winterpoint apparently in lieu of the loan repayment. As Glass well knew he had previously signed a deed of charge and assignment in favour of Natwest in respect of $250,000.00 due to Romano. Even Chapple was constrained to acknowledge that there could not have been a compromise in the circumstances without Natwest's agreement.

No units in the Winterpoint Private Unit Trust were issued to Romano in November 1985 as ought to have occurred if there was a compromise as Chapple and Glass contended.

In other words there was no compromise of Romano's claim. Chapple and Glass fabricated the story to conceal their fraudulent misappropriation and to seek to avoid its consequences.

I have, in this fairly cursory exposition of events sealing the fate of Romano's $500,000.00, done some injustice by oversimplifying the rich complexity of transactions that Chapple and Glass indulged in or by omitting reference to some of the transactions. I have however dealt with sufficient of the matters bearing on them to indicate the reasons for my being satisfied that Chapple fraudulently misappropriated Romano's $500,000.00 and Glass was knowingly implicated or worse. I have also given some indication for my reasons for concluding that Glass, plausible and charming as he undoubtedly is, is not a creditable witness.

Action 2524 and 2534 of 1988

These actions were dealt with collectively in the submissions for the plaintiffs and it is convenient to dispose of them here on that basis. The Romanos and Graylor are plaintiffs in each of the actions while Solmist is also a plaintiff in action 2534. Chapple, Seymour, Winterpoint and Franport are defendants in each of these actions. Associated Medical is an additional defendant in action 2524 while Williams and Rancray are additional defendants in action 2534.

The transactions follow the by now familiar pattern. Funds deposited to the credit of various Romano interest in the Chapple Seymour Trust Account were used by Chapple for his own purposes without or contrary to the basis on which the money was held or the authority of his client. Again, without doing justice to the full tapestry of Chapple's endeavour it is appropriate to give some detail.

In 1986 Chapple procured the payment of the following sums from moneys held to the credit of various Romano Interests in the Chapple Seymour Trust Account.

(i) 6 May, 1986 $12,599.59 from trust ledger A370 Solmist Pty. Ltd.,

(ii) 30 May, 1986 $11,197.15 from trust ledger A356: Romano Group of Companies Re: General Matters,

(iii) 30 June, 1986 $13,599.50: from trust ledger A411; Romano Group of Companies Re: General Matters,

(iv) 29 August, 1986 $10,440.00: from trust ledger A411; Romano Group of Companies Re: General Matters,

(v) 8 October, 1986 $13,297.09: from trust ledger A415: Romano Group of Companies Re: Australian Bank,

(vi) 29 October, 1986 $12,230.65: from trust ledger A356, Romano Group of Companies Re: General Matters.

The moneys were paid to National Westminster Finance Australia Pty. Ltd. to discharge Winterpoint's obligation to pay interest to that company. The funds were used without any authority from the Romanos and the payments were to Chapple and Glass's ultimate advantage but provided no benefit to any Romano Interest.

Other payments included:—

(i) 30 July, 1986 $125,000.00 from trust ledger A356 for Rancray; (Exhibit 14) action 2534 p. 8),

(ii) 30 July, 1986 $50,000.00 from trust ledger A365 for Franport (Exhibit 14 action 2534 p. 8),

(iii) 29 October, 1986 $40,000.00 from trust ledger A415 for Franport (Exhibit 14 action 2534 p. 1),

(iv) 3 February, 1987 $2,541.35 was paid to trust ledger 1512: Ramzatta Pty. Ltd. Re: purchase from Comerford. This ledger was merely a continuation of trust ledger A512: Franport Re: purchase from Commerford. Hence, this sum was withdrawn by cheque from the sum held to the credit of the plaintiff and paid to the credit of Franport Pty. Ltd.

On 29 October, 1986 Chapple procured payment of $60,000.00 from the sum held on trust to the credit of ledger A415: Romano Group of Companies Re: Australian Bank to be paid to the credit in the trust account of ledger A60B: Exminster Pty. Ltd: Re: Establishment of Trust and purchase of Associated Medical Services. This was done without any authority from the plaintiffs or anyone else in the Romano Interest. On 11 December, 1986, Chapple procured the withdrawal of $25,000.00 from the trust account to the credit of A415: Romano Group of Companies Re: Australian Bank and payment of that amount to Winterpoint Pty. Ltd. He did so without authority.

On 29 January, 1987 Chapple procured the withdrawal of $20,000.00 held in the Chapple Seymour Trust Account to the

credit of the Romano Interest. The sum, purportedly on account of legal fees was paid to Chapple Seymour's general account. No memorandum of fees had been delivered and the payment was made without authority.

On 3 February, 1987 $660.00 held on account of the Romano Interest in the Chapple Seymour Trust Account was withdrawn and paid to Statewide. On 17 December, 1986 $10,000.00 on Chapple's instigation was withdrawn from the sum held to the credit of the Romano Interest in the Chapple Seymour account and paid to the credit of Winterpoint in the trust account. Meanwhile on 27 June, 1986, Chapple had procured the payment of $132,500.00 from the Chapple Seymour Trust Account from the moneys held to the credit of Romano (A411) to be paid to the Tait Family Trust to this and benefits of that of interests associated with him. All these payments were without authority.

In 1986 Horworth, the accountant for the Romano Interest practised as a member of a firm called Baker Bros. On 28 August, 1986 $1,130.00 and on 3 October, 1986 $588.00 held in the Chapple Seymour Trust Account of the Romano Interest were, on Chapple's instigation, paid to Baker Partners on account of the accountant's charges to Chapple (not Romano) in respect of Remlex Pty. Ltd. and Lasco Pty. Ltd. and their respective trust deeds.

The sum of $9,020.00 was delivered to Romano and claimed in action 2524. No authority to pay was shown to have existed to pay the alleged outlay despite the fact that Romano said there was no authority.

I have, I think, given sufficient indication of the basis of the finding that Chapple misappropriated the various Romano moneys claimed in these actions.

<u>The position of the various other defendants who participated in the trial</u>:—

I have found Chapple fraudulently misappropriated the Romano money the subject of the various actions. The

plaintiffs are entitled to judgment against him in each of the actions. I turn now to consider the position of those defendants which participated in the trial and raised defences to the claims made against them. Those defendants are Associated Medical Services, Franport, Rancray, Seymour and Williams.

Associated Medical Services:

Associated Medical is a defendant in action 2524. Relevantly for present purposes it can be acquaited with Dr. John Goldstone who as I have previously said was Chapple's brother-in-law. Chapple's relationship to the company was that of being its paid legal adviser and there is no question of its having been a party to his misappropriation in any relevant sense.

Dr. John Goldstone deposited money into Chapple Seymour's Trust Account on accont of Associated Medical Services to fund his purchase of an equity in that company. There was no authority for the money to be utilised for any other purpose. On 5 February, 1986 Chapple procured $58,889.00 of this money to be paid to Mrs. Besh's benefit and he did the same thing with $3,000.00 in April of that year. Put shortly the explanations for the payments are that Chapple had previously got his hands on Mrs. Besh's money and misappropriated it. He told her that he had invested it with Winterpoint which he represented as an impressively credentialled unit trust and in which her money was readily accessible. When Mrs. Besh wished to incur expenditure against what Chapple had represented as her entitlement in Winterpoint Chapple had to find the money from somewhere or be exposed as having fraudulently misappropriated Mrs. Besh's money. He found it in the moneys to the credit of Associated Medical Services held in the trust account. Chapple then used Romano money to top up the diminished Associated Medical Services account and so conceal that misappropriation. He gave various explanations for this at various times. He suggested that there was a bookkeeping error which had been reversed. He told the

bookkeeper Mrs. Bonney that he was entitled to access to Romano money because he was not charging for his service. He lied about this and provided deliberately misleading information to Goldstone, Australian Medical Services and to Kendells the accountants for the latter. Chapple offered another explanation for the transaction to Hughes and Chase the Law Society investigators. Winterpoint had no money to pay Mrs. Besh and Chapple was finally prepared to concede it in cross-examination when confronted with the documentation.

Chapple was not authorised by any Romano Interest to utilise its money in a way in which it was used in this transaction nor was he authorised by Dr. Goldstone nor Australian Medical Services to use moneys to which they were entitled and his explanations are lies to cover a situation where Chapple used Romano Interest moneys and Dr. Goldstone's money to fund payment to Mrs. Besh to conceal from her the fact that he had misappropriated her moneys.

The solicitor appearing for Associated Medical Services conceded that judgment against that company was inevitable and asked for particular findings, which request has, I trust, been accommodated by these reasons.

Seymour and Williams:

As I have already indicated Seymour and Williams had the misfortune to be Chapple's partners in Chapple Seymour. The Romano money fraudulently misappropriated by Chapple was paid into the Chapple Seymour Trust Account in the ordinary course of the conduct of the practice of that firm and it was there misappropriated by Chapple in the various transactions which have been canvassed. Seymour is a defendant in each of the actions reflecting that he was a partner during the whole of the period of Chapple's misappropriations. Williams is a defendant in action 2523 which is brought by Romano against the Glass interest and Winterpoint as well as the Chapple Seymour partners. He is also a defendant in action 2534 brought by Solmist, Graylor and the Romanos against Winterpoint, Rancray and Franport

as well as the Chapple Seymour partners. Williams became a partner on 4 March, 1985 and retired from the partnership on 1 August of the following year. Thus although he was not a partner at the time of the payment of the $500,000.00 referred to in action 2523 he was a partner at the time of the alleged compromise in respect of that liability. The necessity to consider the implications of that transaction for Williams is however diminished by my being satisfied that there was in truth no such compromise but that the story was fabricated by Chapple and Glass to conceal their misappropriation.

Rancray and Franport have served notices of indemnity on Seymour in respect of such obligations they might be found to have to the plaintiffs in the actions in which they are defendant.

I am satisfied that nothing came to the attention of either Seymour or Williams at any relevant time which ought to have led either to a consideration of whether Chapple was acting improperly with respect to Romano money. I am conscious that the Chapple Seymour bookkeeper Mrs. Bonney expressed to Seymour some concern about transactions in which Romano was involved in 1986 but this was rather from the point of view of a concern as to the appropriateness of the transaction as an investment for Romano. I am also conscious of the fact that Seymour became aware of complaints by the Romanos. When Seymour raised these complaints with Chapple he was reassured by his partner in whom he had a degree of trust and confidence and who, on the evidence, had a degree of apparent plausibility in his reassurances in such circumstances. Eventually the Romanos became more pressing and specific in their complaint and Seymour's enquiry led to concerns which caused him to involve the Law Society. Williams was far less directly involved in anything bearing on the Romanos and indeed for part of the time of his partnership directed his energies to the conduct of business at the firm's Gold Coast practice.

In this context it is worth mentioning that although Seymour was the partner who had a prime responsibility for the conduct of the trust account Chapple himself largely intervened in respect of the transactions the subject of these proceedings. At least one of the firm's bookkeepers dispensed with the necessity of the production of trust account authorities for the drawing of cheques in respect of Romano money because she knew of the existence of a power of attorney which Chapple held for Romano which he assured her was a sufficient authorisation.

Both Williams and Seymour signed cheques admitted into evidence as relevant to the transactions in issue and that they did so on the basis of their availability at the relevant time. Absent the benefit of hindsight I am not persuaded that their having done so constituted any impropriety on their part.

Seymour and Williams seeks to escape the operation of the Partnership Act 1891-1965 ("the Partnership Act") by invoking s. 71 of the Trusts Act 1973-1979 ("the Trusts Act"). It will be recalled that s. 14 of the Partnership Act provides:—

> "In the following cases, namely:—
>
> (1) Where one partner acting within the scope of his apparent authority receives the money or property of a third person and misapplies it; and
>
> (2) Where a firm in the course of its business receives money or property of a third person, and the money or property so received is misapplied by one or more of the partners while it is in the custody of the firm;
>
> the firm is liable to make good the loss."

By s. 15 of the Partnership Act every partner is liable jointly with his co-partners and severally for everything which the firm becomes liable under s. 14 during the time for which he is a partner.

It is true that by the operation of the provisions of the Trust Accounts Act 1973-1978 ("the Trust Accounts Act") a solicitor engaged in the practice of his profession in partnership with any other person:—

> "... who, or the firm of which he is a partner, in the course of ... practice . . . receives any money upon trust or upon terms requiring him to account to any person therefore."

is obliged to treat "trust money" in a particular way. Trust money means money received for or on behalf of any person by the trustee "in the course of or in connection with the practice of his profession". By s. 7 of the Trust Accounts Act a trustee receiving trust money is to establish and keep a trust account or trust accounts designated or evidenced as such into which all trust moneys be paid and from which, pursuant to s. 8 of the Act, money is not to be withdrawn so for the purpose specified by s. 8(1).

There is however nothing of the imposition of that obligation which persuades me it bears on the consequences of the provisions of the Partnership Act. In my view the moneys fraudulently misappropriated by Chapple came from moneys received by him as a partner of Chapple Seymour in the ordinary course of the business of that firm and then misappropriated.

In the circumstances it seems to me that s. 71 of the Trusts Act which provides:—

> "A trustee shall be chargeable only for money and securities actually received by him notwithstanding his signing any receipt for the sake of conformity; and shall be answerable and accountable only for his own acts, receipts, neglects or defaults and not for those of any other trustee, nor those of any bank, broker or other person with whom trust money or security may be deposited, nor for the insufficiency or deficiency of any securities, nor for any other loss, unless the insufficiency, deficiency or loss occurs through his own fault."

does not apply in respect of the liability imposed on Williams and Seymour as a consequence of the operations of s. 14 and 15 of the Partnership Act.

In my view, all else being equal, Rancray and Franport's claims for indemnity are not sustainable. As I have indicated I am not prepared to find that Seymour or Williams failed to act honestly in any relevant sense. Nor am I prepared to find that either partner failed to take reasonable care to ensure that either company did not suffer loss or damage. On the view I take of the matter Chapple, at the time of the transactions from which the issues arise for consideration in respect of those companies, was a director and had a beneficial interest in the company. His role included obtaining finance in respect of the acquisition of premises for the conduct of the restaurants at Kangaroo Point and Rosalie or at least to obtain premises in which the business could be conducted. To discharge this role he stole Romano's money taking advantage no doubt of his position as Romano's solicitor and of Romano money being held in the Chapple Seymour Trust Account but by then he was acting in his capacity as a director with a beneficial interest in the companies.

I should also mention that neither Rancray or Franport was ever entitled to Romano money.

There is a further aspect to Rancray's claim to indemnity. It alleges that the contract for the sale of the property at Kangaroo Point in which the restaurant at that locality had been conducted was for $250,000.00 whereas only $150,000.00 was received. It is then alleged that Seymour is liable to make up $100,000.00 as a member of the firm which allowed the contract to settle and the conveyance to proceed without payment in full. I am not prepared to conclude that the company received other than full value, if not what it had expected to receive, in the context of the transaction the complexities of which I do not propose examining here. Even if Chapple defrauded Mathewson by reducing the purchase price by $100,000.00

which was not owed to Chapple I accept the submission that he was not acting in his capacity as solicitor for Rancray or Franport but rather as a director for the beneficial interest in those companies or as a director of Winterpoint as trustee for the Winterpoint Private Unit Trust.

The Glass Interests:

I believe that I have sufficiently dealt with the defences raised by the Glass Interests in dealing with the actions in which those interests were defendants.

Franport and Rancray:

I have already dealt with those companies' claims for indemnity by Seymour and Williams under that heading.

It will be recalled that Chapple and Mathewson were shareholders in and directors of these companies which were essentially concerned with the conduct of restaurants.

The plaintiffs' claims against the companies in essence depend upon the companies being fixed with the consequences of Chapple's fraudulent misappropriation of Romano money which was undoubtedly used on the companies' behalf in the acquisition of assets.

I should say that I am satisfied that Mathewson was not implicated in any way in Chapple's fraudulent misappropriations of the Romano money which found its way into Franport and Rancray and that he was innocent of any knowledge of the misappropriation or anything which ought to have put him on enquiry concerning the source of the funds. It seems to me however something of an understatement to suggest that Mathewson or even a board constituted by Mathewson and Chapple (which never met) was the directing mind of the companies to the exclusion of Chapple from any role which might be said to have given him a part in the directing of the company. It also seems to me that a submission to the effect that Chapple's relationship, notwithstanding that he was a director with a

beneficial interest, was that of legal adviser or lender should also be rejected. I should mention that there seems to me no basis to differentiate between the companies in respect of the matters now under consideration.

In my view Chapple and Mathewson were effectively partners in an ongoing business relationship which involved the acquisition, conduct and disposition of restaurants encompassing in that term properties used for the purpose of the conduct of restaurants. Each of Chapple and Mathewson brought different talents (if that be the right word in the case of Chapple) to the enterprise. Mathewson and his companion Roger undoubtedly brought considerable knowledge of the restaurant trade and skill in the conduct of restaurants. Chapple however was involved in the identification of opportunities to be taken advantage of by the enterprise and in the selection and acquisition of premises. He was particularly responsible for ensuring that the companies were appropriately financed in respect of the ventures upon which they embarked. In this context Chapple contributed his financial acumen and legal expertise (I acknowledge that there is a certain irony in attributing these qualities to him) in the same way as Mathewson contributed his expertise in the area of restaurant management and associated matters.

I said that Chapple and Mathewson were effectively partners in an ongoing business relationship. There is evidence tending to a conclusion that it was intended that they share the profits of their joint enterprises. I have also said that Chapple's role in the conduct of the affairs of the companies included seeing to matters of finance. The evidence reveals that, not to put too fine a point on it, he discharged this aspect of his role by the simple expedient of fraudulently misappropriating Romano's money and providing it to the companies. He did this in his capacity as a director and he was far more than legal adviser or lender.

I turn to the consideration of the extent to which Chapple's knowledge of his own fraudulent misappropriation is to be attributed to the companies. As Megarry V.C. points out in In re: Montague's Settlement Trust (1987) Ch. 264 at 283 since a company is a completely artificial person it is only capable of acquiring knowledge in the sense that it may be fixed with the knowledge of the natural person or persons who control and manage it. Such a person's knowledge may be imputed to the company. Given my characterisation of Chapple's role in the conduct of the companies' affairs if the matter turned on nothing else I should have thought his knowledge as to the source of the companies' fund could be imputed to the company. I turn now to consider the other considerations upon which the issue turns.

Knowledge acquired by a person who simply happens to be a director or who otherwise controls or manages a company is not necessarily to be imputed to the company; Re: Marseilles Extension Railway Co. ex parte Credit Foncier etc. (1871) L.R. 7 Ch. App. 161; In re: Hampshire Land Company [1896] 2 Ch. 743 particularly at 748. Where however a director acquires knowledge in circumstances in which he is under an obligation to communicate it to the company's board and the company is under an obligation to receive that communication the court will assume that the obligations have been carried out and will impute knowledge to the company; In re: Hampshire Land Company (supra); Kettlewell v. Watson (1882) 21 Ch. D. 685 particularly at 704; Re: Fenwick Stobart & Co. Limited [1912] 1 Ch. 507.

It is not however difficult to imagine that different considerations may intrude when what the director is to be taken to have communicated to the company, in the sense being considered, his knowledge of his own fraud. There is what may for the moment be accepted as a fairly well credentialled view that where a director is perpetrating a fraud on the company there is an exception to the general rule and the director's knowledge will not be imputed to the company; In re: Hampshire Land Company (ante) at 749.

This is on the basis of what might be thought to be the common sense view that contrary to assuming the director would communicate to the Board that he was defrauding the company he would conceal it.

The Court of Appeal in Belmont Finance Corporation v. Williams Furniture Ltd. & Ors. (No. 2) was, relevantly for present purposes, concerned with arrangements for the provision of financial assistance for the acquisition of shares in a company in contravention of the English Companies Legislation Buckley L.J. (with whom Geoff and Waller L.JJs agreed) entertained no doubt that the knowledge of officers of a company who were co-conspirators in respect of the provision of financial assistance contrary to the legislation was to be imputed to the company. This was on the basis that an officer aware that his company was about to enter into an illegal or tainted contract was obliged to inform the Board of that fact; see page 404. In re Hampshire Land Company this does not seem to have been referred to.

I was referred to J.C. Houghton v. Northard (1928) A.C. 1; Re: Blackbird Pies Management Pty. Limited (1969) Qd. R. 387; Laurie v. Commonwealth Trading Bank of Australia (1970) Qd. R. 373 and the decision of the Court of Appeal in Belmont Finance v. Williams Furniture (1979) 1 Ch. 250 as well as Re: Rossfield Group Operations Pty. Limited v. Moreton Holdings (A.C.T.) Pty. Limited (1980) Qd. R. 372. None of those cases however seem to me to go to the precise point of whether Chapple's knowledge of his own fraudulent misappropriation of Romano's money is to be imputed to the companies (essentially to Mathewson who was the only other director and who with Chapple thereby constituted the board). They seem concerned rather with the perspective of whether the knowledge was received in circumstances giving rise to an obligation to convey it.

As I understand the basis of the imputed notice rule derived from the cases to which I have referred, is that once a director becomes possessed of knowledge which he is

obliged to communicate and which the company, through its board is obliged to receive it will be assumed that these things have happened and the knowledge is imputed to the company. I am inclined to agree with Vaughan Williams J. in In re: Hampshire Land Company (at p. 749) that common sense leads to the conclusion that it is impossible to infer the duty was fulfilled where doing so would expose the agent's fraud albeit to a party other than the victim of the fraud. I would therefore not impute to the companies knowledge of Chapple's fraudulent misappropriation.

IN THE SUPREME COURT OF QUEENSLAND No. 2521 of 1988

COMMERCIAL CAUSES JURISDICTION

BETWEEN:

BAPTIST JERRY ROMANO and PATRICIA ROMANO and GRAYLOR PTY. LTD. Plaintiffs

AND:

GREGG LEWIS CHAPPLE First Defendant

AND:

REMLEX PTY. LTD. Second Defendant

AND:

STATEWIDE PAGING AND COMMUNICATIONS PTY. LTD. (In liquidation) Third Defendant

AND:

RICHARD HAROLD SEYMOUR Fourth Defendant

No. 2522 of 1988

BETWEEN:

GRAYLOR PTY. LTD. Plaintiff

AND:

GREGG LEWIS CHAPPLE — First Defendant

AND:

RICHARD HAROLD SEYMOUR — Second Defendant

AND:

WINTERPOINT PTY. LTD. (In liquidation) — Third Defendant

AND:

RANCRAY PTY. LTD. — Fourth Defendant

No. 2523 of 1988

BETWEEN:

BAPTIST JERRY ROMANO — Plaintiff

AND:

GLASS DOUGLAS PTY. LTD. — First Defendant

AND:

GALT FINANCE PTY. LTD. — Second Defendant

AND:

GREGG LEWIS CHAPPLE — Third Defendant

AND:

DAVID ALEXANDER GLASS — Fourth Defendant

AND:

WINTERPOINT PTY. LTD. — Fifth Defendant

AND:

RICHARD HAROLD SEYMOUR — Sixth Defendant

AND:

DAVID GREGORY WILLIAMS — Seventh Defendant

No. 2524 of 1988

BETWEEN:

BAPTIST JERRY ROMANO & PATRICIA ROMANO — First Plaintiffs

AND:

GRAYLOR PTY. LTD. — Second Plaintiffs

AND:

GREGG LEWIS CHAPPLE — First Defendant

AND:

RICHARD HAROLD SEYMOUR — Second Defendant

AND:

WINTERPOINT PTY. LTD. (In liquidation) — Third Defendant

AND:

ASSOCIATED MEDICAL SERVICES PTY. LTD. — Fourth Defendant

AND:

FRANPORT PTY. LTD. — Fifth Defendant

No. 2534 of 1988

BETWEEN:

SOLMIST PTY. LTD. — First Plaintiff

AND:

GRAYLOR PTY. LTD. — Second Plaintiff

AND:

BAPTIST JERRY ROMANO & PATRICIA ROMANO — Third Plaintiffs

AND:

GREGG LEWIS CHAPPLE — First Defendant

AND:

RICHARD HAROLD SEYMOUR — Second Defendant

AND:

DAVID GREGORY WILLIAMS — Third Defendant

AND:

WINTERPOINT PTY. LTD. — Fourth Defendant

AND:

RANCRAY PTY. LTD. — Fifth Defendant

AND:

FRANPORT PTY. LTD. — Sixth Defendant

ADDITIONAL FINDINGS - MOYNIHAN J.

It was submitted that equitable relief ought not to be granted in Action 2523 and 2522 in effect because Romano seeks to trace money improperly obtained by him fro AGC, and hence, that he does not come to equity with clean hands. To my mind the provision doesn't get to first base. It has its origins in a notion that borrowing from AGC in respect of the townhouse development or developments, Romano, it is said, in effect misrepresented to AGC cost to him or to his entities of completion of the project. He contemplated, in fact, bringing it in for less. There is,

however, to my mind, no basis for concluding there was any misrepresentation or that there was any aspect of Romano's conduct in respect of the borrowing which requires consideration in determining whether he should be granted equitable relief and there is certainly nothing about it which, in my view, would preclude him from equitable relief.

IN THE SUPREME COURT OF QUEENSLAND No. 2521 of 1988

COMMERCIAL CAUSES JURISDICTION

BETWEEN:

BAPTIST JERRY ROMANO and PATRICIA ROMANO and GRAYLOR PTY. LTD. Plaintiffs

AND:

GREGG LEWIS CHAPPLE First Defendant

AND:

REMLEX PTY. LTD. Second Defendant

AND:

STATEWIDE PAGING AND COMMUNICATIONS PTY. LTD. (In liquidation) Third Defendant

AND:

RICHARD HAROLD SEYMOUR Fourth Defendant

No. 2522 of 1988

BETWEEN:

GRAYLOR PTY. LTD. Plaintiff

AND:

GREGG LEWIS CHAPPLE First Defendant

AND:

RICHARD HAROLD SEYMOUR — Second Defendant

AND:

WINTERPOINT PTY. LTD. (In liquidation) — Third Defendant

AND:

RANCRAY PTY. LTD. — Fourth Defendant

No. 2523 of 1988

BETWEEN:

BAPTIST JERRY ROMANO — Plaintiff

AND:

GLASS DOUGLAS PTY. LTD. — First Defendant

AND:

GALT FINANCE PTY. LTD. — Second Defendant

AND:

GREGG LEWIS CHAPPLE — Third Defendant

AND:

DAVID ALEXANDER GLASS — Fourth Defendant

AND:

WINTERPOINT PTY. LTD. — Fifth Defendant

AND:

RICHARD HAROLD SEYMOUR — Sixth Defendant

AND:

DAVID GREGORY WILLIAMS — Seventh Defendant

No. 2524 of 1988

BETWEEN:

BAPTIST JERRY ROMANO & PATRICIA ROMANO — First Plaintiffs

AND:

GRAYLOR PTY. LTD. — Second Plaintiffs

AND:

GREGG LEWIS CHAPPLE — First Defendant

AND:

RICHARD HAROLD SEYMOUR — Second Defendant

AND:

WINTERPOINT PTY. LTD. (In liquidation) — Third Defendant

AND:

ASSOCIATED MEDICAL SERVICES PTY. LTD. — Fourth Defendant

AND:

FRANPORT PTY. LTD. — Fifth Defendant

No. 2534 of 1988

BETWEEN:

SOLMIST PTY. LTD. — First Plaintiff

AND:

GRAYLOR PTY. LTD. — Second Plaintiff

AND:

BAPTIST JERRY ROMANO & PATRICIA ROMANO — Third Plaintiffs

AND:

GREGG LEWIS CHAPPLE — First Defendant

AND:

RICHARD HAROLD SEYMOUR — Second Defendant

AND:

DAVID GREGORY WILLIAMS — Third Defendant

AND:

WINTERPOINT PTY. LTD. — Fourth Defendant

AND:

RANCRAY PTY. LTD. — Fifth Defendant

AND:

FRANPORT PTY. LTD. — Sixth Defendant

ERRATUM SHORT CORRECTIONS - MOYNIHAN J.

On page 4, the second complete paragraph, delete reference to "Recourse to Chapple's professional indemnity insurer" and substitute "Recourse to the Law Society's fidelity fund".

On page 21 paragraph (c) I substitute $144,743.34 for the $140,743.34 there appearing.