

IN THE HIGH COURT OF AUSTRALIA
MELBOURNE REGISTRY

No. M140 of 2013

ON APPEAL FROM THE FULL COURT OF THE FEDERAL COURT OF
AUSTRALIA

BETWEEN:



STEPHEN JAMES HOWARD
Appellant

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and

COMMISSIONER OF TAXATION OF THE COMMONWEALTH OF AUSTRALIA
Respondent

APPELLANT'S CHRONOLOGY

20 **Part I:**

It is certified that this Chronology is in a form suitable for publication on the internet.

Part II:

Date	Event	
Prior to 1999	Richard Bucknall (Bucknall) had been engaged to assist Kevin Donovan (Donovan) find a suitable investment in the golf industry.	Reasons for Judgment of Jessup J [11]
January 1999	The investment concept settled upon involved constructing or acquiring a golf course, leasing it to an anchor tenant, and selling the leased course to an end-purchaser.	Jessup [11], [15]
April 1999	Donovan identified Kingston Links Golf Course (KLGC) as a potential course to acquire. Bucknall identified Spotless Services Australia Limited (Spotless) as a potential lessee of a golf course to be acquired by Donovan and investors associated with him.	Jessup [11-12]

Filed on behalf of the Appellant

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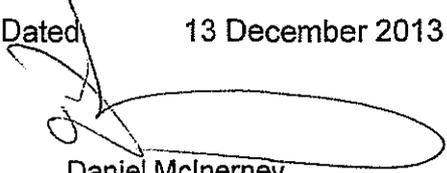
April 1999	From about this time Donovan had in mind that Disctronics Limited, a public company of which he was a director, might purchase the leased course. Donovan shared this view with the Appellant and Michael Quinert (Quinert), who were also directors of Disctronics.	Jessup [15]
April 1999	Christopher Edmonds (Edmonds) and Peter Cahill (Cahill) were engaged as consultants by Donovan.	Jessup [13]
May - June 1999	Quinert and the Appellant joined Donovan in pursuing the opportunity to invest in the syndicate or consortium to acquire and on-sell a golf course.	Jessup [13]
30 June 1999	Spotless offered to lease KLGc.	Jessup [14]
Early July 1999	Edmonds and Cahill sought admission to the consortium to acquire and on-sell KLGc.	Jessup [16-17]
6 July 1999	Donovan informed Edmonds that, if the amount of equity which a prospective purchaser would be required to inject fell within the range of about \$1m-\$1.5m, Disctronics may provide that equity.	Jessup [17]
6 July 1999	Edmonds prepared financial scenarios identifying equity requirements and returns to the participants in the consortium. One scenario required equity of \$1.44m be injected by the end-purchaser.	Jessup [18]
7 July 1999	Donovan confirmed to Edmonds that Disctronics would likely acquire KLGc if \$1.44m in equity were required to be injected.	Jessup [18]
10 July 1999	Edmonds prepared a further financial scenario, which contemplated a higher purchase price to a third party end-purchaser and substantial profits to the individual consortium members. This scenario contemplated an equity investment of \$2.4m rather than \$1.44m.	Jessup [20]

10 July 1999	Donovan, Quinert and the Appellant, as directors of Disctronics, had reached the point of favouring Disctronics as investor, such that the lower the purchase price, the better.	Jessup [20]
12 July 1999	The Appellant, Donovan and Quinert met in London and agreed that the investment in KLGc would be beneficial to Disctronics, provided that the equity investment requirement could be handled by the company. Donovan's view was that the company could afford \$1.5m.	Jessup [23]
13-15 July 1999	<p>The Disctronics Board met in England. The board comprised Appellant, Donovan, Quinert and David Mackie. It was agreed that the acquisition of KLGc would be pursued as a possible investment opportunity for Disctronics.</p> <p>It was agreed that any entitlement to profits from the transaction payable to the Appellant, Donovan or Quinert would be paid over to Disctronics.</p>	Jessup [24-27], [76]
14 -20 July 1999	Negotiations between the Appellant, Donovan, Quinert, Bucknall, Edmonds and Cahill continued.	Jessup [27-31]
20 July 1999	Donovan, Quinert, Bucknall, Cahill and Edmonds participated in a telephone conference which resulted in a joint venture to acquire KLGc coming into existence, with the members of the venture being those five persons plus the Appellant.	Jessup [31]
By early August 1999	The members of the joint venture were in possession of the two key parameters by reference to which they could plot their future: the price at which KLGc was available for purchase and the annual rental which was likely to be paid by Spotless.	Jessup [34]
3 August 1999	Edmonds proposed a new option, whereby the six joint venturers would acquire KLGc and lease it to Spotless themselves rather than selling to an end-purchaser. Edmonds calculated the total equity injection required was \$760,000.	Jessup [35]

3 August 1999	Donovan and Quinert discussed the new Edmonds proposal and agreed to reject it and that Disctronics would take up its entitlement given that an equity injection of less than \$800,000 was required.	Jessup [37]
3 August 1999	Quinert caused Disctronics to acquire one ordinary share in Corwen Grange Pty Ltd as a nominee company to acquire the golf course.	Jessup [39]
4 August 1999	Quinert confirmed to Edmonds that Disctronics intended to exercise its entitlement to take on the acquisition of KLGC.	Jessup [38], [71], [76]
4 - 10 August 1999	The joint venturers engaged in unsuccessful negotiations to agree fees to be paid to Edmonds and Cahill, in light of the fact that no significant profits would accrue to the joint venturers now that Disctronics was to be the purchaser.	Jessup [40- 44]
10 August 1999	Cahill informed the then owner of KLGC that the joint venture was dissolved. Cahill clandestinely proposed to a third party, Michael Buxton (Buxton), that they, along with Edmonds, form a competing joint venture to acquire KLGC.	Jessup [48]
19 August 1999	Quinert made an offer on behalf of Disctronics to acquire KLGC from its then owner for \$8.688m. The then owner did not reply to this offer.	Jessup [49]
27 August 1999	A company associated with Buxton made an offer to acquire KLGC for \$8.7m.	Jessup [50]
1 September 1999	The then owner of KLGC resolved to accept the offer from the company associated with Buxton.	Jessup [50]
12 October 1999	Kingston Links Country Club Pty Ltd (KLCC) was registered, with Buxton, Edmonds and Cahill as directors.	Jessup [50]
8 December 1999	KLGC was leased to Spotless on 8 December 1999.	Jessup [50]
14 December 1999	The transfer to KLCC of the title to the KLGC land was registered.	Jessup [50]

22 December 2000	Disctronics lodged a caveat over the land upon which KLGC stood, asserting the existence of a constructive trust in its favour.	Jessup [51]
8 June 2001	KLCC commenced a proceeding to remove the caveat (the caveat proceeding).	Jessup [51]
15 June 2001	Disctronics, Donovan, the Appellant and Quinert entered into the litigation agreement	Jessup [52], [98-99]
26 June 2001	Disctronics, Donovan, Quinert, Bucknall and the Appellant (the plaintiffs) commenced proceedings in the Supreme Court of Victoria (the principal proceedings), claiming primarily a declaration of a constructive trust in favour of Disctronics, arising from a breach of fiduciary duties by Edmonds and Cahill.	Jessup [51], [60]
23 October 2002	Warren J published Reasons for Judgment.	Jessup [54]
3 December 2002	Warren J made orders in relation to assessment of equitable compensation	Jessup [61]
Late 2002	Appeals and cross appeals were filed.	Jessup [64]
7 January 2004	Disctronics publishes its annual report for financial year ended 30 June 2003, signed by the Appellant as chairman, noting the assignment to Disctronics of the plaintiff directors' entitlements to damages.	Jessup [70], [104]
22 February 2005	The Court of Appeal dismissed the defendants' appeal and allowed Disctronics' appeal in the caveat proceedings.	Jessup [66], [68]

Dated 13 December 2013


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