



HIGH COURT OF AUSTRALIA

Public Information Officer

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**FARAH CONSTRUCTIONS PTY LTD, FARAH ELIAS, LESMINT PTY LTD, MARGARET ELIAS,
SARAH ELIAS AND JADE ELIAS v SAY-DEE PTY LTD**

A Sydney developer had not acted in breach of his fiduciary duties to his joint venture partners, the High Court of Australia held today.

Farah Constructions, controlled by Farah “George” Elias, a real estate developer, and Say-Dee, controlled by businesswomen Sadie Elias (no relation to Mr Elias) and Dalida Dagher, entered into a joint venture in 1998 to buy and redevelop No 11 Deane Street, Burwood. Say-Dee contributed \$225,000, plus stamp duty, while the rest of the \$630,000 price was borrowed. No 11’s four run-down units were refurbished and rented out, prior to a planned demolition. Farah submitted a development application (DA) to Burwood Council for a combined commercial-residential project. The Council rejected it as too big for an 11-metre-wide site with no room for parking. The development would require amalgamation with adjacent blocks. Mr Elias, his wife Margaret, and teenage daughters Sarah and Jade each bought one of the four units at No 15 Deane Street and one of the four at No 20 George Street, which backed on to No 15, totalling \$2.06 million. His company, Lesmint, bought No 13 Deane Street for \$1.68 million. Mr Elias gave evidence that he had invited Ms Dagher and Ms Elias to join in the purchases of Nos 13 and 15 but they declined for financial reasons. He offered to buy Say-Dee’s interest in No 11. Say-Dee declined and relations deteriorated. Problems spiralled, with the project having stalled, rents not meeting mortgage repayments, all three principals in financial difficulty, and Ms Elias diagnosed with cancer.

In the NSW Supreme Court in March 2003 Farah filed a summons against Say-Dee seeking an order that a trustee be appointed over No 11 and that it be sold. Say-Dee filed a cross-claim that the Eliases, Farah and Lesmint held their interests in Nos 13 and 15 on constructive trust for the partnership between Say-Dee and Farah. Justice George Palmer gave judgment for the Farah group, made orders for the sale of No 11, and dismissed the cross-claim. He accepted the evidence of Mr Elias that he had invited Ms Dagher and Ms Elias to join in the purchase of Nos 13 and 15.

The Court of Appeal overturned Justice Palmer’s finding about Mr Elias’s invitation to Ms Dagher and Ms Elias. It also found that Farah’s fiduciary duties to Say-Dee were wider than Justice Palmer had considered them to be and that Farah breached those duties by failing to tell Say-Dee that the Council regarded the acquisition of Nos 13 and 15 and their amalgamation with No 11 as essential if No 11 were to be redeveloped to its full potential. The Court of Appeal made a declaration that Mrs Elias and her daughters held their units in Nos 13 and 15 on constructive trust in favour of the Farah-Say-Dee partnership, and appointed receivers to obtain development consent and sell all their blocks together.

Farah appealed to the High Court which unanimously allowed the appeal and ordered that Justice Palmer’s orders be restored. It accepted that Say-Dee was aware the Council had rejected the DA and that the problem might be overcome by developing No 11 with adjoining land, and that Mr Elias had invited Ms Dagher and Ms Elias to participate in acquiring Nos 13 and 15 but they had declined. Farah had a fiduciary duty to tell Say-Dee information about the Council’s view and the opportunities to buy Nos 13 and 15. Farah fulfilled its obligation of disclosure about the Council’s attitude and the Say-Dee principals had enough business experience to give informed consent to Mr Elias pursuing the purchase of Nos 13 and 15. Say-Dee’s unwillingness to participate in a larger development was not a barrier to Farah proceeding on its own behalf. The Court rejected the grounds on which Mrs Elias and her daughters could have been made constructive trustees on behalf of Say-Dee and held that they were not liable to Say-Dee in any way.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court’s reasons.*