

IN THE HIGH COURT OF AUSTRALIA
MELBOURNE REGISTRY

No. B21 of 2017

BETWEEN:

**COMMISSIONER OF THE
AUSTRALIAN FEDERAL
POLICE**

Appellant

AND

STEVEN IRVINE HART

First Respondent

**FLYING FIGHTERS PTY LTD
as trustee for FLYING
FIGHTERS DISCRETIONARY
TRUST**

Second Respondent

**NEMESIS AUSTRALIA PTY
LTD**

Third Respondent

**YAK 3 INVESTMENTS PTY
LTD**

**as trustee for YAK 3
DISCRETIONARY TRUST**

Fourth Respondent

**BUBBLING SPRINGS OLIVE
GROVE PTY LTD as
trustee for BUBBLING
SPRINGS**

DISCRETIONARY TRUST

Fifth Respondent



APPELLANT'S CHRONOLOGY
Filed 11 May 2017

Filed on behalf of the Applicant

Commissioner of the Australian Federal Police
Criminal Assets Litigation
45 Commercial Road
Newstead QLD 4006
Telephone: (07) 3222-1555
Facsimile: (02) 6132-6137
Email: BRIS-CAL@afp.gov.au
Ref: Harley Pope

IN THE HIGH COURT OF AUSTRALIA
MELBOURNE REGISTRY

BETWEEN:

AND

No. B22 of 2017

**COMMONWEALTH OF
AUSTRALIA**

Appellant

**YAK 3 INVESTMENTS PTY
LTD**

**as trustee for YAK 3
DISCRETIONARY TRUST**

First Respondent

**BUBBLING SPRINGS OLIVE
GROVE PTY LTD as trustee for
BUBBLING SPRINGS
DISCRETIONARY TRUST**

Second Respondent

**NEMESIS AUSTRALIA PTY
LTD**

Third Respondent

**FLYING FIGHTERS PTY LTD
as trustee for FLYING
FIGHTERS DISCRETIONARY
TRUST**

Fourth Respondent

**ALFREDTON PTY LTD as
trustee for NEMESIS GROUP
SUPERANNUATION FUND**

Fifth Respondent

IN THE HIGH COURT OF AUSTRALIA
MELBOURNE REGISTRY

BETWEEN:

AND

No. B23 of 2017

**COMMONWEALTH OF
AUSTRALIA**

Appellant

**COMMISSIONER OF THE
AUSTRALIAN FEDERAL POLICE**

Second Appellant

**FLYING FIGHTERS PTY LTD
ACN 067 895 005**

First Respondent

YAK 3 INVESTMENTS PTY LTD

ACN 010 623 560

Second Respondent

BUBBLING SPRINGS OLIVE GROVE

PTY LTD ACN 010 281 866

Third Respondent

NEMESIS AUSTRALIA PTY LTD

ACN 010 225 537

Fourth Respondent

APPELLANTS' CHRONOLOGY

Part I:

I certify that this chronology is in a form suitable for publication on the internet.

Part II:

The following table sets out a chronology of the principle events in the litigation.

Date	Event	Ref.
1986 Financial Year	6 Merriwa Street purchased.	
Between 30 June 1990 and 30 June 1991	Mr Hart committed nine offences of defrauding the Commonwealth contrary to section 29D of the <i>Crimes Act 1914</i> (Cth) (the Mevton offences). He was convicted of these offences on 25 May 2005. He derived \$706,402.93 from the commission of those offences.	
November 1990	Funds from the Mevton offences were used to pay wages that Harts Australia Group was unable to pay.	
1993	Merriwa Street was debt free. It was later mortgaged to the NAB for Nemesis Australia P/L (Nemesis) to borrow funds to buy assets.	
Between June 1993 and September 1995	Astion received \$1,203,107.20 in fees from participants in the Hendon arrangement. Tinkadale Pty Ltd (Tinkadale) also received fees. Nemesis or Harts Consulting received not less than \$720,000 in fees from the Hendon arrangement.	
About 22 June 1995	The loan for the Mercedes Benz was paid out.	
July 1995	The Cap 232 was purchased by Flying Fighters Pty Ltd (Flying Fighters) with a loan of \$232,579.99 from Nemesis. Source of Nemesis funds included a deposit	

	on 24 October 1994 of \$50,000 by Tinkadale.	
Between January and June 1996	Flying Fighters purchased a half share of the T-28 VH-SHT from Kim Rolph-Smith for \$133,000.	
Late 1995	The Whyalla property was purchased by the Hendon Unit Trust resulting in rental income being paid to Astion.	
Between 1 January 1998 and 30 June 2003	Mr Hart committed offences of defrauding the Commonwealth contrary to section 29D of the <i>Crimes Act 1914</i> (Cth) and dishonestly causing a risk of loss to a Commonwealth entity contrary to section 135.1(5) of the <i>Criminal Code</i> (Cth) (the UOCL offences).	
3 March 1998	The property located at 27 Samara Street, Sunnybank was purchased by Steve Hart Family Holdings No2 Pty Ltd (Bubbling Springs) for \$150,571.12 of which \$100,000 was financed by an ANZ loan and \$45,000 came from Astion.	
Between 7 July 1998 – 27 February 2004	\$7,564,670.18 was paid by United Overseas Credit Limited (UOCL) to Merrell Associates Limited (Merrell) and \$797,859.61 by EGA which had in turn received it from UOCL.	
From July 1998 – 15 May 2001	Nemesis received \$200,000, Harts Australia Ltd received \$1,170,000 and Harts Consulting received \$2,674,565.97 directly from UOCL.	
6 October 1998	Mrs. Hart sent a facsimile to Peggy Chan stating that Mr. Hart requested that she transfer \$102,000 to Geoff Klooger & Associates Trust Account. \$102,000 was transferred on 8 October 1998.	
Between 8 October 1998 and 24 February 2004	\$7,826,278 was withdrawn from Merrell's Australian dollar account. Withdrawals included transfers totalling \$1.387m to Geoff Klooger and Associates, \$150,000 to Nemesis, \$398,361 to Bernard Ponting, \$1m to CPA Trust A/c for Birallee Plaza Shopping Centre, \$44,132 to Unlimited Aero Maintenance (Flying Fighters Maintenance and Restorations) (UAM), \$350,000 to Harts Consulting, \$275,000 to Harts Group Financial Services, \$200,000 to Sea Fury Investments, \$60,000 to Unlimited Aerobatics (Flying Fighters), \$300,000 to Hartley Poynton, \$100,000 to Bomilsco, \$160,571 to Richard Goode and \$503,463 to Federal Financial Group Inc.	
October and December 1998	Flying Fighters purchased the remaining half share of the T-28 VH-SHT from Kim Rolph-Smith. \$149,100 was apportioned to the purchase of this half share. \$83,100 was sourced from UOCL via Merrell and Geoff Klooger's trust. \$64,000 was sourced from a loan from NAB to Flying Fighters.	
16 November 1998	Merrell lodged a charge over Flying Fighters.	
February 1999	Mr Hart arranged for UOCL to lend Dr Fleming \$400,000.	
Between December 1999 and October 2000	The Sea Fury was purchased by Flying Fighters with payments totalling \$644,355.82. \$20,161 (US\$12,500) and \$165,405 were paid by Merrell and sourced from UOCL on 14 February 2000 and 16 October 2000.	

	\$382,141.93 and \$38,027.44 was paid by UAM on 16 and 19 October 2000.	
10 April 2000	\$700,000 was transferred by Merrell to Geoff Klooger's Trust Account. Of this \$300,000 was lent to Harts Consulting Ltd and \$400,000 to No2 Pitt St.	
Between May 2000 and 30 March 2001	\$1,038,972.56 was spent on hangar 400.	
May 2000	Harts Australasia Limited was floated on the Australian Stock Exchange.	
26 May 2000	A deposit of \$45,000 was paid by Bubbling Springs for the purchase of Doonan's Road Grandchester. \$45,000 was transferred by Nemesis to Bubbling Springs on 25 May 2000.	
June 2000	The NAB bank bill facility was increased by a further \$2,700,000 to \$3,350,000.	
14 June 2000	Bubbling Springs settled the purchase of the property at Doonan's Road Grandchester. \$443,560.98 was provided by Nemesis and \$80,000 by the transfer of land at Ford's Road Gatton.	
22 June 2000	\$400,000 was deposited to Nemesis' account by Harts Australasia Limited.	
4 August 2000	Mr. Hart agreed with Merrell that money lent to No 2 Pitt St be redirected via Steve Hart Family Holdings No 3 Pty Ltd (Yak3) to Moruma Pty Ltd (Moruma) so Moruma could make a payment to Badge Constructions.	
4 October 2000	UOCL deposited approximately \$1.5m to Watson Benefits Services account.	
5 October 2000	Nemesis borrowed \$1m from NAB.	
6 October 2000	Nemesis deposited \$1m to Watson Benefit Services account.	
9 October 2000	\$95,625.21 was transferred from Steve Hart Family Holdings (Nemesis) NAB account to the Bubbling Springs ANZ Loan account which had been used to purchase 27 Samara Street.	
12 October 2000	UOCL deposited approximately \$500,000 to Watson Benefits Services account.	
16 October 2000	Merrell (as a loan to Flying Fighters) paid \$165,405 to Rural Aviation as an instalment on the Sea Fury.	
16 October 2000	UAM (as a loan to Flying Fighters) paid \$382,141.93 to Rural Aviation as an instalment on the Sea Fury.	
27 October 2000	Yak 3 transferred \$144,000 to Flying Fighters.	
27 October 2000	A cheque for \$500,000 from Badge Constructions Pty Ltd payable to Harts Property Management Pty Ltd endorsed to Nemesis was deposited to Nemesis.	
3 November 2000	A cheque from Blackshort P/L in the amount of \$1,300,000 was deposited to Nemesis on behalf of Watson Benefit Services.	
6 November 2000	Nemesis transferred \$361,000 to UAM.	
14 December	Unlimited Aerobatics P/L changed its name to Harts	

2000	Flying Fighters P/L (Flying Fighters).	
14 December 2000	Arnot was appointed Director of Flying Fighters.	
15 December 2000	Steve Hart Family Holdings No. 2 P/L changed its name to Bubbling Springs Olive Grove P/L (Bubbling Springs).	
January 2001	Nemesis's NAB commercial Bills totaled \$3.355 million.	
11 May 2001	The National Australia Bank: <ul style="list-style-type: none"> a. Issued a Notice of Termination of the Bill Facility to Nemesis because of its failure to pay the face value of a Bill on the Maturity Date; b. Demanded immediate payment of \$2.3m and \$1.05m; c. Issued a demand for Nemesis' commercial bill facility of \$1.1m and \$2.4m; d. Issued a notice of default and demand to Nemesis, for \$57,752.89 owing on an overdraft account. 	
29 May 2001	The NAB issued a Notice of Exercise of Power of Sale in relation to all assets and undertakings of Nemesis in its own right and as trustee for \$3.62m.	
4 September 2001	John Georgakis was appointed Receiver of Nemesis.	
14 September 2001	Harts Australasia Limited announced a consolidated net loss after tax of \$92.8 million for the year ended 30 June 2001.	
20 September 2001	Flying Fighters purchased the Mercedes Benz and other assets of Nemesis from the receiver and manager of Nemesis using \$400,000 borrowed from Dr Fleming's company Danmere Pty Ltd. A fixed charge over the Sea Fury was provided as security for the loan.	
20 September 2001	The receiver of Nemesis was discharged.	
25 September 2001	McLaughlin Financial Services (MFS) decided not to proceed with loans to Nemesis and Sea Fury Investments Pty Ltd because of 'further searches, media coverage and information further revealed'.	
30 September 2001	Bomilsco went into external administration.	
1 October 2001	Mr. Hart resigned as Director and Secretary of Nemesis.	
1 October 2001	Mr. Hart resigned as a director of Bubbling Springs.	
1 October 2001	Harts Flying Fighters changed its name to Flying Fighters P/L.	
About October 2001	Mr Hart informed Dr Ambler that the NAB wanted all their loans paid out and asked Dr Ambler if he was willing to offer a guarantee to Perpetual so that Yak 3 could obtain a loan. Dr Ambler agreed so long as he	

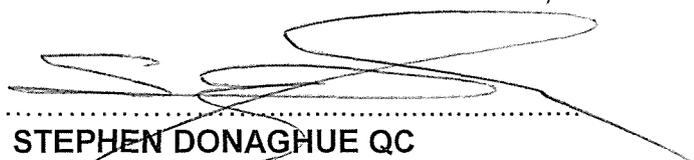
	was adequately protected against the risk of being called upon pursuant to his guarantee. Mr Hart promised him a block of land and a conditional option to buy hangar 400 if his option was called on.	
8 October 2001	Flying Fighters paid \$228,500 for the Trojan T-28. Funds used for the purchase were lent by Dr Ambler.	
Late 2001	Mr Hart approached Dr Fleming to provide a guarantee for a loan from Perpetual Nominees to Bubbling Springs Olive Grove, offering him a block of land and an option to purchase the Bubbling Springs Land (Doonan's Road) in the event of default on the proposed Perpetual Nominees mortgage. Mr Hart said it was a requirement of the proposed mortgagee that he become a director of Bubbling Springs.	
23 October 2001	Dr Ambler was appointed a director Yak 3 and Dr Fleming was appointed a director of Bubbling Springs.	
23 October 2001	Provisional liquidators were appointed to Harts Australasia Limited.	
29 October 2001	\$50,000 was transferred by UOCL to Bubbling Springs.	
1 November 2001	NAB appointed a controller of Nemesis.	
December 2001	Bubbling Springs and Yak 3 were advised by MFS that the loan applications were conditionally approved and that a written representation was required from the borrower and guarantor. In response to that condition, Yak 3, Ms Petersen, Mrs Hart and Dr Ambler signed a document entitled 'Loan Facility Terms and Conditions' which included a representation ("the clause 16 representation") that: 'The borrower and guarantor represent and acknowledge that they are entering into this agreement of their own volition and are not doing so on behalf of Steven Irvine Hart nor any associated company with which he is associated. Neither Steven Irvine Hart nor any associated company is indemnifying us as to the repayment of the loan. We make this representation acknowledging that the lender is relying upon this representation in approving the loan facility.'	
December 2001	Bubbling Springs, Ms Petersen, Mrs Hart and Dr Fleming signed a document entitled Loan Facility Terms and Conditions which included the same clause 16 representation.	
3 December 2001	An agreement was entered into between Harts Consulting and Merrell. Under the agreement, Harts Consulting Pty Ltd acknowledged that it owed \$1,061,842.47 to Merrell. As part payment for this debt, debts owed by the Hart family companies (Nemesis & Bubbling Springs) to Harts Consulting Pty Ltd were assigned to Merrell. The companies gave a cross guarantee and the companies granted a fixed and floating charge.	
10 December 2001	An option was granted to Dr Ambler to purchase hangar 400.	

19 December 2001	Perpetual Nominees advanced Bubbling Springs \$650,000. The property at Doonan's Road was provided as security.	
19 December 2001	The NAB ceased to be controller of Nemesis.	
19 December 2001	Hangar 400 was provided as security to Perpetual Nominees re \$650,000 advanced to Yak 3.	
December 2001	6 Merriwa Street was mortgaged to Equititrust.	
20 December 2001	27 Samara St was mortgaged to Equititrust to secure a loan of \$1,825,000 to assist Nemesis to settle the NAB debt.	
21 December 2001	The NAB facility was paid out by (a) EquitiTrust Finance Facility \$1,757,715.80 (b) Perpetual Finance Facility \$1,223,783.01 (c) Ultimate Business Consultants. \$2,705,413.33 was deposited to Nemesis.	
8 January 2002	Bubbling Springs, Yak 3 and Nemesis each granted Merrell a charge over all its assets rights and property.	
12 February 2002	Merrell lodged fixed and floating charges over Yak 3, Nemesis and Bubbling Springs.	
8 April 2002	Mr. Hart's trustee reported to creditors that six companies, Bubbling Springs, Fighters, Nemesis, Yak 3, UAM and Unlimited Business Consultants (Qld) Pty Ltd, had net assets of minus \$117,748 and that 'A feature of the six trusts is the substantial amount of funding provided by Merrell. In total that funding amounts to almost \$4.3 million'.	
22 April 2002	Mr Hart was declared bankrupt.	
The second week of July 2002	Spider Tracks Pty Ltd took over from Nemesis as the service company for Flying Fighters, Nemesis, Yak3, Bubbling Springs, Flying Fighters Adventures Pty Ltd, UAM and Unlimited Business Consultants (Qld) Pty Ltd, paying wages and lending funds if the companies' income was insufficient.	
23 July 2002	Bubbling Springs granted Daniel Fleming an option to purchase Doonan Rd Grandchester in the event of the occurrence of a "triggering event" as described in the deed.	
18 December 2002	6 Merriwa Street was re-mortgaged from Equititrust Limited to Countrywide Co-operative Housing Society Limited for \$360,000.	
18 December 2002	27 Samara Street was refinanced by Sunshine Co-operative Housing Society Limited for \$280,000.	
Between 30 January 2003 and 3 February 2003	Flying Fighters transferred \$159,500 to UAM. The funds used to make the payment were part of \$300,000 borrowed from Mr Arnot's company Ultimate Aerobatics. \$50,000 was for restoration, repairs and maintenance cost for the Trojan T-28 VH-AVC. The loan to Arnot was repaid with money sourced from Merrell via Sea Fury Investments and then Spider Tracks Pty Ltd.	
8 May 2003	A restraining order was made by His Honour Judge Brabazon QC in BD1416 of 2003.	

19 December 2003	The restraining order was varied to remove property at Pincone Street Sunnybank and add the VH-AVC and VH-SIC.	
14 May 2004	Judge Brabazon made findings that Mr Hart was in effective control of the restrained assets and the companies.	
18 May 2004	The restraining order was varied to add fixed and floating charges registered by Merrell over the assets of Nemesis, Yak 3 and Bubbling Springs.	
21 September 2004	The debt owed to Perpetual Nominees was repaid with money borrowed from Equititrust and others.	
26 May 2005	Mr Hart was convicted of nine offences of defrauding the Commonwealth in contravention of section 29D of the <i>Crimes Act 1914</i> (Cth).	
5 November 2005	An appeal to the Court of Appeal from the decision of Judge Brabazon on 14 May 2004 was dismissed.	
18 April 2006	The restrained assets were forfeited to the Commonwealth pursuant to the <i>Proceeds of Crime Act 2002</i> (Cth).	
17 July 2006	An application for a pecuniary penalty order and for declarations under s141 was filed by the Commonwealth Director of Public Prosecutions.	
18 August 2006	The property located at Doonans Rd, Granchester was sold by Equitrust as mortgagee in possession, after payment of GST on the sale, the balance of funds held by the Official Trustee was \$501,580.53.	
17 October 2006	An application for the transfer of property pursuant to section 102 was filed by the Companies BD3068/06.	
8 January 2007	6 Merriwa Street was sold by the Official Trustee with the consent of Nemesis. The net proceeds of sale of \$40,252.07 were banked and are still held by the Official Trustee.	
20 April 2007	27 Samara Street was sold by the Official Trustee with the consent of Bubbling Springs. The net proceeds of sale after mortgages were paid out of \$181,042.71 were banked and are still held by the Official Trustee.	
June 2010	Mr Hart commenced to act for the companies in the s102 and s141 applications.	
October 2010	Mr Hart granted leave to represent the Companies as a McKenzie friend at the hearing of the s102 applications and the s141 application.	
19 November 2010	An order was made that Mr Hart pay a pecuniary penalty of \$14,757,287. Order Andrews DCJ of 19 November 2010 in BD1416/03.	
6 December 2011	An appeal from the pecuniary penalty order was dismissed.	
2 April 2013	The primary judge determined the Companies s102 application and the Commonwealth's s141 application.	
6 May 2013	The primary judge ordered the transfer of hanger 400, hangar 101, L-39 VHSIC, CAP 232 VH-SHI and T-28 VH-AVC conditional on the payment of \$1.6m less the sale proceeds of 6 Merriwa Street and Doonan's Road Grandchester.	
13 November 2014	The lease of hangar 101 expired.	

29 August 2016	The Court of Appeal delivered judgment.	
8 November 2016	The Court of Appeal, among other things, set aside the order of the District Court made on 6 May 2013, ordered the transfer of certain assets and declared the value of the interests of Nemesis and Bubbling Springs in other assets. Further Amended Order of the Court of Appeal 8 November 2016 in CA3908/13.	

Dated: 11 May 2017



STEPHEN DONAGHUE QC
Solicitor-General of the Commonwealth
Telephone: (02) 6141 4139
Facsimile: (02) 6141 4149
Email: stephen.donaghue@ag.gov.au

ARTHUR MOSES SC
NEW CHAMBERS
Tel: (02) 9151 2075
Fax: (02) 92331850
Email: moses@newchambers.com.au

GIM DEL VILLAR
Murray Gleeson Chambers
Tel: (07) 3175 4650
Fax: (07) 3175 4666
Email: gdelvillar@qldbarr.asn.au