

IN THE HIGH COURT OF AUSTRALIA
MELBOURNE OFFICE OF THE REGISTRY

No. M 130 of 2010

BETWEEN:

EQUUSCORP PTY LTD (ACN 006 012 344)
(FORMERLY EQUUS FINANCIAL SERVICES LTD)
Appellant

and

CUNNINGHAM'S WAREHOUSE SALES PTY LTD
Respondent

RESPONDENT'S SUBMISSIONS

PART I: INTERNET CERTIFICATION

1. The respondent certifies that these submissions are in a form suitable for publication on the Internet.

PART II: ISSUES

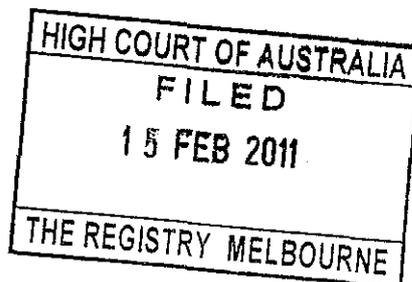
2. The respondent adopts:
- (a) the statement of issues in paragraph 3 of the written submissions in appeal M 128 of 2010 (**Haxton Submissions**); and
 - (b) the statement of issues in paragraphs 2 to 5 of the written submissions in appeal M 129 of 2010 (**Bassat Submissions**).

PART III: SECTION 78B NOTICES

3. The respondent certifies that it considers there is no reason for notice to be given to Attorney-Generals in compliance with sec 78B of the *Judiciary Act* 1903 (Cth).

Filed on behalf of the respondent
Eales & Mackenzie
Solicitors
Level 5, 95 Queen Street
MELBOURNE VIC 3000

As agents for:
Shand Taylor
Level 12, 241 Adelaide Street
Brisbane QLD 4000



Dated: 15 February 2011
Solicitor's Code: 6039
DX: 621 Melbourne
Tel: (03) 8615 9100
Fax: (03) 9602 4311
Ref: DJ:KM:23165

PART IV: FACTS

4. The respondent adopts paragraphs 7 to 13 of the Bassat Submissions, but otherwise agrees with the statement of facts in the appellant's written submissions in this appeal.

PART V: APPLICABLE STATUTES

5. The respondent adopts paragraphs 14 and 15 of the Bassat Submissions.

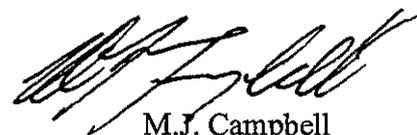
PART VI: ARGUMENT

6. In this case Byrne, J. held at trial that the appellant's claim in contract was statute-barred.¹ This finding was upheld in the Court of Appeal.²
7. The respondent contends that the principal reason why this appeal should be dismissed is because of the operation of the statute of limitations on the appellant's contractual claim and the effect of this on its claim for restitution. In that respect, the respondent adopts paragraphs 7 to 13 of the Haxton Submissions.
8. Alternatively or additionally, the respondent adopts paragraphs 16 to 50 of the Bassat Submissions.

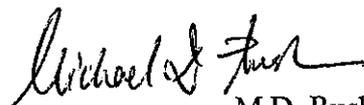
Dated: 15 February 2011



J.D. Merralls
Phone: (03) 9225 7387
Fax: (03) 9225 7114
merralls@vicbar.com.au



M.J. Campbell
Phone: (03) 9225 8344
Fax: (03) 9225 6111
mcampbell@vicbar.com.au



M.D. Rush
Phone: (03) 9225 6744
Fax: (03) 9225 8395
michael.rush@vicbar.com.au

Counsel for the Respondent

¹ *Equuscorp Pty Ltd v Bassat* (2007) 216 FLR 1 at 32 [118].

² *Haxton v Equuscorp Pty Ltd* (2010) 265 ALR 336 at 349 [62] (Dodds-Streeton, J.A.).