

DISTRICT COURT OF QUEENSLAND

CITATION: *Plath & Anor v Plath* [2019] QDC 42

PARTIES: **ALEXIS DUDLEIGH PLATH AND CHEYENNE
KELSEY PLATH AS PERSONAL
REPRESENTATIVES OF THE ESTATE ALFRED
WILLIAM PLATH DECEASED**
(plaintiff)

v

IRA PLATH
(first defendant)

FILE NO/S: D1352/17

DIVISION: Civil

PROCEEDING: Trial

ORIGINATING
COURT: District Court at Brisbane

DELIVERED ON: 4 April 2019

DELIVERED AT: Brisbane

HEARING DATE: 1 April 2019
2 April 2019

JUDGE: Ryrie DCJ

ORDER: **1. Judgment for the Plaintiff.**

2. The defendant's counterclaim is dismissed.

3. I will hear the parties' submissions as to costs, failing any agreement between the parties, set out in no more than 4 pages in writing, to be delivered within 2 weeks from the date of this judgment.

CATCHWORDS: CONTRACT OF SALE OF PROPERTY –
ENFORCEMENT OF MORTGAGE – RECOVERY OF
POSSESSION – whether it was a gift – estoppel defence –
set off defence at common law or equity –
COUNTERCLAIM – damages – limitations of actions act

LEGISLATION: *Limitations of Action Act* 1974 (Qld) ss 10(1)(a), 10(2)

CASES: *Forsyth v Gibbs* (2008) QCA 103

COUNSEL: Mr A Fraser for the Plaintiff
Defendant is Self-Represented

SOLICITORS: Bell Dixon Butler Lawyers

Introduction

- [1] By way of Claim, Alexis and Cheyenne Plath ('Alexis' and 'Cheyenne') as personal representatives of the Estate of Alfred William Plath (deceased) seek the recovery of certain property situated at 6 Hancock Street, Turkey Beach ('Turkey Beach property'). They also seek the sum of \$300,000 plus interest as set out in the registered Mortgage No 712449468 for the period 31 May 2010 continuing until payment or judgment.
- [2] The defendant, Ira Plath, ('Ira') defends the claim on several bases. (Court Doc 25).

Background

- [3] Alfred Plath ('Alf') died on 13 June 2011, having been predeceased by his wife Marilyn ('Marilyn') who died on 29th September 2010. Both were survived by 7 children which included the named personal representatives in this action, Alexis and Cheyenne, and the defendant Ira. Alf and Marilyn had been the registered owners of the Turkey Beach property until the 26 May 2009, at which point they executed certain documents.
- [4] Those documents, which are not in dispute, were a standard REIQ contract (Ex 2) whereby Alf and Marilyn agreed to sell to Ira the Turkey Beach property for the sum of \$315,000. A deposit of \$15,000 was to be paid. A mortgage over the Turkey Beach property was secured by the repayment of the loan by the Defendant to Alf and Marilyn (Ex 3), and a transfer document by Alf and Marilyn of the Turkey Beach property to the defendant (Ex 7) was effected. It was also not in dispute that an application for the First Home Owners Grant ('FHOG') was subsequently and successfully made on Ira's behalf, of which he received a monetary benefit from the government.
- [5] Subsequently, the plaintiffs, in their personal capacity as the representatives of their father's estate, made a written demand for the repayment of the above mentioned loan (Ex 18). Ira has continued to fail to repay any of that loan. Thus, this is the basis which gives rise to the plaintiffs' claim. ('claim').
- [6] In his amended defence, Ira says that when his parents met with him at the solicitors office, Kingston & Stanton, on or about 26th May 2009, that Alf and Marilyn represented to him, in front of Mr Kingston, that he was not required to make any loan repayments at all, and they would also release him from the mortgage at the expiration of 12 months after execution had taken place. Ira says that his parents said that because they wanted to thank him for everything he had done for the family over the preceding 9 years. Put another way, Ira says that his parents wanted to 'gift' the Turkey Beach property to him notwithstanding the terms of the said contract of sale and mortgage. As such, in reliance of the representations made to him, Ira says that the plaintiffs are now estopped from enforcing the mortgage against him ('estoppel defence').
- [7] In the alternative, by way of a set off, Ira says that he is entitled to set off what is now owing under the mortgage in any event, to account for the reasonable value of works and services that were provided by him for his parent's benefit, during the time he worked on various fishing vessels or carried out refit work on the 'Turkey Terra' boat. This covered the period July 1997 to December 2005 ('the set off defence'). For completion, it is also prudent to mention at this point that Ira has also pleaded in his amended defence, a counterclaim seeking damages in the sum of \$840,000 plus interest, on the same factual premise as 'the set off defence' I have just outlined. ('counterclaim').

- [8] While the plaintiff bears the onus of proof in respect to its' claim, the defendant also bears the onus of proof as to the matters which he has raised by way of defence and counterclaim.
- [9] In order to maintain simplicity in my reasons for decision, I shall now deal with each of the matters I have just referred to in turn.

Estoppel Defence

- [10] Several witnesses gave evidence regarding this issue. I have had regard to the transcript of the evidence given at hearing before me, and the submissions made by both parties (Ex 26 and 27 respectively).
- [11] I shall now refer to the evidence which I consider relevant and which I have taken into account when determining this issue.
- [12] In short, Ira's evidence at hearing was that during a meeting which he thought was the 26 May 2009 at Mr Kingston's office (solicitor), he and his parents had attended for the purpose of executing certain documents to give effect to what he believed was his parents' wishes at that time. That was that they wanted to gift him the Turkey Beach property. He said that at the commencement of that meeting, 'we' started off saying that we were going to obtain the first home owners grant, and that Billy Kingston said in order to do that they would have to put in a pretend mortgage (T1-107). He also gave evidence that during the course of that meeting, both Bill ('Mr Kingston') and his parents explained to him that even though a mortgage was being put over the property, it wasn't required to be paid back and no payments had to be made. He also said that Bill had put in a fake mortgage in order to qualify him for the First Home Owner's grant, and told him and his parents that after 12 months had run, 'we' had to come back and knock the mortgage on the head. As he explained, he understood that to mean that after 12 months, it was up to the discretion of his parents' ability to 'write it off'. (T1-107).
- [13] He also gave evidence that his mother Marilyn got very ill in January 2010 and everyone then forgot (including him) to go back after 12 months had passed to 'knock the mortgage on the head, as had been discussed'. Sadly, not long after Marilyn passed away, Alf did too. Ira gave evidence that he remembered signing documents in Mr Kingston's office that day which had to be 'legit to qualify for the first home owner's..... that's what Bill said' (T1-108 L 33).
- [14] Ira also gave evidence that the reason his parents were wanting to 'gift' him the Turkey Beach property, was because of all the effort and the sacrifice he had made and what he had done from 1997 through to 2005. He said that he was never paid for his efforts during this time, which in effect was to help his parents out regarding a difficult situation which had arisen between his parents and one of his siblings (the son Bradley). In this regard, I note in the Outline of Submissions tendered (Ex 27), that Ira again submits to me that the 'gift' of the Turkey Beach property was for all the unpaid work and time lost when he helped his father out in regards to that difficult situation. He has submitted to me in Ex 27, that when his father had called for his help, he couldn't say no, purely on respect.
- [15] Several witnesses were called during the trial, which touched upon this issue regarding whether Ira's parents had always intended that their son Ira was to receive the Turkey Beach property as a gift from them. Put another way, in the event that they did, Ira was therefore not required to make any repayments at all under the mortgage which had attached to that property, which he says the parents had intended to release him from in

any event, once 12 months had passed by after execution of the relevant documentation already outlined in these reasons.

- [16] I shall touch upon that evidence now.
- [17] Alexis Plath had no memory of her father or mother ever mentioning to her that Ira was to receive the Turkey Beach property as a gift. After her mother died, she became her father's carer, and at no point did she recall her father indicating to her that Ira was to receive the Turkey Beach property as a gift from either of her parents. That evidence is relevant because in the amended defence paragraph 3f, it is asserted that the parents subsequently informed their other children, including the plaintiffs, of the gift and the representations made at the solicitor office meeting on the 26th May 2009.
- [18] Cheyenne Plath also had no memory of her father or mother ever mentioning to her that Ira was to receive the Turkey Beach property as a gift. Her only recollection was that her father had mentioned it through the course of her life, after her father had purchased the Turkey Beach property, that the likelihood was that the boys would get the property to be shared, particularly as between Ondra (another son) and Ira. (T1-70).
- [19] Paulette Plath also had no clear memory at all, however what she did recall, was that she thinks sometime in 2002 all she knew was that Ira was going to get the Turkey Beach property in lieu of all the work he had done regarding the 'Turkey Terra' boat, and as far as she was concerned it was a done deal. (T1-89). She also gave evidence however that she wasn't even aware that her parents and Ira had gone to the solicitor in 2009 regarding the Turkey Beach property, and that the first she knew was after her father had died in 2011 that a mortgage existed over the property, and that she thought it was to be part of the will that her brother Ira was going to get the Turkey Beach house. (T1-90).
- [20] Blair Rowan also gave evidence that he had been a family friend of the whole family, and at one point in 2002 he himself had proposed to Alf that he buy a half share in the Turkey Beach property, but Alf told him that he would have to deal with Ira because he was going to give it to Ira or leave it to Ira. (T1-91). He also believed that Alf had reiterated to him over the years that, not sure exactly when, the property was going to be Ira's but couldn't be precise regarding when or what was said on those other occasions.
- [21] Tony Russo also came and gave evidence. He stated he had known the family for 40 years. He recalled a conversation in a car some 20 years ago, that Alf told him that in lieu of the work that Ira had done in helping them retrieve some monies (owed from the son Bradley to Alf in the order of about \$183,000), that they were going to gift Ira the house. That help included the work that Ira had given up himself in order to get the 'Turkey Terra' vessel going, ultimately selling it off and redeeming some of the monies in respect of Bradley's failure in that regard.
- [22] Alexis Pedesco also gave evidence on this issue. It should be mentioned at this point that objection (T1-99) was taken in respect of this witness providing evidence on this issue as it had not been pleaded. I nevertheless allowed it.
- [23] He first met Alf and Marilyn in about 2002 and 2003. He recalls in 2003/4 that Alf told him that he and his wife had decided to give Ira the house because of all the work he had put into recovering all this money for them (presumably in respect of Bradley). (T1-102). He also remembers Marilyn saying something to that effect a year or two later. He agreed under cross examination that he couldn't recall any other conversation after that as 'it all been said by then' (T1-104).

- [24] In response to my direct questioning regarding any recollection of a similar vein in 2009, he then recalled Alf mentioning to him that he had actually given Ira the house, that it was all finalised, unencumbered, that he made up a fictitious loan just so as he'd get the first home buyer's grant, and that there was no intention of Ira ever having to pay it back. He stated that he understood 'it was just a dummy loan' (T1-104).
- [25] When cross examined by Counsel for the plaintiffs, Mr Pedesco conceded that the words 'dummy loan' were words he had actually heard from the defendant himself. He denied when it was put to him, that Alf hadn't told him anything at all like what he had just said Alf had told him in 2009, and that he was in effect making it up. (T1-104).
- [26] I shall now set out my findings as to credit regarding the abovementioned witnesses.
- [27] I have no real reason to reject any of the evidence given by the witnesses regarding their recollections prior to 26th May 2009, regarding what Alf and/or Marilyn may or may not have told them about their possible intentions regarding the Turkey Beach Property and Ira. Those recollections, while vague and imprecise at times, were not in any event that inconsistent with Mr Kingston's own evidence at hearing (which I will deal with more fully now). That evidence in effect was that when Alf, Marilyn, and Ira, had first approached him on 20th May 2009 (1st solicitor meeting), the parents had expressed to him that they had wanted to gift the Turkey Beach property to Ira, and that Ira was also intending to claim the First Home Owners Grant. (T1-17). Mr Kingston said he did recall that the application for a FHOG was fairly paramount in their minds, so he advised them in order to achieve that, they needed to do a contract for purchase of it, and given that Ira wasn't wanting to borrow money, the parents would have to provide vendor finance to assist in that regard.
- [28] Mr Kingston says he then provided legal advice regarding a deposit of \$15,000 in recognition of services rendered by the defendant (Ira), and that the balance of \$300,000 would need to be repaid. He suggested annual repayments inclusive of principal and interest, and told Alf and Marilyn that they would then basically have control of the management of that debt, and that it was for them to decide how to treat that debt into the future. (T1-17).
- [29] Importantly, Mr Kingston's evidence can be summarised as follows. At no stage did he receive instructions from Alf and/or Marilyn that the loan would be forgiven in 12 months' time, or that what he had prepared was only a 'dummy mortgage' in that in reality no repayments had to ever be repaid by Ira. That in light of the approach that the parents were taking by executing a contract for sale with mortgage attached, it was never considered by him that they were therefore 'gifting' the said property to Ira. Indeed, as I understood Mr Kingston's evidence, he stated that he had in fact raised with Alf and Marilyn, the option of gifting the property outright to Ira, and to simply forget about the 1st home owners grant altogether; an option which they did not chose to take up at that time. (T1-21). In cross examination, he also confirmed that the 1st home owners grant application was specifically what Ira had in fact wanted (T1-49).
- [30] Mr Kingston also gave evidence that he therefore prepared the necessary documentation on the basis there was to be a first registered mortgage over the Turkey Beach property, and that it was then to be a matter for the parents regarding how they wanted to manage that debt into the future. Mr Kingston also confirmed that he prepared the necessary documentation regarding the claim for a first home owners grant for Ira, and that he wouldn't have done so if there was to be no liability owing at all by the defendant to his

parents. He gave evidence that he had also in fact discussed with Ira whether he could afford the repayments stated in the mortgage prepared. As he reiterated in his evidence, 'a mortgage is a mortgage is a mortgage'. It can only be released after there's been attention to repayment or forgiveness of debt. (T1-45). He also confirmed in his evidence that he never received any instructions subsequently from the parents to forgive the debt owing. (T1-51).

- [31] Mr Parcell also gave evidence. He was the accountant for Alf and Marilyn. He prepared tax returns for the year 2009. While he could not specifically remember any details, his notes taken at the time did not contain any reference to a gift regarding the sale of the Turkey Beach Property to Ira in 2009, and that had it been such, most likely a notation to that effect would have been made to the market value of the property for the purpose of capital gains tax assessment. No such notation was made.
- [32] Having regard to the evidence of Mr Kingston as a whole, and the other evidence to which I have referred, I make the following findings.
- [33] I find that while Alf and Marilyn may well have considered over the years about gifting or leaving the property to Ira prior to 26th May 2009, that position then changed. I accept Mr Kingston's evidence regarding the two meetings which he had with the parents and Ira. I accept his evidence that he specifically discussed with Alf and Marilyn, the option which was also available to them, which was to simply gift the property outright to Ira and forget altogether about the FHOG, but that was rejected. I find that having received certain legal advice from Mr Kingston, both Alf and Marilyn then chose to take the other option which Mr Kingston had also proposed to them, which was evidenced by the documentation subsequently executed regarding the sale of the Turkey Beach Property, and the mortgage which was to attach to it. That is also consistent with the letter submitted by Ira, on his behalf by Mr Kingston in respect to his application for the first home owners' grant (Ex 13).
- [34] I find that Alf, Marilyn and Ira were all properly informed of the legal consequences regarding the documentation which they subsequently executed, and that all parties were happy to take that option up in order to facilitate Ira being able to claim the first home owners grant. Indeed, the defendant himself initially accepts that he was aware of the legal consequences and obligations that came with signing the contract for sale and mortgage document; (T-120) but subsequently suggests that he didn't think he had any legal obligations at all because the mortgage was 'fake' (T2-5).
- [35] I do not accept Ira's recollection of the meeting which he says happened only on one occasion with Mr Kingston, which he says was for the sole purpose only of having him come in to sign various documents being placed in front of him. Mr Kingston had the benefit of his notes which even though were scant nevertheless assisted him. I accept as a matter of common sense, that Mr Kingston, upon receiving instructions to proceed, would have needed time in order to prepare the necessary documentation, so as to give effect to the instructions which he was given by both the parents and Ira regarding how they wanted to proceed regarding the Turkey Beach property. Those instructions by implication clearly rejected the option that was given to Alf and Marilyn by Mr Kingston, which was that they could simply gift the property outright to Ira if they so wished, and forget about any claim for the first home owners grant.
- [36] I also find that neither Mr Kingston or Alf and Marilyn were complicit in the execution of 'fake documentation' simply in order to obtain Ira the first home owners' grant; which

they would have known he was not entitled too. Both Alf and Marilyn were given certain advices by Mr Kingston on how to legally proceed in order to achieve that objective, and they did so accordingly. I find that it was explained to them fully by Mr Kingston regarding the legal consequences which attached to those respective documents, and how they, Alf and Marilyn, would themselves be then able to manage the debt owed to them by Ira.

- [37] I also have no reason to reject Mr Kingston's recollection when it comes to his memory of the discussions that took place in his office over the two occasions to which he referred with the parents and Ira. Indeed, Ira's memory of events can at best be described as somewhat lacking. In this regard, by way of example, Ira initially gave evidence that when he and his parents attended at Mr Kingston's office on the 26th May 2009 that at the commencement of that meeting (the only meeting he maintained he had with Mr Kingston which I cannot accept as correct given Mr Kingston having to get the necessary documentation that was executed that day prepared), he and his parents started off by saying that they were going to obtain the first home owners grant and that Mr Kingston said in order to do that they would have to put in a 'pretend' mortgage (T1-107). That evidence does not sit well with Ira's own subsequent evidence which was that Ira maintained that he personally never raised the idea that he wanted to get the first homeowner's grant with Mr Kingston (T1-117) because as he put it, all of that documentation which he needed to sign was already done by the time he got to the meeting.
- [38] I also find the answers which the defendant gave as less than satisfactory on occasion, especially when being asked questions regarding what he understood were the legal implications regarding his application to receive the first homeowners grant payment. (T2-9) By way of example, the defendant maintained that he was entitled to receive that payment even though he also continued to maintain the position that he knew that the documentation which had been executed by him (contract of sale and mortgage) was indeed 'fake'. It is difficult then for me in the circumstances to accept his evidence overall as having the necessary veracity for truth.
- [39] Even if it is accepted by me that the documentation which he signed was designed to assist him in getting the first homeowners grant, the legal situation nevertheless remains the same. I find that the documentation which the defendant did in fact sign nevertheless carried with it, the same legal obligations and consequences which attaches to it, insofar as repayments which had to be made as they fell due. Having failed to meet those obligations, the plaintiffs are entitled to the relief sought.
- [40] It follows that I do not find that the parents intended to 'gift' the property to Ira as he asserts. I also find that the alleged representations which he says were made by his parents during the solicitor's meeting which he recalls in May 2009, were not made. That finding is supported by the fact that Mr Kingston, who I accept as credible, has no memory of such representations being made by the parents to Ira and further supported by the fact that neither parent when alive choose to change their wills at any point subsequent to the execution of the documentation on the 26th May 2009, to reflect any 'waiver' of the debt that was still owed to them from Ira in respect of the Turkey Beach property even at the time before their respective deaths. This was the case even though Mr Kingston had advised them that they could manage the debt owed to them however they liked. The letter by Ira which accompanied his first home owners grant (Ex 13) also belies Ira's assertions.

- [41] Indeed, it is important in my mind to note here that at the time that Alf's will was prepared (dated 1 December 2010 and prepared by a solicitor other than Mr Kingston or his firm) that there was still no indication by him that Ira's debt was to be relinquished. A fact in my mind that confirms that Alf considered the sale of the Turkey Beach property to Ira and the subsequent mortgage debt that attached to it was one which Ira nevertheless still needed to honour in order to keep Turkey Beach. There is also the evidence of Mr Kingston which suggests that in consideration of the services that had been rendered by Ira to them, that only 300,000 rather than 315,000 was to be repaid to back to the parents under the mortgage. Another fact which in my mind supports a reasonable inference to be drawn, that Ira was being helped by his parents with the finance of his loan in order that he could purchase Turkey Beach from them.
- [42] I also find that I reject the evidence of Mr Pedesco regarding his recollection of any conversation which he says he had with Alf in 2009. A careful examination of his evidence as a whole shows that Mr Pedesco was vague in his general recollection of any of the conversations he said he had with Alf or even Marilyn regarding their intentions in respect of the Turkey Beach property. His particular recollection of a conversation in 2009 with Alf (T1-104) in my mind smacked of his attempt at gilding the lily in order to assist Ira in whatever way he could. In particular, his concession that the words 'dummy loan' were words that he had been told by the defendant and not by Alf himself did little to assist me in accepting him overall as a credible witness. His use of the word 'unencumbered' is also curious in my mind considering Alf was aware that a mortgage was still attached to the Turkey Beach property at the point he is alleged to have said that to Mr Pedesco.
- [43] Having found that the plaintiffs have proved their claim and the defendant has failed to prove the estoppel defence raised, I now turn to the Set Off Defence.

The Set Off Defence and Counterclaim

- [44] The defence was pleaded as an alternative. The Counterclaim is based on the same factual premise as the Set Off Defence. For the reasons I am about to set out now, I find that the defence and Counterclaim must fail.
- [45] The amended defence is unclear insofar as whether the set off defence is one that arises at common law or in equity. If it is the former then it is now statute barred. See section 10(1)(a) and 10(2) of the *Limitations of Action Act 1974* (Qld). No such impediment however arises in equity. The factual premise relied upon by Ira is as set out in the amended defence paragraph 4, as it relates to the Set Off Defence. There appears to be a typographical error regarding the year (2009 rather than between July 1997 and December 2005) which the defendant says was the services and work which, at the request of his parents, he performed (see Annexure 1 attached to the amended defence).
- [46] I have had regard to the relevant law as it relates to an equitable set off (*Forsyth v Gibbs* (2008) QCA 103), regarding the applicable impeachment of title test. The factual premise upon which the set off is made, runs during a period some 4 years prior to the execution of the subject contract for sale of the Turkey Beach property. While it is arguable that the works and services provided during 1997 to 2005 by Ira allow for some context to be given regarding the Turkey Beach property sale in 2009, insofar as the reasons why Alf and Marilyn may have wanted to help Ira out financially at that time, there must still be nevertheless some ground for equitable intervention beyond the mere existence of a cross-claim. It is difficult on the evidence I have here, that there is. I have

also considered, notwithstanding the common law set off defence is statute barred, whether there is some ground for a set off against the plaintiff's claim.

- [47] In this regard, I have had careful regard to the evidence available and I make the following findings.
- [48] There is simply insufficient evidence available before me to find or even draw a reasonable inference that the services and work which Ira said he carried out and/or performed for his parents were actually at their specific request to do so. I have carefully looked at the defendant's evidence on this issue, and at best it seems that he was simply being a caring decent son who had offered to help his father who had called him for help. (See also Ex 27 which seems to also confirm this, bearing in mind that is merely a submission made for my consideration). I also find that there is no evidence to support a conclusion that Alf or Marilyn in any event, had specifically asked Ira to perform the works or services set out in the Annexure attached to the amended defence, or that they would have in those circumstances even had known, or expected, that he would be wanting payment for those services and/or works rendered. Indeed, as Ira said himself, when he was refitting the vessel out himself, 'he wasn't paid by Mum and Dad to do that, you know, just got in and did it' (T1-114).
- [49] The details regarding the said claim and its' calculations as set out in the Annexure, are also somewhat vague, making it virtually impossible for me to calculate. During his evidence, Ira accepted that he had been earning income fishing in the first 4 years claimed, but that it was much less than he could have been earning as a 'Sparky'. The amount in the far right hand column was simply what he said he could have made. Put another way, it was the amount he said he could have earned as a Sparky (electrician) if he hadn't been providing services to Alf and Marilyn during that time.
- [50] There was also evidence available from Mr Kingston that he believed, based on documentation his firm had on file (Ex 17) that Ira himself had received some benefit in the fishing vessel from 2003 or so (Turkey Terra). (T1-34). While Ira denied that the Commercial/Fishing Ship Registration Transfer document (part of doc Ex 17) raised that possibility, I find that the document in question does show the seller named, Bradley Plath as the seller named, and Ira Plath as buyer in 2003. The defendant also gave evidence himself that at the time the Turkey Terra was sold in 2005, both he and his father received monies from the sale of \$50,000, of which he received \$24,500. That in my mind is consistent with Ira having received some benefit in the shipping vessel, even though he maintained that he always considered the vessel as being his mother and father's vessel and not his (T2-4).
- [51] Unfortunately, I am unable to be satisfied, even on the balance of probabilities, based on the scant evidence available to me, that either a common law set off or a set off in equity arises in the circumstances of this case.
- [52] Finally, in respect of the counterclaim, this claim is also statute barred. For the reasons already stated, I am unable to determine, based on the evidence before me, what a 'reasonable value' of the works and services claimed actually are, or that they were works and services which Alf or Marilyn had requested Ira to perform for them of which it was agreed or at least expected that he would be paid for.

Orders:

[53] Accordingly, the orders are as follows:

- 1. Judgment for the Plaintiff.**
- 2. The defendant's counterclaim is dismissed.**
- 3. I will hear the parties' submissions as to costs, failing any agreement between the parties, set out in no more than 4 pages in writing, to be delivered within 2 weeks from the date of this judgment.**