SUPREME COURT OF QUEENSLAND

CITATION:	*Taylor & Anor v Hobson & Ors* [2019] QSC 4
PARTIES:	**ALAN JOHN JEFFREY TAYLOR** (First Plaintiff) AND **WANDANI PTY LTD (ACN 001 968 684)** (Second Plaintiff) **v** **RODERICK GEORGE HOBSON** (First Defendant) AND **HOBSON INVESTMENTS (NQ) PTY LTD (ACN 102 617 050)** (Second Defendant) AND **ROBERTS NEHMER MCKEE** (Third Defendant) AND **MALCOLM FISHER** (Fourth Defendant)
FILE NO/S:	No 15 of 2014
DIVISION:	Trial Division
PROCEEDING:	Trial
ORIGINATING COURT:	Supreme Court at Mackay
DELIVERED ON:	17 January 2019
DELIVERED AT:	Rockhampton
HEARING DATE:	18 and 29 October 2018
JUDGE:	Crow J
ORDER:	**1. Judgment for the first plaintiff and the second plaintiff against the first defendant and the second defendant for damages to be assessed.**
CATCHWORDS:	PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – PLEADINGS – GENERALLY – where the plaintiffs applied to amend the further amended statement of claim after the expiration of the limitation period – whether the new cause of action arises out of the same facts or substantially the same facts TRADE AND COMMERCE – COMPETITION, FAIR TRADING AND CONSUMER PROTECTION LEGISLATION – CONSUMER PROTECTION – MISLEADING OR DECEPTIVE CONDUCT OR FALSE

	REPRESENTATIONS – FALSE REPRESENTATIONS GENERALLY – where the second plaintiff as purchaser entered into a share sale agreement with the second defendant as vendor – whether the first defendant made representations to the first plaintiff - whether representations were false – whether representations were relied upon in entering into agreement – whether representations were misleading – whether second plaintiff would have entered into agreement had representations not been made
	Trade Practices Act 1974 (Cth), ss 52, 53A
	Uniform Civil Procedure Rules 1999 (Qld), r 376(4)
	Limitation of Actions Act 1974 (Qld)
	Matthews v Ross Neilson Investments Pty Ltd & Ors [1995] FCA 1009
	Brisbane Airport Corporation Pty Ltd v Arup Pty Ltd [2017] QSC 232
	Adcock Private Equity v Porges [2018] NSWSC 1363
COUNSEL:	G D Beacham QC with F Chen for the Plaintiffs
	D A Savage QC with A Raeburn for the First and Second Defendants
SOLICITORS:	Bartley Cohen for the Plaintiffs Connolly Suthers Lawyers for the Defendants

Factual Background

[1] The first defendant, Mr Hobson, is the sole director of the second defendant. The second defendant ("Hobson Investments") is the trustee company for the Hobson Family Trust. Hobson Investments holds two shares in another company, Prawns North Pty Ltd ("Prawns North"), as trustee for the Hobson Family Trust.

[2] From in or about 2001 until 2008, Prawns North held licenses for and conducted prawn and barramundi aquaculture from a property known as "*Saltwater"* located at Rollingstone. When it was a going concern, that property was valued by Herron Todd White Valuers ("HTW") in a valuation report dated 12 June 2003 as having an estimated value of $2,800,000.[1]

[3] The land upon which the Saltwater aquaculture venture had been conducted is crown land which had been leased by the crown to Hobson Investments.

[4] Mr Hobson who had long experience in earthmoving construction, had previously conducted the Prawns North business before ceasing that business and his other business operations in or about 2008.

[5] The first plaintiff, Mr Taylor, is the sole director and sole shareholder of the second plaintiff, Wandani Pty Ltd ("Wandani"). Mr Taylor was formerly a grazier who had lived

1 Ex 1 at p 4.

all of his life on the family farm near Coonamble, in the central west of New South Wales. The Taylor family farm was sold in May 2009 to the Native Conservation Trust (NSW) for $7.6M. Mr Taylor received $4.5M from the sale.

[6] Mr Taylor and Mr Hobson became socially acquainted in 2007 during a helicopter safari to Cape York. The helicopter safari commenced at Airlie Beach and the first stop was Saltwater. In July 2007 Saltwater was in full production and Mr Hobson showed his guests, including Mr Taylor, around Saltwater. It was during this short tour around Saltwater that Mr Hobson showed Mr Taylor the processing tanks from which prawns were being harvested, and the processing shed. The safari group then moved to a sand hill along the beach for lunch.

[7] It was clear that Saltwater made quite an impression on Mr Taylor. Exhibit 1 page 404 is an aerial photograph of Saltwater, however, it does not appear to depict just how impressive Saltwater was in July 2007. The photograph shows numerous ponds. The ponds were an average of 1 hectare each.[2] All of the equipment was new and "state of the art." Saltwater was extremely well kept. The 45 metre x 25 metre building called a packing shed was constructed in 2003 or 2004.[3] According to the HTW valuation[4] the buildings upon the Saltwater property were valued at approximately $630,000 on 12 June 2003.

[8] Mr Taylor admits[5] that he told Mr Hobson that he was interested in aquaculture on a "trip to the Gulf." It is not disputed that Mr Taylor and Mr Hobson had several discussions concerning the aquaculture ventures at *Saltwater* and a property at Cardwell. However the contents of those conversations which occurred from 12 December 2009 until 5 March 2010 are in dispute.

[9] On 8 February 2010, Wandani as purchaser, and Hobson Investments as vendor, entered into a share sale agreement[6] dated 11 February 2010, the effect of which was that in consideration for Wandani paying Hobson Investments $2,500,000, Hobson Investments sold one of its two shares in Prawns North to Wandani.

[10] On the day that the share sale agreement was signed, Wandani paid Hobson Investments $300,000. After the share sale agreement and between 9 March 2010 and 25 July 2010, Wandani paid Hobson Investments a further $1,355,699.97. The balance of $844,300 was not ever paid and Wandani purported to rescind the share sale agreement on 24 February 2012.

[11] On 28 February 2014, the plaintiffs commenced this action against Mr Hobson, Hobson Investments and the third and fourth defendants. The fourth defendant is a partner of the third defendant and acted as the solicitor to the first and second defendants during the course of the transaction. By Paragraph 7(b) and 16 of the Further Amended Statement of Claim ("FASC") filed 11 April 2016, the plaintiffs allege that the third defendant and the fourth defendant acted as the agents of the first and second defendants "in their dealings with the first and second plaintiffs."

---

2 T1-97/22.
3 T1-97/31.
4 Ex 1 at p 18.
5 Paragraph 1(d) of the Further Amended Reply and Answer filed 8 August 2016.
6 Ex 1 at pp 261 – 268.

[12] Mr Hobson and Hobson Investments deny this allegation and allege that the third and fourth defendants were only acting as solicitors for Mr Taylor and Wandani.

[13] The plaintiffs' claims against the third and fourth defendants have been settled. The plaintiffs' claims against the first and second defendants were stayed by order of Boddice J.[7] Attempts to have the stay altered or lifted were subsequently refused by McMeekin J.[8]

[14] By order of North J on 17 April 2018 the stay ordered by Boddice J was lifted. By further order of this Court on 1 June 2018, the liability issues defined as those issues arising from Paragraphs 1 to 24C of the FASC filed 15 April 2016[9] and Paragraphs 1 to 24C of the Amended Defence ("AD") filed 13 June 2016[10] were ordered to be tried as a separate trial.

A Late Amendment

[15] At the commencement of trial the plaintiffs applied to amend the FASC. The application was not opposed, on the basis that the defendants' rights to plead a limitation defence were reserved.

[16] The defendants also flagged an objection to any evidence which fell outside of the summaries of evidence which, by direction, had been supplied by the plaintiffs. As it transpired, no objection was taken because no evidence which was outside the terms of the summaries provided by direction was sought to be led.

[17] The amendments set out in Paragraphs 11D, 11E, 22A and 22B as follows:

> "11D. The first plaintiff visited the land at Saltwater on at least 3 occasions prior to 11 February 2010, and was taken for a tour around the land and shown the features of the aquaculture business by Mr Hobson on 12 December 2009.
>
> 11E. In the alternative to paragraphs 9(b), 11(b) and 11(m), the making of the representations in paragraphs 9(c) and 11(c) and the matters in paragraph 11D above, impliedly represented to the plaintiffs that:
>
> (a) Prawns North was the owner of, or had legal title to, the land at Saltwater;
>
> (b) By purchasing an interest in Prawns North, the plaintiffs would acquire an interest in a company or business that was the owner of, or had legal title to, the land at Saltwater.
>
> […]

---

7 *Taylor v Hobson* [2016] QSC 226.
8 *Taylor v Hobson* [2017] QSC 139 and *Taylor v Hobson* [2017] QSC 157.
9 Court Document 37.
10 Court Document 42.

22. The pre-agreement representations were false misleading or deceptive in that:

[…]

(h) Prawns North owed a debt of over $2M to Hobson Constructions (Qld) Pty Ltd.

22A In the alternative, the failure to disclose that Prawns North was not the owner of, and did not have the legal title to, the land at Saltwater was misleading or deceptive because, in the following circumstances:

(a) the making of the representations in paragraphs 9(c) and 11(c);

(b) the matters set out in paragraph 11D;

there was a reasonable basis for expecting that such facts would be disclosed.

22B The representations in paragraphs 11(m) and 11E(b) were misleading or deceptive because, in the following circumstances:

(a) the making of the representations in paragraphs 9(c) and 11(c);

(b) the matters set out in paragraph 11D;

such representations ought to have included a qualification to the effect that Prawns North did not own, or have legal title to the land on which the aquaculture business was operated, but no such qualification was included."

[18] The plaintiffs argue that the time limitation defence cannot arise because of the effect of r 376(4) of the *Uniform Civil Procedure Rules* 1999 (Qld). Rule 376(4) provides:

376 Amendment after limitation period

[…]

(4) The court may give leave to make an amendment to include a new cause of action only if—

(a) the court considers it appropriate; and

(b) the new cause of action arises out of the same facts or substantially the same facts as a cause of action for which relief has already been claimed in the proceeding by the party applying for leave to make the amendment.

[19] The defendants argue that the new cause of action does not arise out of the same facts, or substantially the same facts, as the cause of action for which relief has already been claimed in the proceedings.

[20] The defendants submit that:

> "Knowingly telling someone of the particular state of affairs which involved a factual dispute about what was said and what was not said, cannot be said to arise out of the same facts as not saying something in circumstances where the factual enquiry is whether that was an occasion which something should or should not have been said."[11]

[21] The defendants call in aid of their submission the decision of Kiefel J (as her Honour then was) in *Matthews v Ross Neilson Investments Pty Ltd & Ors.*[12] The Matthews' case was also a case concerning misleading and deceptive conduct and breach of s 52 of the *Trade Practices Act* 1974 (Cth). The statement of claim was filed on 17 December 1993 and after directions hearings and all interlocutory steps were completed, the matter was listed for trial on 13 December 1995 (i.e. almost 2 years after the statement of claim was filed). The statement of claim brought a case made upon implied representations and reliance based "upon the vendors' silence as to the difficulties with respect to Billboard's financial capacity, as a representation."

[22] In accordance with directions, witness statements were delivered by the applicant, in which the applicant alleged the respondents made six oral misrepresentations. The respondents took objection to the witness statements, and in response the applicants applied to amend their statement of claim, adding the series of six oral representations. Kiefel J dismissed the application, finding that:

> "The case now sought to be pursued is not however one based on substantially the same facts. A separate and distinct action now arises and it is based upon the conduct in making what seems to me to be the critical representation, that Brash Holdings would be taking a lease of the billboard, and reliance and inducement is based upon that and not upon what the vendors themselves failed to say to the applicant."

[23] It may be observed that the present case differs significantly from the facts in the *Matthews* case. In the present case, witness summaries have been delivered and there is no suggestion that evidence in respect of the amendments falls outside the witness summaries that have been provided.

[24] The amendments the subject of paragraph 11E are implied representations made upon the same factual circumstances as the representations the subject of paragraphs 9(b), 11(b) and 11(m) of the FASC, and were expressly said to be in the alternative to paragraphs 9(b), 11(b) and 11(m). In terms of r 376(4) of the *Uniform Civil Procedure Rules* 1999 (Qld) it has been shown that the new cause of action the subject of paragraph 11D and 11E do rise out of substantially the same facts.

[25] The relevant principles have been succinctly set out by Applegarth J in *Brisbane Airport Corporation Pty Ltd v Arup Pty Ltd*[13] and in particular where his Honour said:

> [39] The essential question is whether the new cause of action arises out of "substantially the same facts" as a cause of action for which

---

11 Defendants' written submissions.
12 [1995] FCA 1009.
13 [2017] QSC 232.

> relief already has been claimed. The answer to that question should be informed by an appreciation of the policies underlying the applicable statute of limitation. Those policies may be inappropriately undermined if the required analysis is conducted at too high a level of generality. However, if those underlying policies are not threatened by a proposed amendment, the test in r 376(4)(b) may be found to be satisfied even though the new claim involves some variation in the facts.
>
> [40] If there was no variation of the facts so as to give rise to a new cause of action, then the rule would not be engaged. The rule is concerned with new facts of a kind which give rise to a new cause of action, as distinct from new facts which simply particularise an existing cause of action. The rule assumes a variation in the facts, for example because the new facts plead for the first time the specific content of a general duty or a different breach of duty."[14]

[26] It is apparent that the amendments the subject of paragraph 11E, being an alternative case for implied representations, is made by the plaintiffs on the cautionary basis that the evidence as to the precise form of the positive representations the subject of paragraphs 9(b), 11(b) and 11(m) are not proved to the requisite standard. No violence is occasioned to the policies underlying the *Limitation of Actions Act* 1974 (Qld) by the granting of the application to amend because substantially the same facts are being litigated in the plaintiffs' case as was originally pleaded. In particular, the case has not moved from an implied representation and representation by silence case to an express representation case, but rather to the opposite, namely, the plaintiffs' case always was an express representations case and the plaintiff wishes to argue, that if its express representation case is not accepted, an implied representation case is available as an alternative. In those circumstances, not only was it appropriate to make the amendments, the amendments do, as a result of r 376(4) have the effect of being included in the claim as part of the original claim and accordingly the defendants' time limitation defence cannot succeed.

The Plaintiffs' Case

[27] The Australian Consumer Law, Schedule 2 of the *Competition and Consumer Act* 2010 (Cth), came into effect on 1 January 2011. As the conduct complained of in the present case occurred prior to 5 March 2010, the *Trade Practices Act* 1974 (Cth) applies.

[28] The plaintiffs' case against the defendants (first and second defendants) was based upon eleven specific representations said to constitute misleading or deceptive conduct in contravention of s 52 of the *Trade Practices Act* 1974 (Cth) or s 53A of the *Trade Practices Act* 1974 (Cth). Sections 52 and 53A of the *Trade Practices Act* 1974 provide (where relevant):

---

[14] *Brisbane Airport Corporation Pty Ltd v Arup Pty Ltd* [2017] QSC 232 at [39] – [40] (footnotes omitted).

52 Misleading or deceptive conduct

(1) A corporation shall not, in trade or commerce, engage in conduct that is misleading or deceptive or is likely to mislead or deceive.

(2) Nothing in the succeeding provisions of this Division shall be taken as limiting by implication the generality of subsection (1).

53A False representations and other misleading or offensive conduct in relation to land

(1) A corporation shall not, in trade or commerce, in connexion with the sale or grant, or the possible sale or grant, of an interest in land or in connexion with the promotion by any means of the sale or grant of an interest in land:

(a) represent that the corporation has a sponsorship, approval or affiliation it does not have;

(b) make a false or misleading representation concerning the nature of the interest in the land, the price payable for the land, the location of the land, the characteristics of the land, the use to which the land is capable of being put or may lawfully be put or the existence or availability of facilities associated with the land; or

(c) offer gifts, prizes or other free items with the intention of not providing them or of not providing them as offered.

[29] The plaintiffs framed their case against the defendants on the basis of seven pre-agreement false representations, i.e. representations occurring prior to 11 February 2010, and a further four post-agreement false representations, occurring between 18 February 2010 and 5 March 2010, which the plaintiffs plead were relied upon as inducing Wandani to pay to Hobson Investments the total sum of $1,655,699.97.

[30] It is convenient to examine the seven pre-agreement representations with reference to the allegations made in the second further amended statement of claim (SFASC).

First Pre-Agreement Representation – 12 December 2009

[31] The first pre-agreement representation is set out in Paragraph 9 of the SFASC as follows:

> "On or about 12 December 2009 Mr Hobson represented to the plaintiffs that:
>
> (a) The second defendant was the owner of Prawns North;
>
> (b) Prawns North was the owner of land at Saltwater;
>
> (c) Prawns North owned and operated an aquaculture business consisting of a prawn farm and a barramundi farm on the land at Saltwater;

(d) The value of Prawns North's interest in the aquaculture business and land at Saltwater was not less than $4M."

[32] Paragraph 9 of the SFASC identifies five representations which Mr Taylor alleges Mr Hobson made orally on or about 12 December 2009. The representation the subject of Paragraph 9(a) of the SFASC that Hobson Investments was the owner of Prawns North is not in dispute. By Paragraph 9(a) of the AD those facts are admitted on the specific basis that Hobson Investments "owned both issued shares in the capital of Prawns North Pty Ltd as at 11 February 2010." Thus essentially the representation was admitted, and was in fact true.

[33] The representation in Paragraph 9(b) of the SFASC, namely that Mr Hobson represented that the company Prawns North "was the owner of the land at Saltwater" is specifically denied by Mr Hobson in evidence and in Paragraph 9(b) of the AD.

[34] The background to the representation was that in the period between July 2007 (when Mr Taylor first met Mr Hobson on the helicopter safari) and May 2009 (when the Taylor family moved to Airlie Beach), Mr Taylor would see Mr Hobson when servicing his helicopter in Airlie Beach each few months.[15] In that period, Mr Hobson and Mr Taylor went on approximately six helicopter safaris together.

[35] Following the Taylor family moving to Airlie Beach in 2009, Mr Taylor and Mr Hobson would see each other quite regularly, that is, every two to three weeks, and they struck up a close friendship.

[36] It was on a fishing trip to Karumba in October 2009 when Mr Taylor and Mr Hobson first discussed Mr Taylor potentially investing in a prawn farm. Mr Hobson had been interested in purchasing a former prawn farm in Cardwell for some years. Mr Hobson suggested to Mr Taylor that Mr Taylor might be interested in purchasing the prawn farm at Cardwell. A plan was made to visit the Cardwell property.

[37] The Cardwell property was inspected by Mr Taylor and Mr Hobson in late November or early December 2009. In short, it was nothing like Saltwater, as the farm was extremely run down. The ponds and the drains needed to be restructured, and the processing shed was in such poor condition that it was essentially condemned. The pump stations also needed repair. It was plain to both Mr Taylor and Mr Hobson that the Cardwell property "needed a bit of work."[16] Despite its dilapidated condition, Mr Hobson explained to Mr Taylor that "the main thing with this agriculture business is licences. They are very difficult to get, and that this farm already had the licences in place…"[17]

[38] Following completion of the inspection of the Cardwell property, Mr Hobson and Mr Taylor flew by helicopter to the Saltwater farm and during that flight, Mr Taylor says that Mr Hobson made the following proposition:

> "that I should probably buy a half share of the Saltwater Creek farm and that we could run both farms together and do the processing on the – on

---

15 T1-9/30–36.
16 T1-11/22.
17 T1-11/25–30.

> the Saltwater Creek property. He thought that would be more profitable – a more viable way of going about the – the Cardwell property."[18]

[39] Mr Taylor then swore that he and Mr Hobson agreed that they would both be equal owners of the Saltwater property and the Cardwell property. Mr Taylor said that he asked Mr Hobson "Rick, would I be buying a half share in the land, the business, the plant and equipment to run the farm? And he said yes, I would be."[19]

[40] Mr Taylor said that Mr Hobson said "that Prawns North owned the land."[20] Mr Taylor admitted that he was not, at that time, familiar with Prawns North and what that signified. Mr Taylor alleges it was during this conversation that Mr Hobson told Mr Taylor that the Saltwater farm was worth $4M and for a half share, that Mr Taylor would need to pay $2M. Mr Taylor said that it was during this conversation that Mr Hobson said the following concerning the ownership of the land at Saltwater:

> "He told me that Prawns North was the governing body over the land and that Prawns North owned the land and the equipment on the property. And so I took that to mean that Prawns North owned half the land."[21]

[41] Mr Taylor then repeated that Mr Hobson told him that "Prawns North owned and operated the farm."[22] At that inspection in late 2009 the processing shed was again observed to be in immaculate order, however the farm was not then operational.[23]

[42] During the conversation, Mr Taylor said that he needed the profit and loss statements and "the actuals" for the Saltwater property. Christmas intervened and the financial documents were not then provided. After Christmas and in mid-January 2010, Mr Hobson arranged for an aquaculture expert, Chris Robertson, to attend at the Saltwater farm. Mr Taylor had arranged for Mr Robertson to attend to assist in the education of Mr Taylor in the aquaculture industry. Mr Taylor said he was "trying to absorb some basic knowledge on the whole idea of aquaculture."[24]

[43] It is to be recalled that all of Mr Taylor's adult life, he had been a farmer in New South Wales where he had a mixed farm with crops, Merino sheep and Poll Hereford cattle. In addition to Mr Robertson's "education" of Mr Taylor, Mr Taylor was provided with net profit projections for both the Saltwater farm[25] and the Cardwell farm.[26] That showed the potential profit from prawns at the Saltwater farm amounting to approximately $507,000 per annum and a potential profit from the Cardwell farm of $302,400 per annum. No complaint is made with respect to these projections. Mr Taylor's half share of this projected profit is similar to the income Mr Taylor later declared to the Commonwealth Bank of Australia.

[44] Mr Taylor provided his evidence in a convincing fashion. Mr Taylor's evidence of the 12 December 2009 representation was inherently plausible and although the

---

18 T1-11/43–46.
19 T1-12/10–13.
20 T1-12/20.
21 T1-12/37–39.
22 T1-12/45.
23 T1-13/19.
24 T1-14/28.
25 Ex 1 at p 1.
26 Ex 1 at p 3.

conversations the subject of the representations occurred almost 9 years ago, the content of the conversations were of such extreme importance to Mr Taylor that I consider that Mr Taylor had a reasonable and reliable recollection of what Mr Hobson said that constituted the important parts of the conversations the subject of the representations.

[45] Mr Hobson had an excellent recollection of what he did not say in 2009 and 2010[27], but a very poor recollection of what in fact he did say.

[46] An attack was launched against Mr Hobson in cross examination, alleging that Mr Hobson had motivation to relieve Mr Taylor of some of his wealth as Mr Hobson was in dire financial straits in 2009. Mr Hobson initially denied this and claimed as proof of his wealth that he paid his wife $2.3M in a property settlement.[28] In cross-examination, when asked about the $2.3M payment in the property settlement, Mr Hobson claimed of the figure "it was something like that, I mean I haven't added it up but it was somewhere in that vicinity."[29]

[47] I find it difficult to accept that someone who has been involved in an acrimonious property settlement in the Family Court would not know what they received or were paid. When it was pointed out to Mr Hobson that the consent order that he had entered into[30] showed him only paying $400,000, he explained he had calculated the $2.3M by reference to the $400,000 he paid his wife, the provision of the matrimonial home worth $1.1M and a further $180,000 in superannuation, which totals $1.68M, a figure substantially less than Mr Hobson's claim of $2.3M. That type of inaccuracy detracts from Mr Hobson's reliability as a witness.

[48] More damage, however, was occasioned by Mr Hobson's admissions[31] that because he considered his former wife and his former wife's legal team "weren't being real fair" in the property settlement, he, acting on the advice of his accountants and solicitors, shutdown many of his businesses and threatened to go bankrupt. Mr Hobson claimed he did this specifically to obtain a better property settlement from his wife, and that he in fact was not under financial difficulty. It would seem to have been a convincing ruse, as will be explained later, because objectively there was a great deal of evidence that Mr Hobson was under dire financial pressure in or about 2009. Mr Hobson explained that his strategy worked in shutting his businesses down when he explained[32] "But I didn't shut them all down. I didn't bankrupt. They came to their senses a little bit earlier then."

[49] In a typically vague answer, the question was asked:[33]

> "MR BEACHAM: So, nevertheless, the reason that you shut down your businesses was in response to your wife's family law claim for a property settlement?
>
> MR HOBSON: Bit more than that, yeah. Something like that."

---

27 T1-81.
28 T1-89/18.
29 T1-101/25–28.
30 Ex 1 at p 7.
31 T1-108 - T1-109.
32 T1-109/23–24.
33 T1-109/26–29.

[50] Other than as explained below, in certain instances where the evidence of Mr Taylor differs from Mr Hobson's, I prefer Mr Taylor's evidence over Mr Hobson's evidence as being more reliable.

[51] There are four objective reasons for preferring Mr Taylor's evidence as reliable and for accepting Mr Taylor's evidence over Mr Hobson's evidence in relation to the representation in Paragraph 9(b).

[52] The first is Mr Hobson's evidence[34] that he owned the Saltwater land because he owned both companies. If Mr Hobson was prepared to swear in evidence that he owned the Saltwater land (as he owned both companies, the companies being Hobson Investments and Prawns North) in court, then it is easy to accept that Mr Hobson would have said the same to Mr Taylor in late 2009, namely, that he or his company, Prawns North, was the owner of the land. Indeed, Mr Hobson said he first found out "there was an issue with the – the name on the – on the lease"[35] after 11 February 2010 when Mr Taylor asked Mr Fisher for his half title of Saltwater. It follows that on and prior to 11 February 2010 Mr Hobson thought he or Prawns North did own Saltwater and he is likely to have said so.

[53] The second is that[36] Mr Hobson claimed he discussed with Mr Taylor who owned the real property and the discussion occurred prior to the signing of the share sale agreement on 11 February 2010. Mr Hobson's evidence was that Mr Taylor knew that Hobson Investments owned the Saltwater land because "it's all documented. The documents he read showed that Hobson Investments had the lease over the crown land." Not only were the documents Mr Hobson is referring to not identified, but more importantly, Mr Hobson's argument that Mr Taylor knew that Hobson Investments held the lease over the crown land as it was shown in a document, was not put to Mr Taylor. There is no implied criticism of senior counsel for the defendant in this regard, as is set out in Paragraph 11A(b)(i) of the AD, if in fact the document Mr Hobson was referring to was the HTW report, it was his instructions in his case that that document was not provided by Mr Hobson to Mr Taylor until April or May 2010. This is discussed further below.

[54] The third is the file note of Mr Fisher of 1 March 2010[37] by which it is recorded that Ms Jean Mobbs[38], Mr Hobson's bookkeeper, telephoned Mr Fisher on 1 March 2010 at 12:55pm advising Mr Fisher that the Saltwater property was to have 50% of it transferred to Wandani. Mr Hobson confirmed that he provided this instruction to Ms Mobbs. This instruction can only be in keeping with Mr Taylor's evidence that Mr Hobson had promised to Mr Taylor that he would transfer one half of the land or real property at Saltwater to Mr Taylor, which in turn strengthens the probability that Mr Hobson said that he, through Prawns North, owned the land. It also explains Mr Taylor's understanding[39] that Prawns North owned the land and that following the transaction, Prawns North would continue to own half of the land, with the other half of the land being transferred to the second plaintiff.

---

34 T1-82/4–5.
35 T1-98/27–28.
36 T1-81/45 - T1-82/2.
37 Ex 1 at p 295.
38 T1-99/19.
39 T1-12/39

[55] The fourth is Mr Hobson's evidence[40] that he always intended that Mr Taylor would get a half share of the interest in the land if he bought a share in Prawns North.

[56] The representation in Paragraph 9(b) is the critical representation in the trial. With respect to the issue of reliance, Mr Taylor said[41] that the significance of Mr Hobson informing him that Prawns North owned the Saltwater land was "everything" to Mr Taylor's decision to sign the share sale agreement. As Mr Taylor said:[42]

> "Well, I had to be buying – the value was in the land. So the land had the licences and so on. Okay. All the value was in the land. It had to be – I had to be buying half of that land."

[57] I accept Mr Taylor's evidence in this regard, not only because Mr Taylor provided this evidence in a convincing, open and frank manner, but rather because it is objectively reasonable that Mr Taylor, as a farmer/grazier and former owner of a large parcel of rural land would not agree to expend almost one half of his fortune unless he was buying a substantial asset that he was familiar with, namely, land.

[58] That causation is often best resolved by a court objectively determining the likely effect of misleading conduct is well explained by McDougall J in *Adcock Private Equity v Porges*[43] as follows:

> "There is a similar process of reasoning displayed in the decision of the Full Federal Court in *Hanave Pty Limited v LFOT Pty Limited*. The applicant (appellant) in that case claimed that it had been induced by misrepresentations to buy a commercial property. Mr Richard Burke, the applicant's principal, gave evidence of reliance. It would appear that the primary judge thought that Mr Burke's evidence was unreliable (see Wilcox J, who agreed with Kiefel J that the appeal should be upheld, at [11]). That did not matter. Wilcox J said at [11] "that causation can sometimes (perhaps best) be resolved by the Court objectively determining the likely effect of the misleading conduct"."[44]

[59] I find in respect of the representation the subject of Paragraph 9(b) of the SFASC, that Mr Hobson made the representation, and that it was of primary importance and in fact relied upon by Mr Taylor in signing the share sale agreement and as a consequence thereof, paying to Mr Hobson, or his entities, or at his direction, over $1.6M. That representation was made in trade or commerce and was misleading. It is common ground that Prawns North did not own the land at Saltwater.

[60] Paragraph 9(c) of the SFASC contains two representations of fact, namely, that Prawns North both owned and operated an aquaculture business consisting of a prawn farm and a barramundi farm on the land at Saltwater. By Paragraph 9(c) of the AD and in his evidence Mr Hobson admitted that he did say that Prawns North owned, and in the past did operate, an aquaculture business on the Saltwater land. As Mr Hobson says, it was

---

40 T1-98/9–11.
41 T1-17/35–44.
42 T1-17/40–45.
43 [2018] NSWSC 1363.
44 *Adcock Private Equity v Porges* [2018] NSWSC 1363 at [186]. Footnote omitted.

quite plain to Mr Taylor upon his inspection in November 2009 that the aquaculture business was not then in operation.

[61] I find therefore in respect of the representations in Paragraph 9(c) that Mr Hobson represented that Prawns North did own the Saltwater aquaculture business, however that is not a misrepresentation, as it was true. I further find that Mr Hobson did not say that Prawns North currently operated an aquaculture business at Saltwater as it was plain to anyone, including Mr Taylor who inspected Saltwater that that was not the case.

[62] The representation alleged by Mr Taylor in Paragraph 9(d) of the SFASC that "the value of Prawns North's interest in the aquaculture business and land at Saltwater was not less than $4M" is the subject of dispute. One of the difficulties in resolving the dispute is that the alleged conversation occurred over 8 years ago and there really is only slight differences in the testimonies of Mr Taylor and Mr Hobson as to what was said. It is difficult to accept that either Mr Taylor or Mr Hobson has a photographic memory that would enable them to state the precise words which were said in the conversation over 8 years ago. The effect of the conversation according to Mr Taylor is as he has pleaded, namely, that he alleges that Mr Hobson was acting as a valuer in providing a valuation of the aquaculture business and land at not less than $4M, whereas Mr Hobson simply says "he wanted $2M for a 50% interest in the Prawns North business."

[63] With respect to the value of Saltwater, Mr Taylor's evidence[45] is as follows:

> "MR BEACHAM: All right. How did that topic come up?
>
> MR TAYLOR: I asked him how much it would be for me to enter into this share agreement.
>
> MR BEACHAM: And what did he say in response?
>
> MR TAYLOR: It would be $4 million for – the value of the property was at four million, so I would have to pay two million to buy that share."

[64] Mr Hobson's evidence[46] is as follows:

> "MR SAVAGE: Did you tell Mr Taylor what he alleges that Prawns North was worth $4 million?
>
> MR HOBSON: No. No.
>
> MR SAVAGE: You agreed to sell him a share in Prawns North. You recall that?
>
> MR HOBSON: Yeah.
>
> MR SAVAGE: And the purchase price in the contract was $2.5 million?
>
> MR HOBSON: That's right.

---

45 T1-12/30–35.
46 T1-76/4–15.

> MR SAVAGE: And the contract provides that the purchase price will be paid and Hobson Investments will transfer the share?
>
> MR HOBSON: That's right
>
> MR SAVAGE: How did – how was the purchase price determined?
>
> MR HOBSON: It was a value that I put on what I wanted and plus the 500,000 for Cardwell property to be purchased. That's all."

[65] With respect to this representation, I accept that Mr Hobson did say that "he placed a value upon the Saltwater property at $4M", however, as he said, that was his valuation and the method by which the $2M was agreed as a half share of Saltwater. That, however, is different to a representation that in fact the true valuation of the Saltwater property was $4M. Although I do not accept the representation in terms as pleaded in Paragraph 9(d), I do accept, in this regard, Mr Hobson's evidence, that he did place his own value on Saltwater at $4M and that he said words to that effect to Mr Taylor. Thus, whilst the plaintiffs have not made their case in respect of the representation, the fact that Mr Hobson did say that he had valued Saltwater at $4M does assist Mr Taylor's case in proof of representation in Paragraph 11(g) as discussed below.

[66] Given the background of the matter and the HTW valuation discussed below, I conclude it is objectively more reasonable to accept Mr Hobson's version of the conversation concerning the value of Saltwater at $4M, namely, he did not purport to value Saltwater at a specific figure in the sense of providing an independent valuation, but rather, simply said, in the course of negotiation with Mr Taylor, that he placed his own value of Saltwater at $4M and would accept $2M for a half interest in the Prawns North business, which included the land at Saltwater. It is a necessary part of every negotiation for a property, that the vendor at some point, discloses the price which they seek for the property. That cannot, in the absence of much more, be a suggestion of an independent or accurate valuation by the vendor of the property.

Second Pre-Agreement Representation – 14 January 2010

[67] By Paragraph 10 of the SFASC, the plaintiffs allege:

> "10. On or about 14 January 2010 Mr Hobson represented to the plaintiffs that:
>
> (a) Prawns North was the owner of equipment and improvements on the land at Saltwater which was used in the aquaculture business at Saltwater Creek including feeders and aerators;
>
> (b) Prawns North was the owner of earthmoving equipment valued at $1M."

[68] By Paragraph 10(a) of the SFASC the plaintiffs allege that Mr Hobson made two representations, namely, that Prawns North was the owner of the equipment on the land and also owner of the improvements on the land at Saltwater. It is not clear from the way in which Paragraph 10(a) is drafted whether the plaintiffs are alleging Mr Hobson suggested that the feeders and aerators previously used in the aquaculture business were

part of the equipment owned by Prawns North or part of the improvements on the land referred to in Paragraph 10(a).

[69] Mr Hobson, by his defence Paragraph 10(a) of his AD and in evidence, admits that he said in or about January 2010 that Prawns North was the owner of some equipment on the Saltwater land. There is no evidence as to what equipment is being referred to. Accordingly the representation was to some extent true and it has not been shown to be false.

[70] Mr Hobson denies he said anything about ownership of the improvements on the land. I accept Mr Hobson's evidence in this regard. The evidence in the plaintiffs' case rises no higher than the evidence of Mr Taylor[47] which I accept, namely that Mr Hobson said that Prawns North owned both the land and the equipment on the property. There was no specific discussion at all about improvements on the land, however, it would have been patently clear that the improvements on the land would have been construed as fixtures. Accordingly there was no need for such a discussion as to descend to the level of particularity in discussing improvements when, as may be seen by the evidence of both Mr Taylor and Mr Hobson, both men usually spoke in general terms because at that point they were good friends and trusted each other.

[71] The representation referred to in Paragraph 10(b) of the SFASC namely that Mr Hobson told the plaintiffs that "Prawns North was the owner of earthmoving equipment valued at $1M" is the subject of a fierce dispute. By Paragraph 10(b) of the AD and in evidence, Mr Hobson denies that he said Prawns North was the owner of earthmoving equipment, whether valued at $1M or otherwise. In evidence, Mr Taylor said the earthmoving equipment "was owned by Hobson Constructions."[48]

[72] In the evidence of Mr Taylor on this issue[49], Mr Taylor alleges that it was late January or possibly early February when Mr Hobson telephoned him suggesting that, instead of using contractors to fix up the ponds at the Cardwell property, that they would undertake the task themselves using earthmoving equipment owned by Hobson Constructions. Mr Taylor says that Mr Hobson told him that the earthmoving equipment was worth $1M and that he ought to purchase half the earthmoving equipment for $500,000.

[73] Mr Hobson denies such conversations, but rather says that the extra half million dollars, that is above and beyond the $2M to be paid for the half share of Saltwater, was to be paid to enable Prawns North to complete the contract for the purchase of the Cardwell property and to provide funds to improve the Cardwell property. Furthermore, the allegation pleaded specifically was that Prawns North was the owner of the earthmoving equipment valued at $1M, whereas Mr Taylor's evidence[50] was that Mr Hobson said that the earthmoving equipment was in fact owned by Hobson Constructions. This issue is further discussed with reference to the representation in Paragraph 11(m) below.

[74] I therefore reject the plaintiffs' evidence and case concerning the representation made at Paragraphs 10(a) and 10(b).

Third Pre-Agreement Representation – 11 February 2010

---

47 T1-12/35–40.
48 T1-16/21.
49 T1-16.
50 T1-16/21

[75] In Paragraph 11 of the SFASC the plaintiffs allege:

> "11. On or about 11 February 2010 Mr Hobson represented to the plaintiffs that:
>
> (a) The second defendant was the owner of Prawns North;
>
> (b) Prawns North was the owner of the land at Saltwater;
>
> (c) Prawns North owned and operated an aquaculture business consisting of a prawn farm and a barramundi farm on the land at Saltwater;
>
> (d) The value of Prawns North's interest in the aquaculture business and land at Saltwater was not less than $4M;
>
> (e) Prawns North was the owner of equipment and improvements on the land at Saltwater which was used in the aquaculture business at Saltwater Creek including feeders and aerators;
>
> (f) Prawns North was the owner of earthmoving equipment valued at $1M;
>
> (g) Prawns North did not have any outstanding debts;
>
> (h) Prawns North had entered into an agreement with Tycoon International Pty Ltd to purchase property described as Lot 5 and 6 on SP131219 ("the Cardwell property") at Cardwell for $800,000.00;
>
> (i) Prawns North had paid a deposit with respect to the Cardwell property of $80,000.00;
>
> (j) Prawns North intended to proceed with the purchase of the Cardwell property and to develop an aquaculture facility on that property;
>
> (k) The second defendant wanted to go into partnership with the second plaintiff;
>
> (l) The first and second defendants proposed that the second plaintiff acquire a 50% shareholding in Prawns North;
>
> (m) By entering into the Sharesale Agreement, the second plaintiff would acquire an interest in the following assets of Prawns North:
>
> (i) earthmoving equipment valued at $1M;
>
> (ii) the land located at Saltwater;

(iii) improvements on the Saltwater land;

(iv) the equipment used in operating the aquaculture business at Saltwater;

(v) the aquaculture business at Saltwater and the business intended to be operated at Cardwell."

[76] It is important to note that the share sale agreement was in fact signed on 8 February 2010 and that Paragraph 11 of the SFASC alleges that the representations were made on or about 11 February 2010, that is, after that date. Whilst Paragraph 11 is contained within the pre-agreement representations part of the pleading, it is difficult, because the conversations occurred years ago, to reach a positive conclusion as to when or whether the representations the subject of Paragraph 11 were made. It can also be further observed that the allegations made in Paragraphs 11(a) to (d) of the SFASC are precisely the same as the allegations made in Paragraphs 9(a) to (d) of the SFASC. That is, Mr Taylor is alleging that the representations are precisely the same as the representations he alleges Mr Hobson made almost two months previously on 12 December 2009.

[77] Although it may be expected that the same conclusions with respect to Paragraphs 11(a) to (d) inclusive be reached as the conclusions with respect to the representations in Paragraphs 9(a) to (d) inclusive, the difficulty is that the representations the subject of Paragraphs 11(a) to (d) lack any evidential basis. Mr Taylor explained[51] what occurred in the offices of Roberts Nehmer McKee when he signed the share sale agreement and Mr Taylor did not swear to the repetition of representations in Paragraphs 9(a) to (d). I accordingly dismiss the plaintiffs' case with respect to the representations in Paragraphs 11(a) to (d).

[78] The allegations the subject of Paragraph 11(e) is precisely the same as the allegation in Paragraph 10(a), that is, Mr Taylor is alleging that Mr Hobson repeated on or about 11 February 2010 what he had previously said on or about 12 March 2009 concerning ownership of equipment and improvements at Saltwater. The representation the subject of Paragraph 11(f) is in the same category as it is precisely the same representation as Paragraph 10(b).

[79] Had the representations in Paragraphs 11(e) and (f) of the SFASC been the subject of evidence then I may have reached the same conclusions with respect to Paragraphs 11(e) and (f) as the conclusions with respect to the representations in Paragraphs 10(a) and (b), however, the representations the subject of Paragraphs 11(e) and (f) must be rejected as they lack any evidential basis. Mr Taylor explained[52] what occurred in the offices of Roberts Nehmer McKee when he signed the share sale agreement. Mr Taylor did not swear to the repetition of representations in Paragraphs 10(a) and (b). I accordingly dismiss the plaintiffs' case with respect to the representations in Paragraphs 11(e) and (f).

[80] The representation the subject of Paragraph 11(g), namely, that Mr Hobson said that Prawns North did not have any outstanding debts was specifically denied by Mr Hobson.

---

51 T1-16 - T1-17.

52 T1-16 – T1-17.

[81] Mr Taylor's evidence[53] is that prior to signing the share sale agreement, which bound Wandani to pay Hobson Investments $2.5M, Mr Taylor specifically asked Mr Hobson "whether there was any mortgages – outstanding mortgages, taxes, fines, fees, anything outstanding on the properties of Saltwater Creek." To which Mr Hobson replied "there was nothing." Mr Taylor says he then signed the share sale agreement.

[82] With respect to the importance of the representation that the Saltwater property was free of any debts, taxes and mortgages, Mr Taylor said that that was very much of significance in his decision in signing the agreement because "I didn't want to be buying debt."[54]

[83] Mr Hobson's evidence[55] is simply that he and Mr Taylor did not discuss anything about the debts that Prawns North might have had to creditors. Eight transcript lines later[56] Mr Hobson contradicted himself when he said "**Well, as I explained to – to Alan, it – it would be debt free when he took the farm on**. When he took that share over, it would be debt free." Mr Hobson then said[57] that the loans on Saltwater were simply intercompany loans and that "I'd just write it off."

[84] The true situation, however, was the subject of cross-examination[58]. The true situation was that the previous owner, Rupert Clarke & Co Pty Ltd had a mortgage securing a debt of $810,000 over Saltwater, which was in fact registered in late 2009, i.e. at or about the time that Mr Taylor and Mr Hobson were discussing Mr Taylor's purchase of a half share in Saltwater and the Cardwell property. Mr Hobson then repeated[59] that it was agreed that Mr Taylor would take his share with no debt. When Mr Hobson was asked specifically whether he told Mr Taylor about the $810,000 mortgage over the crown leasehold, Mr Hobson avoided directly answering the question by saying:

> "I told him there was debts on Prawns North to be paid out, when he paid the share. I just told him it would be debt free, so – there was other debts there too, but can I just say that that mortgage was through Rupert Clarke and Co's company, that when he died, he actually had a security over the farm with – with a security. And when the executors of the estate took over and whatever, they just wanted that transferred. So they – young Rupert paid that out, put the debt against the farm, and I could pay that any time I liked if I wanted to. And he – he was on – he knew all about the share sale."

[85] In addition to the $810,000 mortgage upon Saltwater, there was a debt "in the book" of Hobson Constructions whereby Prawns North owed Hobson Constructions about $2M.[60] Although the debt definitely appears in the books of Hobson Constructions, Mr Hobson claims it did not exist because "I owed myself a debt."[61]

[86] Mr Hobson's evidence with respect to the debt upon Saltwater was provided in a most unconvincing fashion. Whilst in fact there was a debt secured by registered mortgage of

---

53 T1-16/25–30 and T1-17/21–25.
54 T1-18/25.
55 T1-90/6 – 7.
56 T1-90/19.
57 T1-90.
58 T1-99 - T-101.
59 T1-100/17.
60 T1-101.
61 T1-101/10.

$810,000 to a third party, and a debt of approximately $2M owed by Prawns North to Hobson Constructions, Mr Hobson did not disclose any of this information to Mr Taylor and according to Mr Hobson, all he said is that the title or share would be transferred debt free. Whilst that may have been Mr Hobson's intention, that is not to the point in determining whether the representation the subject of Paragraph 11(g) was made or not made. It is objectively reasonable that Mr Taylor would ask whether the company Prawns North had any debts or mortgage outstanding prior to agreeing to pay $2.5M for a share, and it is objectively unreasonable to accept Mr Hobson's evidence, firstly that matters of debt were not discussed, and latterly that Mr Hobson told Mr Taylor there were debts, but the property would be debt free when he took on his interest in Saltwater.

[87] As a matter of credit and as a matter of reasonable objectivity, I accept Mr Taylor's evidence that he did specifically ask Mr Hobson whether Prawns North had any debts, whether there were any mortgages, taxes, or levies outstanding in respect of Saltwater, and that Mr Hobson told Mr Taylor that there were no such debts or mortgages.

[88] In respect of all representations, Mr Taylor was cross-examined on the contents of his email dated 21 February 2012.[62] It was put to Mr Taylor in cross-examination that there is an absence of any suggestion in the email of 21 February 2012 of any type of misrepresentation. Mr Taylor agreed with this and explained that the purpose of the email was not to antagonise his friend, but simply to appeal to his better side, because Mr Taylor was, at that point, in severe financial embarrassment. I accept Mr Taylor's evidence in this regard.

[89] It was further put to Mr Taylor that the allegations of misrepresentation he currently brings significantly differ to those set out in Exhibit 2, the letter of Macrossan & Amiet Solicitors dated 4 October 2013. Whilst there are some differences, the two significant representations, namely that Prawns North owned the farm and that it was owned outright and not subject to any mortgage debt, is specifically recorded in the letter of 4 October 2013. This supports Mr Taylor's evidence that the representations the subject of Paragraph 11(g) of the SFASC were made.

[90] Furthermore, it is objectively reasonable for Mr Taylor, who did not have all of the information that he wished, to make specific enquiry about any debt, mortgages, taxes, fines or fees, and, given Mr Hobson's constrained financial circumstances and desire to enter into the venture with Mr Taylor, it is objectively reasonable for Mr Hobson to have answered as Mr Taylor said he did,[63] namely, that there was nothing outstanding. I accept Mr Taylor's evidence that that conversation was had prior to the signing of the share sale agreement and I accept Mr Taylor's evidence that the lack of any mortgage or debt upon the property was very much important to Mr Taylor, and in fact induced him to sign the share sale agreement, and for his company, Wandani, subsequently to make the payments in excess of $1.6M to Mr Hobson and his entities.

[91] The representation in Paragraph 11(g) was made in trade or commerce and was misleading as it was false.

[92] The representations the subject of Paragraphs 11(h), (i), and (j) are admitted by Mr Hobson. Furthermore, Mr Hobson specifically alleges that Mr Taylor knew that

---

62 Ex 1 at pp 402–403.

63 T1-17/31.

Prawns North had entered into an agreement with Tycoon International Pty Ltd to purchase the Cardwell property for $800,000 and had paid a 10% deposit, i.e. a sum of $80,000. Mr Hobson's evidence is that it is the inclusion of the purchase of the Cardwell property to provide for a larger aquaculture business than that which had previously been conducted at Saltwater, which in effect caused an increase in the consideration price asked for from $2M to $2.5M. Whilst the representations the subject of Paragraphs 11(h) to (j) inclusive are proved, they cannot be said to be misrepresentations because they are true.

[93] The representations the subject of Paragraph 11(k) and (l) are that Mr Hobson said that he wished to go into partnership with Mr Taylor and that it would be an equal partnership with Mr Taylor and his company, Wandani, acquiring one-half of the shareholding of Prawns North. By his defence and in his evidence, Mr Hobson agrees to, in fact, using the word partnership in the discussions, but says that the word was used not in its ordinary legal sense, but merely as a descriptor of the type of agreement that Mr Taylor and Mr Hobson and their entities entered into, with Mr Taylor having the assistance of his solicitor, the third and fourth defendants. Again, I accept that the representation has been proven, however, it was not shown to be false nor relied upon.

[94] The representation the subject of Paragraph 11(m) is disputed.

[95] Paragraph 11(m) of the SFASC alleges a representation made by Mr Hobson on or about 11 February 2010 as follows:

> "(m) By entering into the Sharesale Agreement, the second plaintiff would acquire an interest in the following assets of Prawns North:
>
> (i) earthmoving equipment valued at $1M;
>
> (ii) the land located at Saltwater;
>
> (iii) improvements on the Saltwater land;
>
> (iv) the equipment used in operating the aquaculture business at Saltwater;
>
> (v) the aquaculture business at Saltwater and the business intended to be operated at Cardwell."

[96] There is no evidence to support the making of any of the representations the subject of Paragraph 11(m) on 8 or 11 February 2010. As discussed above, Mr Taylor's evidence as to what occurred in the offices of Roberts Nehmer McKee on 8 February 2010 is the subject of Mr Taylor's evidence.[64] In summary, the only additional information and representation Mr Taylor alleged that Mr Hobson made immediately prior to the signing of the share sale agreement was the assurance, that there was not any "outstanding mortgages, taxes, fines, fees, anything outstanding on the properties of Saltwater Creek."[65]

[97] I am conscious that by Paragraph 4 of the further and better particulars of the amended statement of claim of 20 October 2014, Mr Taylor alleged that the representation the

---

64 T1-17.

65 T1-17/25–30.

subject of Paragraph 11 were made orally and by conduct. Conduct was said to be by the provision of a copy of the plan of the Saltwater land, which is not the subject of evidence, as well as provision of a copy of the HTW valuation subject to the findings as set out below. Insofar as the representation was made orally, it was particularised as being said in conversations:

> "that took place between Mr Hobson and Mr Taylor on or about 11 February 2010 at the Saltwater property, and during the course of a drive by vehicle from the Saltwater property to Townsville at the Sizzler restaurant in Townsville and in the carpark of the Third Defendant's premises."[66]

[98] The evidence of Mr Taylor[67] does not bear out this allegation at all, and to the contrary, Mr Taylor's evidence is that the conversations concerning the $1M for the earthmoving equipment occurred by telephone in late January or possibly early February, and, it would appear, prior to the journey from Saltwater to the offices of Roberts Nehmer McKee on or about 8 February 2010. As there is no evidence to support the representations the subject of Paragraphs 11(m)(ii) through to (v), they ought to be dismissed.

[99] There is, however, evidence supporting the representation in Paragraph 11(m)(i) being made at an earlier time.[68] Mr Taylor's allegation, in short, is that prior to signing the share sale agreement on 8 February 2010, in late January or early February, Mr Hobson telephoned Mr Taylor and suggested that Mr Taylor ought to purchase half a share in the earthmoving equipment owned by Hobson Constructions, which was worth $1M. Mr Taylor's evidence is that for a half share in that $1M of earthmoving equipment, Mr Taylor needed to pay $500,000 and that in fact is how the share sale agreement amount of $2.5M was agreed. Mr Hobson disputes this. Mr Taylor and Mr Hobson agree that the share sale agreement did not remotely embody the agreement that they had entered into between themselves or their companies.

[100] The plaintiffs argue that there are objective reasons to accept the representation of Paragraph 11(m)(i) as being made in late January or early February 2010, and they include:

1. Payment of $500,000 for a half share of the equipment neatly explains the share sale agreement sum of $2.5M ($2M for a half interest in Saltwater and $500,000 for machinery) as opposed to Mr Hobson's version which is $2M for a half share in Saltwater, together with a half share in the Cardwell property which had a contract price of $800,000, which suggests that the share sale agreement sum ought to have been $2.4M. Whilst it is plain that both parties knew and accepted that additional funds were required to develop the Cardwell property, there is really an absence of evidence as to what was discussed between Mr Taylor and Mr Hobson in that regard.

2. In addition, the plaintiffs argue that:

---

66 Paragraph 4(b) of the further and better particulars of the amended statement of claim.
67 T1-16 - T1-18.
68 T1-16/1 – 30.

(a) It was not in contention that there was consideration of using some Hobson earthmoving equipment to undertake work on the Cardwell property and that they were substantial earthworks.[69]

(b) Mr Hobson had used earthmoving equipment annually to do work on the Saltwater property such as tidying up the ponds.[70]

(c) The Saltwater land was not fully developed and there was a development approval to expand it to another 50-odd ponds.[71]

(d) Given Mr Hobson's difficult financial position, it is plausible he would offer to sell Mr Taylor a share in the equipment thus providing Mr Hobson with funds which were necessary and which is also consistent with Mr Hobson consolidating his assets as a result of his divorce.[72]

(e) The representation about the equipment prior to entering into the share sale agreement explains why, within weeks of signing or at least by 1 March 2010, Mr Taylor asked for a list of equipment.[73]

[101] Objectively therefore, there was good reason for Mr Taylor to wish to purchase half of the earthmoving equipment then owned by Hobson Constructions, but to be owned by Prawns North. The earthmoving equipment could not only be used immediately to undertake the necessary works on the Cardwell Property, it could be used to continue to develop and expand the Saltwater ponds in accordance with the development approval as well as being utilised for the annual work of tidying and cleaning the ponds both at Saltwater and the Cardwell property. It would have been plain to Mr Taylor as a farmer that large pieces of plant such as graders and scrapers would have been necessary to perform the work. Mr Hobson's evidence[74] was that after every crop, graders and scrapers are used to tidy up and clean the ponds. Whilst Hobson Constructions may have had 30 or 40 pieces of equipment in late 2009[75] and whilst Mr Hobson denied telling Mr Taylor he valued that earthmoving equipment at $1M[76], Mr Hobson provided no actual evidence as to what value he placed upon the 30 to 40 pieces of earthmoving equipment owned by Hobson Constructions.

[102] There can be no doubt that Mr Taylor, having been a farmer for more than 30 years would have had some experience in the use of earthmoving equipment. Similar to Mr Taylor's interest in purchasing debt-free real property, it is an objectively attractive proposition to Mr Taylor to have purchased a share in earthmoving equipment for utilisation both at the Cardwell property and Saltwater.

[103] It further must be recalled that both Mr Taylor and Mr Hobson's evidence was to the effect that Mr Taylor would perform hands on management of the aquaculture farms, whereas Mr Hobson was to provide his expertise and knowledge. There is an important

---

69 T1-77/19 – 21 and T1-86/18 – 23.
70 T1-77/7 – 13.
71 T1-84/26–28.
72 T1-79/1 – 12.
73 Ex 1, Doc 26 at p 283 and T1-19/38–42.
74 T1-77/10–14.
75 T1-77/30.
76 T1-77/26.

omission from Mr Hobson's evidence, namely, whether he had any rationale for keeping the earthmoving equipment in Hobson Constructions. Whilst certainly Mr Hobson gave evidence that he had "an application to court for approval of an 850 lot subdivision", in typically vague evidence[77], Mr Hobson said of his business activities in 2009 and 2010:

> "I was consolidating everything I had, really. I basically shut everything down that I owned, restaurants and everything, just to consolidate – see where I was
>
> […]
>
> Well, you get a divorce and you have to – you go through everything like that, it does make a – it puts a different outlook on life and whatever. You think – well, you know, you had to change in a new direction and start a new direction, and I – I couldn't run everything like that because I had – had to look after the kids 50 per cent of the time, whatever. So, yeah."

[104] There are therefore six objective reasons (set out in Paragraph [100]) for accepting Mr Taylor's evidence that in late January 2010 or early February 2010, and in a telephone call, Mr Hobson did make the representations the subject of Paragraph 11(m)(i), namely, that by entering into the share sale agreement the second plaintiff would acquire a half interest in $1M worth of earthmoving equipment.

[105] A difficulty for Mr Taylor is, however, that as particularised, the representation the subject of Paragraph 11(m)(i) occurred by conduct, which is devoid of evidence, and orally, as set out in Paragraph [97] above, specifically at the Saltwater property and during the course of a drive by vehicle from the Saltwater property to Townsville at the Sizzler restaurant. That is clearly an allegation of representation made immediately prior to the signing of the share sale agreement at the offices of Roberts Nehmer McKee. Mr Taylor's direct evidence[78] in no way supports that allegation, but rather, as reflected above, relates to a telephone conversation in late January or early February 2010.

[106] Mr Taylor's evidence[79] is that Mr Hobson expressly said that the earthmoving equipment was owned by Hobson Constructions and was worth $1M. Mr Taylor did not know what earthmoving equipment was being referred to, and Mr Hobson's representation was really a suggestion that "I should be purchasing a half share in earthmoving equipment to do the earth."[80] The evidence of Mr Taylor therefore does support the representation as pleaded in Paragraph 11(m)(i) as being made late January or early February 2010.

[107] It is apparent that Mr Taylor and Mr Hobson had many discussions concerning their proposals for the aquaculture ventures at Saltwater and at the Cardwell property. It is also apparent during evidence that both Mr Taylor and Mr Hobson were doing their best to try to recall conversations which occurred eight and a half to nine years ago and to that extent, it is the reliability of the evidence of Mr Taylor or Mr Hobson which is as important, as the credit of Mr Taylor or Mr Hobson.

---

77 T1-79/1–11.
78 T1-16 - T1-18.
79 T1-16.
80 T1-16/9.

[108] With respect to the reliability of Mr Taylor's evidence concerning the representation the subject of Paragraph 11(m)(i), the fact that four years prior to giving evidence, that is on 20 October 2014, Mr Taylor gave inconsistent further and better particulars (recited in Paragraph [97]) does not compel a conclusion that I cannot accept Mr Taylor's evidence as being reliable as to the content of the representation the subject of Paragraph 11(m)(i). I accept Mr Taylor's evidence that the representation in Paragraph 11(m)(i) was made in late January or early February 2010 because:

(a) of the six objective reasons (set out in Paragraph 100);

(b) it is likely that the final price of $2.5 million would be agreed well prior to the drive from Saltwater to the offices of Roberts Nehmer McKee; and

(c) there were numerous conversations had several years ago and it is understandable that in Paragraph 11(m), which contains 5 allegations of representations, an error has occurred in particularising the conversation relating to 11(m)(i) at the wrong time (by perhaps a week or so).

[109] The plaintiffs have satisfied me that Mr Hobson made the representation the subject of Paragraph 11(m)(i). Mr Taylor's evidence[81] on the reliance of Prawns North owning the Saltwater land, was that it was "everything" in terms of significance in signing the share sale agreement and that the reassurance that the property was debt free was very much significant to the decision to enter into the share sale agreement. The evidence concerning reliance on the representation concerning the purchase of half a million dollars' worth of earthmoving equipment was less impressive. Although Mr Taylor said[82] that the representation was "significant", he acknowledged "there was a problem, though" namely that he did not know what he was buying because he had not received any information on that prior to signing. As Mr Taylor conceded "so it was a little bit concerning that I didn't know what I was paying half a million dollars for."[83] This compels the conclusion, objectively, that the representation concerning the million dollars' worth of equipment was relied upon by Mr Taylor in entering into the share sale agreement, because although he did not know precisely what he was purchasing, he knew it was large plant, (dozers and excavators),[84] he knew the plant had performed earthmoving work for Hobson Constructions and he was told it was worth $1 million.

Fourth Pre-Agreement Representation – Herron Todd White report of 12 June 2003

[110] The plaintiffs' case in respect of the HTW valuation is set out in Paragraphs 11A to 11C of the SFASC as follows:

> "11A. In or about late January or early February 2010 and prior to the making of the agreement referred to in paragraph 8 the first defendant provided to the first plaintiff a copy of a valuation report by Herron Todd White valuing "Prawn Farming Property ("Prawns North")" as at 12 June 2003.
>
> 11B. The valuation report stated:

81 T1-17 and T1-18.
82 T1-18.
83 T1-18/9–10.
84 T1-21/2.

(a) The report was prepared for the first defendant;

(b) That the first defendant's instructions were given as operator of the Prawns North Aquaculture farm to assess the market value of the property located via Bruce Highway, Rollingstone;

(c) The valuation was prepared for mortgage security purposes and that the interest being valued was the unencumbered fee simple in use as a going concern Walk-In Walk-Out (WIWO) excluding prawn stocks;

(d) The valuation was assessing the market value of the subject prawn farming property on an unencumbered freehold basis and that the current status of the tenure was leasehold and consequently a freeholding cost adjustment would have to be made to reflect the asset's current leasehold status;

(e) The property was developed with a range of buildings and the most significant structure was the new processing shed;

(f) The value was:

Freehold	$3,100,000.00
Less estimated freeholding cost	$330,000.00
Current market value as leasehold	$2,770,000.00
Rounded	$2,800,000.00

11C. The valuation report:

(a) Was intended by the first and second defendants as evidence and thereby represented that the representations referred to in Paragraphs 9 and 10a and 11a-e and mii-v were true;

(b) Was reasonably understood and relied upon by the plaintiffs as evidence that those representations were true."

[111] Mr Hobson does not deny providing the HTW report to Mr Taylor but pleads that the report was provided in April or May 2010 to assist Mr Taylor in obtaining finance to complete the share sale agreement.

[112] The HTW report was not the subject of any evidence of Mr Taylor nor Mr Hobson. I therefore can make no finding in respect of the HTW report.

Fifth Pre-Agreement Representation

[113] The fifth pre-agreement representation which is the subject of Paragraph 11E(a) and (b) of the SFASC are implied representations made in the alternative to Paragraphs 9(b), 11(b) and 11(m). The implied representations that are said to arise as a result of the making of the representations in Paragraph 9(c), 11 (c) and paragraph 11D.

[114] As set out above, I have accepted the representation the subject of Paragraph 9(b). I have rejected the representation the subject of Paragraph 11(b) on the basis that the representation that Prawns North was the owner of the land was not said again on or about

11 February 2010, but rather that it was on or about 12 December 2009. I have rejected the representation the subject of Paragraph 11(b) because, as discussed above, there was an absence of evidence to support that allegation. I have rejected the express representations the subject of Paragraphs 11(m)(ii) to (v) inclusive.

[115] As the representations the subject of Paragraph 11E(a) and (b) are in the alternative, and as I have accepted representation made in respect of Paragraph 9(b), I conclude the plaintiffs have made their primary case out in respect of express actual representations. I therefore do not need to consider the plaintiffs' case in respect of implied representations.

Sixth Pre-Agreement Representation

[116] The sixth pre-agreement representation is the subject of Paragraph 12 of the SFASC which provides as follows:

> "12. There was a further representation, implied from the first and second defendant's conduct in making the above express representations, and the absence of any indication or qualification placed on those representations that the first and second defendants and/or Prawns North had at that time in place the necessary financial capacity and other resources to complete the purchase of the Cardwell property."

[117] There is no evidence to support this representation. The sixth pre-agreement representation has not been established and is dismissed.

Seventh Pre-Agreement Representation

[118] The seventh pre-agreement representation is the subject of Paragraph 13 of the SFASC which provides as follows:-

> "13. On or about 11 February 2010 Mr Hobson represented to the plaintiffs (in the presence of the fourth defendant) that he was in a serious situation by reason of a family law dispute and because of his position needed the plaintiffs to enter into the Sharesale Agreement as a matter of urgency. By reason of the representation pleaded in this paragraph the first, second, third and fourth defendants knew that the plaintiffs were encouraged to make their decision to enter into the Sharesale Agreement swiftly and without investigation of the representations made by Mr Hobson."

[119] Mr Taylor's evidence[85] is that the meeting at Roberts Nehmer McKee was something that was unexpected from his perspective and he was brought to the office by Mr Hobson, who told him "we need to move things along very quickly." Further, Mr Taylor said in evidence that "Rick said he was under financial hardship."[86]

[120] The evidence of Mr Taylor did not go any further, and did not rise to the level to provide any evidential basis to prove the seventh pre-agreement representation.

---

85 T1-17 and T1-18

86 T1-17/16.

Paragraphs 22A and 22B

[121] It is not necessary to consider the alternative case brought by Paragraph 22A as I have found the representation in Paragraph 9(b) was made, namely, Mr Hobson did expressly represent that Prawns North was the owner of the land at Saltwater. Similarly, Paragraph 22B must be dismissed because the representations in Paragraph 11(m)(ii) to (v) and 11E(b) are dismissed.

The Share Sale Agreement

[122] On 8 February 2010 the second plaintiff as purchaser and the second defendant as vendor entered into the share sale agreement. It is notable that on page 1 the completion date for the agreement was not finalised, and accordingly the completion date for the final payment of the purchase price of $2.5M was defined, pursuant to cl 1.1(b) as "any other date which is agreed in writing by the parties before the date referred to in Paragraph (a)." The difficulty is that Paragraph (a) did not provide a date. Accordingly the completion date was not defined in writing. This provides some difficulty because the share sale agreement included cl 6.3 as follows:

> "**6.3 Entire Agreement**
>
> This agreement is the entire agreement of the parties on the subject matter. The only enforceable obligations and liabilities of the parties in relation to this subject matter are those that arise out of the provisions contained in this agreement. All representations, communications and prior agreements in relation to the subject matter are merged in and superseded by this agreement."

[123] The entire agreement clause was, appropriately, not the subject of any evidence. It speaks for itself.

[124] It is helpful to set out the payments made by the plaintiffs in respect of the share sale agreement. They are set out and admitted in Paragraph 25 of the SFASC as follows:

> "25. The plaintiffs made the following payments pursuant to the Sharesale Agreement
>
> (a) The sum of $300,000.00 paid by cheque on or about 11 February 2010;
>
> (b) The sum of $100,000.00 paid to the third defendant's trust account on or about 9 March 2010;
>
> (c) The sum of $36,666.36 paid to the trust account of Connolly Suthers Lawyers at the request of the first and second defendants on or about 10 April 2010;
>
> (d) The sum of $500,000.00 paid to the third defendant's trust account on or about 4 May 2010;
>
> (e) The sum of $700,000.00 paid to the third defendant's trust account on or about 25 July 2010;

(f) The sum of $19,033.61 paid to the Seller of the Cardwell property by way of default interest at the request of the first and second defendants as follows:"

(i)	25 May 2010	$11,232.00
(ii)	11 June 2010	$139.17
(iii)	11 June 2010	$4,500.36
(iv)	6 July 2010	$3,162.08

Post-Agreement Representations

[125] The five post-agreement representations were, rightfully, not the subject of any evidence and are accordingly dismissed.

Conclusion

[126] In conclusion, I find that Mr Taylor had proven that:

(a) Mr Hobson did represent to the plaintiffs that the company Prawns North was the owner of the Saltwater land (Representation 9(b));

(b) Mr Hobson did represent to the plaintiffs that Prawns North did not have any outstanding debts (Representation 11(g));

(c) Mr Hobson did represent that by entering into the Sharesale Agreement; the second Plaintiff would acquire a 50% interest in earthmoving equipment valued at $1M (Representation 11(m)(ii)).

[127] I further find that the plaintiffs entered into the share sale agreement of 11 February 2010 acting upon and induced by those three representations, and as a result made the payments of money totalling $1,655,699.97 as set out in Paragraph 25 of the SFASC.

[128] I further find that the three representations were in fact false. I find that the first defendant, Mr Hobson, acting as the sole shareholder and director of the second defendant, Hobson Investments, did, by making the said three false representations, engage in conduct in trade or commerce which was misleading in contravention of s 52 of the *Trade Practices Act* 1974 (Cth).

[129] I give judgment for the first and second plaintiffs against the first and second defendants upon the causes of action the subject of Paragraphs 9(b), 11(g) and 11(m)(i) of the SFASC.

[130] I will receive written submissions on the appropriate consequential orders for the conduct of the remaining issue of quantum.