FEDERAL COURT OF AUSTRALIA

Commissioner of Taxation v Bosanac [2021] FCAFC 158

Appeal from:	*Commissioner of Taxation v Bosanac (No 7)* [2021] FCA 249
File number:	WAD 82 of 2021
Judgment of:	**KENNY, DAVIES AND THAWLEY JJ**
Date of judgment:	31 August 2021
Catchwords:	**EQUITY –** presumption of advancement – purchase of property by husband and wife – title registered in wife's name only – whether presumption of advancement is qualified by statements in *Trustees of Property of Cummins (a bankrupt) v Cummins* (2006) 227 CLR 278 – whether presumption of advancement is rebutted – where property intended as matrimonial home – where both spouses contributed equally to purchase through joint loan accounts – where husband assumed significant liability under mortgage over the property – inference husband acquired 50% beneficial interest raised on the

	facts – inference supported by subsequent conduct – held: presumption of advancement rebutted
Cases cited:	*Actors & Announcers Equity Association of Australia v Fontana Films Proprietary Limited* (1982) 150 CLR 169 *Aldi Foods Pty Ltd v Moroccanoil Israel Ltd* (2018) 261 FCR 301 *Black Uhlans Inc v New South Wales Crime Commission* [2002] NSWSC 1060 *Branir Pty Ltd v Owston Nominees (No 2) Pty Ltd* (2001) 117 FCR 424 *Calverley v Green* (1984) 155 CLR 242 *Carr v Baker* (1936) 36 SR (NSW) 301 *Cassimatis v Australian Securities and Investments Commission* (2020) 275 FCR 533 *Charles Marshall Pty Ltd v Grimsley* (1956) 95 CLR 353 *Commissioner of Taxation v Bosanac (No 7)* [2021] FCA 249 *Nelson v Nelson* (1995) 184 CLR 538 *Scott v Pauly* (1917) 24 CLR 274 *The Trustees of the Property of Cummins (a bankrupt) v Cummins* (2006) 227 CLR 278 *Warren v Coombes* (1979) 142 CLR 531
Division:	General Division
Registry:	Western Australia

National Practice Area:	Taxation
Number of paragraphs:	28
Date of hearing:	4 August 2021
Counsel for the Appellant:	Mr A J Musikanth SC with Mr J Slack-Smith
Solicitor for the Appellant:	Australian Government Solicitor
Solicitor for the First Respondent:	Mr R Blow of Cove Legal
Counsel for the Second Respondent:	Mr J Hynes with Mr T L Bagley and Mr B A O'Connor (All Pro Bono)

ORDERS

WAD 82 OF 2021

BETWEEN: **COMMISSIONER OF TAXATION**
Appellant

AND: **VLADO BOSANAC**
First Respondent

BERNADETTE BOSANAC
Second Respondent

ORDER MADE BY: KENNY, DAVIES AND THAWLEY JJ

DATE OF ORDER: 31 AUGUST 2021

THE COURT ORDERS THAT:

1. The appeal be allowed.

2. The orders made by McKerracher J on 22 March 2021 be set aside and, in lieu thereof, it is declared that the second respondent holds 50 per cent of her interest in the property located at 82 Philip Road, Dalkeith, Western Australia, more particularly described in certificate of title volume 1628 folio 598, on trust for the first respondent.

3. On or before 4:30 pm on 7 September 2021, the parties file and serve submissions of no more than 2 pages as to the appropriate order as to:

(a) the costs of the appeal; and

(b) the costs of the proceeding before the primary judge, including whether this issue of costs should be remitted to the primary judge to determine.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

REASONS FOR JUDGMENT

THE COURT:

1. The issue in this appeal is whether, contrary to the judgment of the primary judge, Mr Bosanac held an equitable interest in residential property purchased for $4.5 million in the name of Ms Bosanac only. The deposit of $250,000 was paid with funds from a joint loan account. Mr and Ms Bosanac then jointly borrowed $4.5 million from Westpac and this was used to pay the balance of the purchase price.

2. The issue in the appeal is ultimately largely one of fact: what did Mr and Ms Bosanac intend as to the beneficial ownership of the property at the time of purchase? This question is determined by reference to the facts, including inferences appropriately drawn from the facts, and – if they are applicable and not rebutted – certain presumptions of equity. The

facts are either established by direct evidence or they may be inferred from facts directly proved when those proved facts make it reasonably probable that the inferred fact exists: *Carr v Baker* (1936) 36 SR (NSW) 301 at 306 (Jordan CJ). Presumptions, unless "rebutted" by evidence, operate such that proof of one fact results in a second fact being presumed to exist. The presumption of the existence of a fact in this way is said to be available because it gives effect to common experience: *Actors & Announcers Equity Association of Australia v Fontana Films Proprietary Limited* (1982) 150 CLR 169 at 213-215 (Murphy J); ***Nelson** v Nelson* (1995) 184 CLR 538 at 601-3 (McHugh J); ***Calverley** v Green* (1984) 155 CLR 242 at 264 (Murphy J). A presumption differs from an inference in that an inference is something which may be drawn from facts directly proved, whereas a presumption (unless rebutted) operates automatically once a certain fact is proved.

3. Two "presumptions" are of particular relevance in the determination of this appeal:

> (1) The first presumption concerns resulting or presumptive trusts. Relevantly, a declaration of trust may be presumed where two parties contribute to the purchase price of property, but legal title to the property is put only in the name of one of them. Equity presumes there was a declaration of trust because it presumes it was intended that the person holding legal title would do so for both contributors (or that the purchaser did not intend to gift his or her contribution to the other person).

> (2) The second is the presumption of advancement. Where it applies, the presumption of advancement operates to prevent a resulting trust from arising because the relationship between the relevant parties provides a reason against presuming a trust. The presumption operates on the hypothesis that, because a certain relationship exists between two parties, a benefit provided by one party to the other at the cost of the first was intended to be provided by way of "advancement"; absent evidence to the contrary, the relationship supplies a reason for why a gift was intended.

4. The presumption of advancement developed as a result of Courts of equity drawing an inference, from the type of relationship, that the gift was intended as an "advancement" – see, for example: *Scott v Pauly* (1917) 24 CLR 274 at 282 (Isaacs J); *Calverley* at 267 (Deane J). As to the development of the presumption of resulting trust see: Bogert, *The Law of Trusts and Trustees*, revised 2nd edition 1991, § 454, 240-241; *Black Uhlans Inc v New South Wales Crime Commission* [2002] NSWSC 1060 at [129]-[134] (Campbell J). Neither

the presumption of resulting trust, nor the presumption of advancement, are without controversy, in particular because it has been recognised that they may not reflect contemporary understanding or views or experience; nevertheless they are recognised as entrenched – see, for example: *Calverley* at 248-9 (Gibbs CJ), at 264-5 (Murphy J) and at 265-6 (Deane J); *Nelson* at 602 (McHugh J).

5. The presumption of advancement has particular significance where there is little evidence relevant to establishing the intention of the donor or where the Court is unable to reach a positive satisfaction on the issue from the evidence adduced. That is why the presumption has been described as operating "to place the burden of proof, if there be a paucity of evidence bearing upon such a relevant matter as the intention of the party who provided the funds for the purchase": *Nelson* at 547 (Deane and Gummow JJ).
In *Calverley* at 270-271, Deane J stated:

> The weight to be given to a presumption of a resulting trust in the resolution of what is essentially an issue of fact may vary in accordance with changing community attitudes and with the contemporary strength or weakness of the rationale of the rule embodying the presumption: see, eg, *Snell's Principles of Equity*, 28th ed (1982), p 183 and the cases there cited, and per Mahoney J, *Doohan v Nelson* [[1973] 2 NSWLR 320, at pp 325-326]. The generalization that a presumption of resulting trust "should not give way to slight circumstances" [[1955] AC 431, at p 455] can no longer properly be accepted as an unqualified rule. Indeed, in a case where a presumption of resulting trust or a "presumption" of advancement applies in circumstances where the relationship between the parties does not, as a matter of modern experience, provide any firm rational basis for presuming either an intention to retain the beneficial interest or an intention to confer it on the other party, the presumption may be found to be of practical importance only in those cases where the evidence, including evidence of the actual relationship between the parties, does not enable the court to make a positive finding of intention: cf per Gibbs J in *Napier* [(1980) 32 ALR, at p 2] and per Lord Upjohn, *Pettitt v Pettitt* [[1970] AC 777, at pp 813-814)].

6. The presumption of advancement does not preclude an examination of the actual relationship between the parties, or of other facts relevant to the intention at the time of the transaction, when it comes to the question whether the evidence rebuts the presumption. The role of presumptions is not to obscure an identification of what was actually intended or to force a conclusion which the evidence sufficiently demonstrates to be incorrect. "The presumption can be rebutted or qualified by evidence which manifests an intention to the contrary": *Charles Marshall Pty Ltd v Grimsley* (1956) 95 CLR 353 at 365.

7. The presumption of advancement and its connection with resulting trusts was referred to by the High Court in *The Trustees of the Property of **Cummins** (a bankrupt) v Cummins* (2006) 227 CLR 278. The Court stated (footnotes omitted):

> [55] The generally accepted principles in this field, affirmed for Australia by *Calverley v Green*, were expressed as follows in that case by Gibbs CJ:
>
> > "[I]f two persons have contributed the purchase money in unequal shares, and the property is purchased in their joint names, there is, again in the absence of a relationship that gives rise to a presumption of advancement, a presumption that the property is held by the purchasers in trust for themselves as tenants in common in the proportions in which they contributed the purchase money".
>
> Further, the presumption of advancement of a wife by the husband has not been matched by a presumption of advancement of the husband by the wife. The "presumption of advancement", where it applies, means that the equitable interest is at home with the legal title, because there is no reason for assuming that any trust has arisen.

8. The first part of the Commissioner's case on appeal centred on the following passage of the High Court's decision in *Cummins* (emphasis added, footnotes omitted):

> [71] The present case concerns the traditional matrimonial relationship. Here, the following view expressed in the present edition of Professor Scott's work respecting beneficial ownership of the matrimonial home should be accepted:
>
> > "It is often a purely accidental circumstance whether money of the husband or of the wife is actually used to pay the purchase price to the vendor, where both are contributing by money or labor to the various expenses of the household. It is often a matter of chance whether the family expenses are incurred and discharged or services are rendered in the maintenance of the home before or after the purchase."
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> To that may be added the statement in the same work:
>
> > "**Where a husband and wife purchase a matrimonial home, each contributing to the purchase price and title is taken in the name of one of them, it may be inferred that it was intended that each of the spouses should have a**

one-half interest in the property, regardless of the amounts contributed by them."

9. The Commissioner submitted that the passage emphasised above "qualifies" the presumption of advancement. It was submitted that the High Court accepted that, where a husband and wife purchase a matrimonial home, each contributing to the purchase price, and title is taken in the name of one of them only, then – in the absence of evidence to the contrary – it *must* be inferred (notwithstanding the presumption of advancement) that it was intended that each of the spouses would have a one-half interest in the property, regardless of the amounts contributed by them.

10. This submission, if correct, would mean that the observation made by the High Court in *Cummins* is, in effect, itself a "presumption", which – if arising because the relevant facts are shown to exist – would itself then need to be rebutted. This is an unlikely conclusion. First, the High Court did not frame its observation in the language of presumption or special category of case needing to be treated differently from other categories. Secondly, the statement found in Professor Scott's work which was accepted by the High Court in *Cummins* at [71] was a statement made in the context of "rebutting the presumption of a gift to a relative" and the work does not otherwise support the Commissioner's submission (or even raise it for consideration). Thirdly, it is unlikely that the High Court intended to introduce, without detailed analysis, a qualification to the operation of the presumption of advancement of the general kind submitted by the Commissioner. Finally, and most importantly, the High Court was not considering whether the circumstances identified in Professor Scott's work operated as a special category of case which, unless rebutted by other evidence, necessarily rebutted the presumption of advancement. *Cummins* involved an entirely different issue.

11. The presumption of advancement arises on proof of the existence of a relationship to which the presumption applies. It applies to a purchase by a husband of property which is put in his wife's name. Perhaps demonstrating just one reason for controversy about the presumption, it does not apply to property a wife purchases and puts in her husband's name. The presumption is a general one, but it is nevertheless important to assess the particular transaction in respect of which the presumption is said to operate. The presumption is liable to being displaced or rebutted by evidence, including the circumstances of the particular transaction. The important point to be made from the relevant passage in *Cummins* at [71] is that, if the facts there set out exist, an available inference to draw from those facts is that a trust was intended. In a case where that inference is drawn, the presumption of advancement will be shown to have been inconsistent with the true

intentions of the parties and thus rebutted. This conclusion is based on the objective circumstances of the acquisition, assessed in the context in which they occurred. Those facts might give rise to a positive inference inconsistent with the presumption. The "presumption of advancement" arises because the parties have been shown to be in a relationship which gives rise to it, but the evidence shows that the presumption that the husband's contribution was an "advancement" or gift is inconsistent with the true state of affairs and is therefore rebutted.

12. The second aspect of the Commissioner's case was that, even if the passage identified by the High Court in *Cummins* at [71] did not operate as a qualification to the presumption of advancement in the manner contended in the first part of his case, nevertheless the appropriate inference to draw from all of the evidence was that Mr Bosanac intended to retain a 50% beneficial interest in the property. This aspect of the appeal proceeded on the basis that there was no challenge to any of the primary judge's findings of fact.

13. The appeal to this Court is by way of rehearing. An appeal by way of rehearing involves the correction of error: ***Branir*** *Pty Ltd v Owston Nominees (No 2) Pty Ltd* (2001) 117 FCR 424 at [22] (Allsop J); ***Aldi Foods*** *Pty Ltd v Moroccanoil Israel Ltd* (2018) 261 FCR 301 at [45] (Perram J). Error is not demonstrated by mere disagreement with the views of the primary judge; there must be a proper basis justifying appellate intervention: *Branir* at [1] (Drummond J), [2] (Mansfield J), [20], [22], [28]-[29] (Allsop J); *Aldi Foods* at [2]-[10] (Allsop CJ), [45]– [49] (Perram J), [169] (Markovic J); *Cassimatis v Australian Securities and Investments Commission* (2020) 275 FCR 533 at [476] (Thawley J). In this appeal, we are asked to review the inferences to be drawn from the facts as found by the primary judge. There is no doubt that it is open to an appellate court to do so. In deciding an issue of this kind, "the appellate court will give respect and weight to the conclusion of the trial judge, but, once having reached its own conclusion will not shrink from giving effect to it": *Warren v Coombes* (1979) 142 CLR 531 at 551.

14. The primary judge accepted Ms Bosanac's submission that the fact that the property was the matrimonial home and that Mr Bosanac assumed a very substantial liability by signing on to the loan documents does not ground an inference that he intended to retain a beneficial interest: *Commissioner of Taxation v Bosanac (No 7)* [2021] FCA 249 (hereafter "J") at [222] (first sentence). The primary judge's reason for this conclusion was that there was no evidence that Westpac required both Mr and Ms Bosanac to sign onto the loans to obtain finance. The primary judge recorded that, in *Calverley*, Gibbs CJ considered such evidence rebutted the presumption of advancement (at 251) but that Deane J (at 271) considered the same evidence to be "amphibolous"

because it could be viewed "as either an explanation of her acquisition of a beneficial interest in the property or as an explanation of her being but a trustee for Mr Calverley". The primary judge continued at J[222]:

> In the absence of any evidence here that Ms Bosanac's name was only required on the loans to obtain finance, there is nothing to be drawn from the fact that Mr Bosanac assumed a substantial liability without the benefit of the beneficial interest. That is even more so in this case where, unlike in *Calverley*, the Dalkeith Property was purchased only in Ms Bosanac's name, not in their joint names.

15. This reasoning indicates that the primary judge excluded from consideration, on the question whether the presumption of advancement had been shown not to apply or to be inconsistent with the true state of affairs, the fact that, as his Honour would have it, Mr Bosanac assumed a substantial liability without the benefit of acquiring any beneficial interest. This is a fact which should not have been excluded from a consideration of whether the presumption of advancement had been rebutted in the manner just indicated.

16. At a level of generality, the presumption of advancement supplies a reason why a trust should not be automatically presumed in equity, namely that Ms Bosanac was Mr Bonsanac's wife and on this account Mr Bosanac could have been willing to assume a substantial liability without any beneficial interest. However, the presumption of advancement does not operate to preclude examination of the quality of the particular transaction in connection with which the presumption arises in order to determine whether the evidence as a whole shows the presumption to be inconsistent with what was in fact intended. For example, the gifting by a husband to his wife of one of a number of houses, owned outright, is qualitatively quite different from borrowing to acquire and gift a house. There is significance in the fact that the transaction in this case involved a substantial borrowing by Mr Bosanac for which he would be liable in circumstances where he had no legal title to the property purchased with those borrowings. The significance is that the nature of the transaction permits an inference as to intention consistent with the inference drawn in *Cummins* at [71], in the second passage quoted from Professor Scott's work.

17. It is to be borne in mind in this case that neither of the central protagonists sought to give direct evidence about the purchase of the Dalkeith Property. Mr Bosanac did not give evidence before the primary judge. Although Ms Bosanac filed two affidavits in the proceeding, one in February 2020 and another in May 2020, neither affidavit was read and relied on by her in opposition to the Commissioner's case: J[24]. While the primary judge allowed the tender of such parts of her affidavits as constituted admissions of the fact that the Dalkeith

Property was the matrimonial home of the Bosanacs, as his Honour observed, this was not a fact seriously in dispute: J[37]. We note too at this point that his Honour also allowed the tender of paragraph 12 of the May 2020 affidavit relating to the 'Rocket Loans' secured by the Dalkeith Property (and another property) after the purchase of the Dalkeith Property, a matter that we discuss below: J[37], [217], [227].

18. The Commissioner substantially relied on the unchallenged evidence of an officer in the Australian Taxation Office to establish the core facts on which he relied, including the facts relating to the purchase of the Dalkeith Property: J[23], [38]. Bearing in mind the limited nature of the evidence before the primary judge, the facts his Honour found based on this evidence, none of which are in dispute, are critical to the outcome of the appeal. As explained below, the absence of direct evidence from Mr Bosanac as to his intention at the time of purchase does not, in our view, preclude a finding that the facts as found by the primary judge on the evidence before the Court rebutted the application of the presumption of advancement in this case: cf J[79], [207]. As already stated, the outcome of this appeal turns on our assessment of the inferences that should be drawn from the facts as found by the primary judge.

19. The primary judge found that at the time of the purchase of the Dalkeith Property: (a) Mr and Ms Bosanac had been married to one another for some eight years; and (b) the purpose of the purchase of the Dalkeith Property was to acquire their matrimonial home. In other words, the Dalkeith Property was intended by them to be their matrimonial home: J[37]-[38], [47], [96]. That this was what they both intended at the time is consistent with the fact that they both moved into the Dalkeith Property not long after the purchase in late 2006 and that they remained there together until sometime in 2015. It was only then that Mr Bosanac moved elsewhere, having separated from his wife some two or three years earlier: J[38], [55]-[56]. We infer from the fact that Ms and Mr Bosanac purchased the property as their matrimonial home and moved in together shortly after purchase that at the time of purchase they intended that the Property would be for their joint use and for the benefit of them both, even though the Property was registered in the wife's name alone.

20. Furthermore, at the time of the purchase of the Dalkeith Property the funds for the purchase came from joint loan accounts in both Bosanacs' names. The deposit of $250,000 required under the contract of sale was (so the primary judge inferred) paid out of a pre-existing joint loan account in their joint names: J[39]. Furthermore, the whole of the purchase price of $4.5 million was paid from joint borrowings. Both Mr and Ms Bosanac applied for two joint loans from Westpac in the amounts of $3,500,000 and $1,000,000 on 24 October 2006: J[40].

The Bank offered them the loans on or about the same date. Mr and Ms Bosanac each accepted the loans. On 2 November 2006, two amounts totalling $4.5 million were drawn down from the home loan accounts held jointly in their names. Unsurprisingly, the primary judge inferred that these amounts were advances of the October loans: J[48]. As the primary judge recorded, "by entering into a joint loan agreement, the Bosanacs each contributed half of the purchase price of the Dalkeith Property": J[96], [60].

21. The primary judge accepted, and it is not in dispute on appeal, that the purpose or predominant purpose of the loans in October 2006 was to purchase the Dalkeith Property: J[46]. It must also be borne in mind that the securities for the two October loans were mortgages, including over the Dalkeith Property: J[42], [53]. It seems to us that this circumstance tends strongly against the presumption of advancement applying in this case. We consider less probable than not in the circumstances just described that Mr Bosanac would take on a very substantial liability in respect of the Dalkeith Property without at the same time acquiring a corresponding beneficial interest in the Property.

22. It seems to us that, taken together, these fundamental facts tend strongly against the application of the presumption of advancement here. Rather, the objective facts together with the inferences properly drawn from those facts, lead to the conclusion that Mr Bosanac did not intend that his contribution to the purchase of their matrimonial home at Dalkeith be by way of gift to Ms Bosanac for her 'advancement'. Rather, it should be inferred from the facts as found that both he and Ms Bosanac intended that Mr Bosanac would have a 50% beneficial interest in the Dalkeith Property. In our opinion, the primary judge should not have excluded the fact that Mr Bosanac assumed a substantial liability in the acquisition of their matrimonial home in considering whether the evidence and the facts as found on the evidence rebutted the presumption of advancement.

23. We acknowledge that subsequent events are not directly probative of Mr or Ms Bosanac's intention at the time of the purchase of the Dalkeith Property. Nonetheless, the fact is that Mr Bosanac later used the Property to secure borrowings of $3.6 million. This was in respect of what the primary judge referred to as the 'Rocket Investment Loan' and the 'Rocket Repay Home Loan', a significant portion of which he used to pursue share-trading activities: J[215]–[217]. This subsequent use of the Dalkeith Property to secure Mr Bosanac's borrowings supports the inference we would draw from the circumstances attending the purchase. That is, that at the time of purchase, the Bosanacs intended that the Dalkeith Property would be available to benefit both of them, notwithstanding that it was registered only in Ms Bosanac's name.

24. We acknowledge that the primary judge reached a different conclusion. His Honour considered that any inference that could be drawn from the use of the Rocket Loans about Mr Bosanac's intention at the time of purchase was significantly weakened by the fact that the loans were also secured by another property over which Mr Bosanac claimed no interest: J[227]. In the absence of detailed evidence about the purchase and use of this latter property, however, we are unable to attach the same significance to this circumstance as did the primary judge. It seems to us that, on the evidence and facts as found, this circumstance did not tend one way or the other.

25. There are two further matters. The first is that the primary judge considered it relevant that there was "considerable evidence of separate ownership of property and the use of separately owned properties as security for joint loans": J[228]. Plainly enough, as the primary judge said (at J[58]), this was not a case where a husband and wife shared all their matrimonial assets jointly. We do not consider, however, that much, if anything, can be drawn from the fact that each of the Bosanacs had other assets in his or her separate ownership. Nor does the use of separately owned properties, apart from the matrimonial home, as security for joint loans weaken the conclusion we have reached, which is based on the evidence and the facts relating to the purchase of the Dalkeith Property itself.

26. The second matter concerns the primary judge's reference to the fact that Mr Bosanac described himself as a "self-styled venture capitalist" and that his Honour referred to him as a sophisticated businessman: J[231]. His Honour concluded from these matters that Mr Bosanac "must be taken to have appreciated that the name in which real property is held is of significant consequence in almost all situations". As we see it, however, there are two difficulties with this conclusion. Both arise from the fact that Mr Bosanac did not himself give evidence. First, the primary judge's appraisal did not rest on an assessment of Mr Bosanac's own evidence, since there was none. Secondly, there was no direct evidence of what Mr Bosanac perceived to be the significance of the Dalkeith Property being put into Ms Bosanac's name. Plainly enough, the inference drawn by the primary judge was not the only one available. We would not, therefore, place much, if any, weight on the primary judge's characterisation of Mr Bosanac's business acumen.

27. It seems to us that, ultimately, the most significant fact in favour of the operation of the presumption of advancement in this case was simply that, at the time of purchase, the Dalkeith Property was put into Ms Bosanac's name, notwithstanding that Mr Bosanac contributed half the purchase price. This was, of course, sufficient to attract the presumption, absent rebutting evidence. For the reasons we have

stated, we have concluded that in this case the evidence and the facts as found by the primary judge based on that evidence rebutted the presumption. We infer from these facts that at the time of the purchase Mr Bosanac and Ms Bosanac intended that Mr Bosanac would have a 50% beneficial interest in the property that was to be their matrimonial home.

28. For the reasons stated, we would allow the appeal and make the declaration sought by the appellant in his notice of appeal. The parties will be given an opportunity to make submissions as to costs.

I certify that the preceding twenty-eight (28) numbered paragraphs are a true copy of the Reasons for Judgment of the Honourable Justices Kenny, Davies and Thawley.

Associate:

Dated: 31 August 2021