

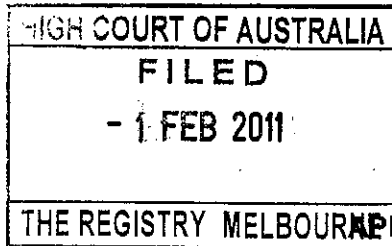
BETWEEN:

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

and

ROBERT SAMUEL BASSAT
Respondent

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APPELLANT'S SUBMISSIONS

PART I:

20 1 The Appellant (**Equuscorp**) certifies that these submissions are in a form suitable for publication on the internet.

PART II:

2 Equuscorp adopts paragraphs 2 to 5 of its submissions in appeal M128 of 2010.

PART III:

3 Equuscorp certifies that no notice is required under section 78B of the Judiciary Act 1903.

PART IV:

4 Equuscorp adopts paragraphs 7 to 8 of its submissions in appeal M128 of 2010.

PART V:

30 5 Equuscorp adopts paragraphs 9 to 53 of its submissions in appeal M128 of 2010.

Facts Specific to Bassat

6 Bassat entered into his suite of documents for the 1988-1989 Scheme on 31 March 1989¹. There was no prospectus.

7 Clauses 1 and 8 of Bassat's Farm Agreement² granted Bassat a 12 year licence of his Farm on the Land. Clause 2³ contained Bassat's obligation to pay Fees. Clauses 4.2 and 5.2⁴ contained Bassat's maintenance and harvesting obligations.

¹ The Farm Agreement is at ABXX, the Management Agreement at ABXX, the Sale of Fruit Agreement at ABXX and the Loan Agreement is at ABXX.

- 8 Bassat's obligation to pay Fees, and his right to elect to prepay the first year's Fees and receive a discount if he did, was contained in clause 2⁵ of the Bassat's Management Agreement. Those discounted Fees were \$133,518 .
- 9 Bassat borrowed the \$133,518 from Rural. Clause 3A⁶ of Bassat's Loan Agreement specified the five year term. Bassat's obligations to make the Initial Repayments was in clause 3C(i)⁷ and the obligation to repay the balance was in clause 3C(ii)⁸. There was no non-recourse provision. By clause 3C(iv)⁹ Bassat authorised the Buyer to pay first from sales of fruit JFM's Fees¹⁰ and then amounts he owed to Rural. By clause 4(i) Bassat gave the Investor Charge. Bassat gave
10 no Investor Mortgage pursuant to clause 4(ii). The 1.5% discount on the otherwise applicable interest rate which was offered for prepayment of Fees was in clause 6¹¹. Clause 7 was the default clause which contained the acceleration provision¹².
- 10 Bassat paid both Initial Repayments on time¹³, with the result that the loan repayable in March 1994¹⁴.
- 11 Bassat paid Rural \$25,200 by the Initial Repayments, \$15,876 by prepayment of interest, \$56,679 from the proceeds of fruit sales in the 1989, 1990 and 1991 financial years¹⁵. Bassat made no payments after 30 June 1991¹⁶.
- 12 By letter dated 20 November 1997 Bassat was given notice of the assignment to Equuscorp of Rural's interest under the Bassat Loan Agreement and the debt
20 owed under it¹⁷.
- 13 Equuscorp commenced its proceeding against Bassat on 25 February 1998 seeking to recover the \$62,076 balance of the loan then outstanding.

² ABXX.

³ ABXX.

⁴ ABXX.

⁵ ABXX.

⁶ ABXX.

⁷ ABXX.

⁸ ABXX.

⁹ ABXX.

¹⁰ See the definition of "Net Proceeds".

¹¹ ABXX.

¹² ABXX.

¹³ VSC at [48].

¹⁴ VSC at [68].

¹⁵ VSC at [16].

¹⁶ Agreed facts [10].

¹⁷ ABXX; Agreed facts [15].

PART VI:

14 Equuscorp adopts paragraphs 62 to 108 of its submissions in appeal M128 of 2010.

PART VII:

15 The legislation upon which Equuscorp relies is annexed to its submissions in proceeding M128 of 2010.

PART VIII:

16 The Orders which Equuscorp seeks are:

16.1 the Appeal is allowed;

10 16.2 set aside the Orders of the Court of Appeal made on 29 January 2010 and in lieu thereof order that the Respondent's Appeal to that Court is dismissed with costs;

16.3 the Respondent pays the Appellant's cost of and incidental to the Appeal.

Dated 1 February 2010

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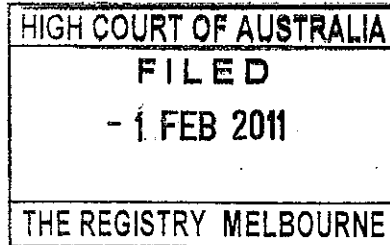
BETWEEN:

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

Appellant

and

ROBERT SAMUEL BASSAT
Respondent



APPELLANT'S CHRONOLOGY

Part I¹:

Equuscorp certifies that these submissions are in a form suitable for publication on the internet.

Part II²:

Date	Event
00.05.85 – 00.05.88	CBG granted the registered mortgages over the Land or part of it to the Commonwealth Bank ³ .
00.00.86	The Johnsons begin to promote tax driven investments in blueberry farming schemes ⁴ .
00.12.86 – 00.11.92	CBG granted registered mortgage over the Land or part of it to State Bank of New South Wales ⁵ .
31.05.89	<i>Bassat enters into his Loan Agreement, Sale of Fruit Agreement, Management Agreement and Farm Agreement for the 1987-1988 scheme. At this time Bassat borrowed \$133,518 from Rural⁶.</i>

¹ This chronology adopts the definitions contained in the Appellant's submissions in M128 of 2010 ("M128 AS").

² Facts specific to proceeding M129 have been italicised.

³ M128 AS [29]

⁴ M128 AS [9]

⁵ M128 AS [14]

⁶ Appellant's submissions in M129 of 2010 ("M129 AS") [6] and [9]

Date	Event
30.06.89	<i>Bassat's first principal repayment under the Loan Agreement falls due.</i>
30.06.89	<i>Bassat makes his first repayment under the Loan Agreement of \$12,600 of principal on time.⁷</i>
30.09.89	<i>Bassat makes his second repayment under the Loan Agreement of \$12,600 of principal on time⁸.</i>
30.09.89	<i>Bassat's second principal repayment under the Loan Agreement falls due.</i>
07.01.91	CBG grants Equuscorp a registered mortgage over the Land (including each of the Respondents' Farms) ⁹ .
10.01.91	Charges are registered by Equuscorp over the assets of CBG, JFM, Rural the Buyer. These charges are granted to secure loan facilities granted by Equuscorp to companies in the Johnson Group ¹⁰ .
30.06.91	<p>Up to this date the net proceeds from the sale of the Investors' fruit were paid to Rural in accordance with the various Loan Agreements.</p> <p><i>To this date Bassat has paid the following in repayment of the principal balance¹¹:</i></p> <ul style="list-style-type: none"> (a) \$25,200 by direct payments of capital; (b) \$15,876 by prepayment of interest; and (c) \$56,679 from the proceeds of the sales of the farm produce in the financial years 1989, 1990 and 1991.
01.07.91	<p>From this date, none of the Investors receive proceeds from sales of fruit and no repayments are made in reduction of the loans¹².</p> <p><i>From this date Bassat made no repayments of principal or interest due under the Loan Agreement.</i></p>

⁷ M129 AS [10]

⁸ M129 AS [10]

⁹ M128 AS [29]

¹⁰ M128 AS [30]

¹¹ M129 AS [11]

¹² M128 AS [31]

Date	Event
29.08.91	Equuscorp appoints two receivers and managers of the assets of Rural pursuant to the Rural Charge ¹³ .
14.03.93	Equuscorp appoints two receivers and managers of the assets of JFM, CBG and the Buyer pursuant to the charges registered over their respective assets ¹⁴ .
22.04.94	A transfer of the CBA and SBNSW Mortgages to Equuscorp is registered ¹⁵ .
00.10.95	Equuscorp, as mortgagee in possession under the CBA and SBNSW and Equuscorp Mortgages, sells the land containing the blueberry farms ¹⁶ .
06.03.96	Rural is wound up pursuant to the resolution of its creditors at a meeting convened under s 439A of the Corporations Law ¹⁷ .
16.05.97	ASA between Rural (by its receivers and managers) and Equuscorp is entered. Rural agrees that on completion it will sell to Equuscorp the loans between Investors and Rural ¹⁸ .
30.10.97	By the Deed Rural purports to assign its interests under the loans to the Investors described in the ASA and the amounts of indebtedness thereunder to Equuscorp ¹⁹ .
00.11.97	Investors are given written notice of the assignment ²⁰ .
20.11.97	<i>Bassat is given notice of the assignment to Equuscorp of Rural's interest under the Bassat Loan Agreement and the debt owed under it.</i>
25.02.98	<i>Equuscorp commences its proceeding against Bassat seeking to recover the \$62,076 balance of the loan then outstanding²¹.</i>

¹³ M128 AS [32]

¹⁴ M128 AS [33]

¹⁵ M128 AS [34]

¹⁶ M128 AS [35]

¹⁷ M128 AS [38]

¹⁸ M128 AS [39]


¹⁹ M128 AS [40]

²⁰ M128 AS [40]

²¹ M129 AS [13]

1st February 2011

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