

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: ***Extra Gift Exchange Inc. v. Chung,***  
2006 BCSC 526

Date: 20060331  
Docket: S035555  
Registry: Vancouver

Between:

**Extra Gift Exchange Inc., Leon Lam, Richmond Liquidation Sales**

Plaintiffs

And

**Sammy Chung, Martin Li, Donald Chung, Billy Chui, Hanson Lau,  
John Wong, Jeff Hsu, Shih Lin Night Market,  
The Owners, Strata Plan 3259**

Defendants

Before: The Honourable Madam Justice H. Holmes

## **Reasons for Judgment**

Appearing on his own behalf: Leon Lam

Appearing on behalf of Extra Gift Exchange Inc.: L. Lee

Counsel for the Defendants, Sammy Chung, Martin Li,  
Donald Chung, Billy Chui, Hanson Lau, John  
Wong, and The Owners, Strata Plan LMS 3259: R. Shore

Date and Place of Trial/Hearing: January 16-17, 2006  
February 1, 2006  
Vancouver, B.C.

**INTRODUCTION**

[1] The plaintiffs seek judgment under Rule 18A of the *Rules of Court* in the amount of \$47,569.10 plus interest at three percent per month against the defendant strata plan owners of Pacific Plaza in Richmond, B.C., as amounts owing for materials and labour supplied in connection with the strata corporation's creation and operation of a public night market and New Year festival.

[2] The plaintiffs refer also to Rules 18 and 19(24); however, as Mr. Lam appears to concede, these rules do not in the circumstances provide for the remedy the plaintiffs seek.

[3] The defendants say the matter is not suitable for summary trial under Rule 18A because a large portion of the plaintiffs' material is inadmissible and because conflicts in key areas of the evidence require determinations as to credibility.

[4] The defendants say that in any event, the plaintiffs' case should fail because (a) the materials and labour for which payment is claimed were not requested or authorized by the strata council; (b) there is no evidence that the labour invoiced, which the plaintiffs say reflected work done by Mr. Lam, was for work beyond the ordinary duties of a strata council member and president, as Mr. Lam was at the time; and (c) in any event, Mr. Lam did not disclose (as required by s. 32 of the *Strata Property Act*, S.B.C. 1998, c. 43) the nature and extent of his direct or indirect interest in any contract with the strata corporation for labour and materials, and any such contract is therefore unenforceable against the corporation.

[5] On this application, the defendants are all but Jeff Hsu and Shih Lin Night Market, whose liability was determined in separate proceedings.

**BACKGROUND**

[6] The strata property is at 8888 Odlin Crescent in Richmond, and is known to the public as Pacific Plaza.

[7] Pacific Plaza is distinctive in its structure as a strata development, in that there are four different forms of commercial strata units: commercial strata units, from which various businesses are run; units in the food court; signage units; and parking units.

[8] The plaintiffs Mr. Lam and Extra Gift Exchange Inc. together operate a business under the name “Richmond Liquidation Sales” within Pacific Plaza. The strata unit or units in which the business operates is owned by a holding company; however, it is common ground that for the purposes of participation under the ***Strata Property Act***, the holding company assigned its powers and duties to Extra Gift Exchange Inc. as lessee, which in turn authorized Mr. Lam to represent it. Thus although Mr. Lam had no formal ownership in the strata property at the time of these events, it is common ground that he was authorized to participate as a strata owner and to, as he did for a period, serve as an elected member of the strata council and as strata council president.

[9] In 2001, Mr. Lam and others led a successful movement to remove the strata council in place at the time, which they believed was acting for the developer and not

in the best interests of the owners generally. On November 21, 2001 Madam Justice Loo determined that the owners had acted lawfully in removing the former strata councillors from their positions on the strata council.

[10] Another of the leaders who, with Mr. Lam, led the movement to replace the strata council was Sammy Chung. Mr. Chung was, earlier, a defendant in this action, and he has sworn the key affidavits for the present defendants.

[11] On the new strata council, Mr. Lam was the president and Mr. Chung was the treasurer.

[12] It is common ground that the new strata council decided to put on an event for Chinese New Year in early 2002 and to run a public night market beginning in the late spring or early summer.

[13] The parties disagree as to whether the night market was to run, as Mr. Lam says, seven days a week, year-round, and on a permanent basis or, as the defendants say, on Fridays through Sundays and statutory holidays and only from May 31, 2002 to September 29, 2002.

[14] The parties also disagree as to whether the night market was, as Mr. Lam says, intended as a profit-making venture for Pacific Plaza, or rather, as the defendants say, a promotional event that would at best break even.

[15] When Mr. Lam, Mr. Chung, and other owners took steps to remove and replace the previous strata council, Mr. Lam's efforts and leadership were well-appreciated. However, things went sour in approximately May 2002, shortly before

the opening of the night market. Mr. Chung explains that, as treasurer, he was concerned that Mr. Lam was causing the council's legal bills to escalate. Mr. Chung deposes that, with Mr. Lam's agreement, two experienced businessmen joined the strata council to assist with its financial management. Mr. Lam views these developments as part of a general campaign to oust him from involvement with the strata council in disregard of the interests of the strata owners as a whole.

[16] In July 2002, against his wishes and for reasons that are in dispute, Mr. Lam was replaced as strata council president.

[17] Mr. Lam submitted a series of monthly invoices by Richmond Liquidation Sales for materials and labour supplied to the strata corporation. These have not been paid, and form the subject matter of the plaintiffs' present claim.

[18] The events surrounding Mr. Lam's removal as strata council president are very much in dispute and led to proceedings in this court. They are not directly relevant to this application, except in that Mr. Lam views them as part of an overall scheme by certain of the owners to profit from the night market at Mr. Lam's expense. Mr. Lam takes the position that the night market did well during its existence and gave every indication of being highly profitable on an ongoing basis. He says the council profited from his as yet unpaid material and labour to create in the night market a significant capital asset which it then attempted to sell to a non-arms-length purchaser so as to remove it from the control of the strata owners as a whole.

[19] The night market closed in August or September, 2002. The reasons for the closure are in dispute.

[20] Mr. Lam makes numerous allegations of bad faith and improper conduct against the owners and their counsel. Most of these relate to events concerning other proceedings in this court and are not directly applicable to this application.

## **DISCUSSION**

### **Defects in the Plaintiffs' Affidavit Material**

[21] Mr. Shore is correct in his submissions that the plaintiffs' affidavit material contains many defects.

[22] One of Mr. Lam's affidavits (one of two dated August 25, 2005; this was included at tab 5 of the Chambers' Record) alleges significant and serious misfeasance by counsel for the defendants and some of the owners. The defendants submit that the affidavit should be struck as scandalous and vexatious. It has that character, and in any event addresses disputes between the parties extending far beyond and unrelated to the plaintiffs' present claim. The affidavit, and Mr. Shore's affidavit in response, are therefore not admitted in this application.

[23] As to the other material on which the plaintiffs rely, Mr. Lam's own affidavits make numerous statements as to matters which are outside the scope of his direct knowledge. They amount to Mr. Lam's conclusions from facts which are not stated or sworn before the court.

[24] Certain of Mr. Lam's statements amount to conclusions of law, rather than statements of personal knowledge as to and belief in facts. Other statements amount to Mr. Lam's opinion, also without a sworn supporting basis.

[25] I accept Mr. Shore's submission that, even though unrepresented by legal counsel, the plaintiffs should not be permitted to rely on inadmissible evidence to the disadvantage of the defendants: *P.E.K. v. B.W.K.*, 2004 ABCA 135. At the same time, in my view some effort must be made to accommodate a self-represented litigant who has used his best efforts to present his case to the court, where the defects in the evidence on which he relies will not operate to the detriment of the other party. That is the case here for the following reasons.

[26] The defective portions in the plaintiffs' materials are obvious to counsel and the court and, in my view, may be disregarded without prejudice to the plaintiffs' case. For example, the argumentative, conclusory, or unsubstantiated hearsay portions of Mr. Lam's affidavits may, to the extent they are relevant, be read as effectively Mr. Lam's submissions, rather than evidence. The scandalous, vexatious, or irrelevant portions may simply be disregarded.

[27] I spent some time canvassing with Mr. Lam during his submissions the precise nature and boundaries of his claim and the evidence to support it. As a result, I am satisfied that all of the relevant evidence available to Mr. Lam and on which he wishes to rely in order to support the plaintiffs' claim is before the court. Most of that evidence is properly admissible.

[28] The claim is relatively straightforward. The defective portions of the plaintiffs' material are not necessary to support the plaintiffs' claim as Mr. Lam wishes to present it, and will be disregarded.

[29] There is one main exception. During the course of submissions, I ruled inadmissible an affidavit of Allan Landa dated May 17, 2005 on which the plaintiffs sought to rely. The affidavit is attached as an exhibit to Mr. Lam's own affidavit; it is not submitted in its own right in this application. The defendants are correct in their submission that it is not properly tendered in this fashion, which affords them no right or opportunity to cross-examine Mr. Landa. They also note that the affidavit was prepared in relation to a different court proceeding.

[30] The Landa affidavit, if properly tendered, would provide some evidence in support of Mr. Lam's position. It speaks briefly and in general terms, as well as in distinctive language identical to Mr. Lam's, of the creation and operation of the New Year's market and the night market. However, most of its general assertions are unsupported by detail, except that Mr. Landa was the president of the strata property management company for Pacific Plaza and asserted personal knowledge of the matters stated in his affidavit. Even were the affidavit properly tendered and admissible, I would not find it to assist in relation to the matters in issue. Its assertions lack the specificity which proof of the plaintiffs' claim requires.

**Suitability for Determination Under Rule 18A**

[31] The defendants submit on several bases that the case is not suitable for determination under Rule 18A. They refer to defects in the plaintiffs' evidence, as



discussed above, and conflicts in the evidence which, the defendants submit, require determinations as to credibility. I agree that usually these are bases on which a court will find that a matter is not suitable for determination under Rule 18A.

However, I am not persuaded that in a trial of this matter the plaintiffs' case would be any less troubled by extraneous material and the confusion of evidence and argument.

[32] The defendants refer to **Padgett v. Saxena** (2003), 123 A.C.W.S. (3d) 254 (B.C.S.C.), in which Bennett J. expressed concern, on a Rule 18A application, about clashing evidence on material points and found that it was not possible to make the findings of fact necessary for the case. The defendants refer also to **Sermeno v. Trejo** (2000), 97 A.C.W.S. (3d) 696 (B.C.S.C.) where Macaulay J. at ¶18 admonished a practice of unloading volumes of disjointed affidavits and exhibits upon a chambers judge and expecting an informed decision under Rule 18A.

[33] The plaintiffs' case, as presented in this application, has some characteristics in common with those cases. However, there are also differences. In chief, the plaintiffs' claim here is relatively straightforward and the issues are few. In my view, it can be determined on the plaintiffs' admissible evidence at its best and without findings as to credibility. For reasons I will explain below, I conclude that the plaintiffs have failed to prove a contract for labour or materials; however, they are entitled to some reimbursement for the cost of materials supplied on the basis of restitutionary principles.

[34] These conclusions do not require determinations as to credibility arising from conflicts in the affidavit evidence. They are based on an examination of the admissible portions of the evidence, as they relate to proof of the plaintiffs' claims, and (as to the materials supplied) on the areas of common ground between the parties.

**Was There a Contract for Labour and Materials?**

[35] The materials in question include a stage erected in Pacific Plaza on which, it is common ground, public events took place; carpeting and trim for the stage; a large free-standing sink with attachments such as faucets and spouts available for the use of vendors operating food booths; a vacuum cleaner; locks and chains; and other miscellaneous items. They are invoiced at a total of \$11,069.01 on nine invoices, the first dated May 16, 2002 and the last dated June 7, 2002.

[36] The labour in question is that of Mr. Lam personally. It is invoiced on a series of monthly invoices beginning on February 12, 2002, reflecting labour dating back to January 18, 2002 and continuing through to June 16, 2002. Work is billed at \$55 per hour plus GST, typically for between six and twelve hours per day, and for between fifteen and thirty days in the month. The total amount invoiced for labour is \$36,501.72.

[37] The plaintiffs also claim, as the invoices state, a late payment charge of three percent monthly.

[38] The plaintiffs claim that council members contracted by oral agreements from time to time to purchase materials and labour from Richmond Liquidation Sales for the creation and operation of the public night market. They say that these oral agreements followed naturally from the customary practice of the defendants to purchase materials from Richmond Liquidation Sales for the ongoing maintenance of the strata property.

[39] The defendants deny that the strata council or its members made any such agreements in relation to the night market. They say that previous purchases of materials from Richmond Liquidation Sales for the ongoing maintenance of the strata property were for relatively trivial items that did not require or warrant the approval of the strata council as a whole.

[40] I will address separately the labour and materials components of the plaintiffs' claim.

*Labour*

[41] The defendants deny any contract for the plaintiffs' or Mr. Lam's services or labour in relation to the night market. They say that, like other members of the strata council, Mr. Lam may have devoted time and effort to the night market but was understood to have done so on a voluntary, unpaid basis. They say that only after Mr. Lam was removed as president did they become aware that he was claiming payment for labour in relation to the night market.

[42] Mr. Lam responds that his labour was entirely outside the ordinary voluntary contribution of a strata council member or president, and in any event was performed pursuant to oral agreements with council members on behalf of the strata corporation. However, the evidence does not support these propositions, except insofar as Mr. Lam asserts them in his affidavits in non-specific terms.

[43] The nature of the labour is not shown in the plaintiffs' invoices. It is described in Mr. Lam's affidavits only in the broadest of terms:

18. The strata council/councilors on behalf of the Strata Corporation contracted out the general design, mechanical design of the say New Year Market and Night Market, construction management and the supply of material and labour for the physical creation of the say New Year Market and Night Market to Leon Lam and Extra Gift, which were carried out by Leon Lam and Extra Gift on the instruction of the strata council/councilors.
19. Leon Lam and Extra Gift had also provided services for the retaining, organizing and supervising of sub-trades for the physical creation of the say New Year Market and Night Market on behalf of strata council/councilors to LMS3259.
- ...
31. The strata councilors verbally instructed and ordered Leon Lam and Extra Gift Exchange Inc. as usual to supply labour and materials for physical construction works for the creation of the New Year Market at the beginning of January 2002, while having the knowledge of an agreed to the amount and shop rate charged by the Plaintiffs at all material times.
32. The strata councilors verbally instructed and ordered Leon Lam and Extra Gift Exchange Inc. to supply labour and materials for physical construction works for the creation of the Night Market at the beginning of April 2002, while having the knowledge of and agreed to the amount and shop rate charged by the Plaintiffs.
33. Leon Lam duly carried out the instructions and orders of strata councilors on behalf of the Plaintiffs in providing all materials

and the physical labour construction works for the creation of the say New Year Market and Night Market of the Strata Corporation LMS3259. Leon Lam turned a bare concrete parking place into an multi-cultural, vibrant, vital Festival and Night Market events for the benefit of all the owners of the Strata Corporation, which the strata had not employed nor paid any other worker to carry out those say physical labour works and supply of materials for the creation of the New Year Market and Night Market. ...

and:

3. 75% of the subject strata Night Market improvement was created with the materials and labour supplied by the Plaintiffs, as per the order of the strata councilors, and 20% were supplied by sub-trades, such as electrician, plumbers, electronic supplier for the amount of approximately \$55,000.00, and the remainder of the 5% of work were the work of various venders and strata councilors.

[44] Despite the plaintiffs' voluminous materials and multiple responses to defendants' challenges, inquiries, and filed materials, the plaintiffs' evidence as to the labour performed and invoiced is no more specific than as in the excerpts quoted above.

[45] Mr. Lam deposes that on numerous occasions members of the strata council, usually individually, informally instructed him to go ahead with work or the supply of materials. However, the evidence provides no detail as to these circumstances and no indication of who, specifically, directed or authorized the work, or of where and when they did so. There is no indication in the evidence that any such authorizations or directions contemplated payment for Mr. Lam's labour in carrying them out. There is no evidence that the strata council or any of its members were

informed of Mr. Lam's \$55 hourly rate, let alone that they contracted for his labour at that rate.

[46] In Mr. Lam's submissions, but not the evidence, he explained that most of the invoiced labour was physical labour related to construction; however, even in his submissions he provided no further detail and no explanation of how the relatively modest construction projects involved in the creation of the night market entailed the large number of hours invoiced.

[47] The plaintiffs' own evidence is insufficient to establish that the strata corporation, or any of its members, contracted with the plaintiffs, or any of them, for paid labour. It is also insufficient to establish that the invoiced labour was performed.

[48] The labour component of the plaintiffs' claim in contract therefore cannot succeed.

*Materials*

[49] The evidence as to any agreement to purchase materials for the night market from the plaintiffs is similarly lacking.

[50] The defendants do not dispute that the strata corporation received the materials for which the plaintiffs have invoiced them. They contend, however, that many of these materials were supplied without the prior knowledge or approval of the strata corporation, that some of the materials were unnecessary, and that some

of the materials were invoiced at excessive amounts or in ways that indirectly gave financial benefit to the plaintiffs to the financial detriment of the owners.

[51] The strata council minutes include no reference to any of the materials in question even though the purchase of other materials, such as an \$8,000 order for lighting, is reflected in the minutes.

[52] There is some documentary evidence (such as a drawing of the sink, which one of the defendants acknowledges he discussed with Mr. Lam) which provides support for the plaintiffs' position that some or all of the defendants knew of and authorized the plaintiffs' supply of these items. However, there is no documentary or other evidence of the prices at which these items were to be supplied. In particular, there is no evidence that the defendants agreed to prices or a pricing or billing structure that afforded the plaintiffs a profit.

[53] There is also no evidence that Mr. Lam sought or presented to the defendants quotations or estimates from arms-length suppliers for the materials provided and invoiced by Richmond Liquidation Sales. Although the plaintiffs' evidence includes some quotations or estimates for materials similar to those in question, most of the quotations or estimates appear on their face to have been produced recently in connection with this litigation. In other words, they appear to be after-the-fact efforts to determine what the arms-length suppliers would have charged if asked at the time. They therefore do not provide evidence that those suppliers were asked to supply quotations at or around the time Richmond Liquidation Sales supplied the materials in question.

[54] At best for the plaintiffs, there is evidence that one or more other strata council members knew that Mr. Lam intended to purchase or had purchased some of the materials in question on behalf of the strata corporation in relation to the night market, and that they authorized that action. One may reasonably infer that the strata council thereby undertook to reimburse Mr. Lam or the plaintiffs for the cost of those materials.

[55] There is no evidence to indicate that any of the defendants agreed to purchase materials from the plaintiffs at a price that afforded the plaintiffs a profit. Mr. Lam submits that such an agreement to purchase materials from Richmond Liquidation Sales (presumably at its retail sale price) may be inferred from the undisputed customary practice by which the strata corporation purchased materials from the Richmond Liquidation Sales store, was invoiced monthly and asked to pay Extra Gift Exchange, and did so. The evidence establishes that in January and February 2002 the strata corporation purchased items such as instant cameras on this basis.

[56] However, those purchases were relatively small. Their amounts fell well under \$2,000, and were therefore open for payment without council approval, as would otherwise have been required by s. 98 of the **Strata Property Act**. These purchases are therefore to be distinguished from the purchase of most of the materials in the present claim, which involved much larger amounts. I do not find in the strata corporation's practice of paying the plaintiffs' invoices in January and February 2002 a basis to find or infer that the parties had an oral agreement for the



defendants to purchase materials from the plaintiffs for significantly larger amounts on an ongoing basis.

[57] The plaintiffs' own evidence does not establish that the strata corporation agreed to purchase the materials at the prices invoiced by the plaintiff.

**Conclusion**

[58] On the plaintiffs' own evidence they have failed to prove a contract with the defendants for the supply of labour or materials in relation to the night market. Their claim for a contractual remedy must therefore be denied.

[59] However, the evidence does establish, and the defendants do not seriously dispute, that the plaintiffs did supply materials that the defendants used in relation to the night market. The question therefore arises whether the plaintiffs should be reimbursed for the reasonable cost of supplying those materials according to restitutionary principles.

**Restitution**

[60] Restitution is a legal doctrine that prevents unjust enrichment. As Iacobucci J. explained in ***Garland v. Consumers' Gas Co.***, [2004] 1 S.C.R. 629 at ¶30, a cause of action for unjust enrichment has three elements: (1) an enrichment of the defendant; (2) a corresponding deprivation of the plaintiff; and (3) the absence of juristic reason for the enrichment.

[61] The word enrichment “connotes a tangible benefit” which has been conferred on the defendant. The benefit can be either positive, such as the payment of money, or negative, such as the sparing of expense: **Peel (Regional Municipality) v. Canada; Peel (Regional Municipality) v. Ontario**, [1992] 3 S.C.R. 762 at ¶45.

[62] The defendants contend that some of the materials (such as the stage, and the sink and other equipment necessary to support the food booths in the market) were unnecessary or were unwise purchases. However, the undisputed fact is that the strata corporation knowingly received the materials and used them. Moreover, there is some evidence that one or more strata council members knew that Mr. Lam intended to purchase or had purchased some of the materials in question on behalf of the strata corporation. The defendants were therefore enriched by the plaintiffs at the plaintiffs’ expense.

[63] I must now determine whether a juristic reason exists to preclude the plaintiffs from relying on restitutionary principles to recover from the defendants. Such a juristic reason may include a contract, a disposition of law, a donative intent, and other valid common law, equitable, or statutory obligations. Here, the defendants submit that here s. 32 of the **Strata Property Act** provides a juristic reason that the plaintiffs should not recover.

[64] Section 32 reads as follows:

A council member who has a direct or indirect interest in a contract or transaction with the strata corporation must

- (a) disclose fully and promptly to the council the nature and extent of the interest,

- (b) abstain from voting on the contract or transaction, and
- (c) leave the council meeting
  - (i) while the contract or transaction is discussed, unless asked by council to be present to provide information, and
  - (ii) while the council votes on the contract or transaction.

[65] The related s. 34 reads as follows:

Any remuneration paid to a member of council for the member's exercise of council powers or performance of council duties must be approved in advance of payment

- (a) in the budget,
- (b) in the bylaws, or
- (c) by a resolution passed by a 3/4 vote at an annual or special general meeting.

[66] Section 33 provides the remedy for a failure to comply with s. 32:

(1) If a council member who has an interest in a contract or transaction fails to comply with section 32, the strata corporation or an owner may apply for an order under subsection (3) of this section to a court having jurisdiction unless, after full disclosure of the nature and extent of the council member's interest in the contract or transaction, the contract or transaction is ratified by a resolution passed by a 3/4 vote at an annual or special general meeting.

(2) For the purposes of the 3/4 vote referred to in subsection (1), a person who has an interest in the contract or transaction is not an eligible voter.

(3) If, on application under subsection (1), the court finds that the contract or transaction was unreasonable or unfair to the strata corporation at the time it was entered into, the court may do one or more of the following:

(a) set aside the contract or transaction if no significant injustice will be caused to third parties;

(b) if the council member has not acted honestly and in good faith, require the council member to compensate the strata corporation or any other person for a loss arising from the contract or transaction, or from the setting aside of the contract or transaction;

(c) require the council member to pay to the strata corporation any profit the council member makes as a consequence of the contract or transaction.

[67] As to the requirements of ss. 32(b) and (c) of the **Strata Property Act**, Mr. Lam submits that there never was a council meeting at which he could abstain from voting or which he could leave; his instructions to supply labour and material were given informally by council members from time to time. He submits that it was also well known that he owned the store operated as Richmond Liquidation Sales in the strata unit for which Extra Gift Exchange had assigned authority from the owner holding company.

[68] The main difficulty with the plaintiffs' position is that it assumes that the defendants, or some of them, were aware of a contractual arrangement with the plaintiffs for labour and materials. I have determined that the evidence does not establish that such an arrangement existed.

[69] Nowhere in the minutes of the strata council's meetings is there mention of the retainer of, or compensation for, Mr. Lam or the other plaintiffs. The evidence discloses nothing to suggest that the council or its members were asked to consider in some less formal fashion Mr. Lam's personal interest in the transactions before determining to proceed with them. Indeed, such would have been unlikely given, as

I find and have explained above, there was no contract by which the plaintiffs were to profit. If, as the plaintiffs contend, they were to profit from the supply of labour and materials they had an obligation to ensure that the steps required by s. 32 were taken. There is no evidence that they did so.

[70] However, that does not provide a juristic reason for here denying restitution on the basis I will outline.

[71] Section 32 is designed to prevent a person who is in a conflict of interest from profiting from a contract or transaction with a strata corporation. The restitution to which I conclude the plaintiffs are entitled would not afford them a profit; it would do no more than reimburse their reasonable costs of supplying the materials. Section 32 therefore does not provide a juristic reason to deny restitution.

[72] The plaintiffs are therefore entitled to their reasonable cost (without mark-up to retail and without the inclusion of labour costs) of the materials shown in the invoices, to be either agreed by the parties within thirty days of these reasons or to be determined by the Registrar.

**ORDER**

[73] The defendants will pay the plaintiffs their reasonable costs (without mark-up to retail and without the inclusion of labour charges) of supplying the materials shown in the invoices.

[74] The amount of the reasonable cost may be agreed by the parties. If there is no agreement within thirty days of these reasons, the matter may be determined by the Registrar.

[75] The remainder of the plaintiffs' claim is dismissed.

[76] There will be no order as to costs.

"H.J. Holmes, J."  
The Honourable Madam Justice H.J. Holmes