CHAPTER XI

DEATH SQUAD
1997–1998

Although the 'death warrant' against innocent investors had been signed and issued on Wednesday, 26 February 1997, in the form of Justice Spender's Reasons for Judgment, the 'Order to kill' was not given until almost three months later. This Order was read out from a document titled, "Judge Making Order". For the moment, however, I'll explain the warrant itself before moving through the Order and beyond.

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[The following three excerpts cover Responses to the Judge's False Statements 1,2, & 12. False Statements 3 to 11 and their corresponding Responses can be read within the entire chapter. Yet, these 12 False Statements and a further three described in *Appendix "40" – Fraudsters Inc,* amount to only 15 of the 22 false statements contained in the Reasons for Judgment brought down by Australia's longest serving federal court judge (1984-2010) and one of Australia's most notorious. By March 1998, Justice Spender had been charged under two sections of the Commonwealth Crimes Act 1914 – s.32 Judicial Corruption (12 charges) and s.43 Attempt to Pervert Justice.]

Judge's False Statement

1. *"Clause 3.2 of the Master Franchise Agreement provided:*

> *'The Franchise Management Fee of one hundred and twenty-five thousand dollars ($125,000.00) shall be paid by the Master Franchisee to the franchisor on or before ……1994 subject only to Clause 3.1 above.'*

According to Mr Eaton, this fee was to be tax deductible against profits made by the franchisee, but there is no reference to profits or tax deductibility in the franchise agreement. ***The claim that*** *of the $145,000.00 franchise fee,* ***$125,000.00 would be for 'tax deductible expenses' is untrue****."*

Response to Judge's False Statement **– 1**

a) Appendix "3" contains *The Weekend Australian* newspaper advertisement that appeared on 7-8 May 1994. It clearly states:

> AN OUTSTANDING INVESTMENT THROUGH
> INTERNATIONAL FRANCHISE OWNERSHIP
>
> **Franchise Fee:** Total $145,000.00 (Capital Cost - $20,000 plus tax deductible expenses - $125,000)

This tax deductibility statement was broadcast throughout Australia. Our disclosure couldn't have been more open. A copy of the advertisement was provided to the judge as evidence.

b) Parties who own an international franchise were referred to as master franchisees. Appendix "28" contains a copy of the Europark Plan – International Overview and I will now highlight part of page 5 which is headed **Commitment Required**.

> The Master Franchisee will need to commit both time and money to the Franchise, as follows:-
>
> (a) Initial fees of $145,000 comprising a $20,000 Franchise Fee and a $125,000 tax deductible management services fee. The Franchise has been structured to minimize risk to the Franchisee.

This document was given to all prospective master franchisees who were clearly advised that the "management services fee" component of $125,000 was the tax deductible expenses referred to in the advertisement. **A copy of the Europark Plan – International Overview was provided to the judge as evidence.**

c) Appendix "29" contains the master franchise agreement which was also given to prospective master franchisees. I'll now highlight Clause 3 – Establishment Moneys.

> 3. ESTABLISHMENT MONEYS
>
> 3.1 The Master Franchisee shall upon execution of this Agreement pay to the Franchisor the sum of twenty thousand dollars ($20,000.00) by way of a franchise fee to be refunded in the event of the Master Franchisee not consenting in writing on 1994 to the commencement of this Agreement. Where the Master Franchisee consents to proceed to commencement of this Agreement then such consent in writing on 1994 shall be required and accepted by the Franchisor.
>
> 3.2 The Franchise Management Fee of one hundred and twenty five thousand dollars ($125,000.00) shall be paid by the Master Franchisee to the Franchisor on or before 1994 subject only to Clause 3.1 above.

This agreement was given to interested parties not just for their own evaluation but to assist them in doing their due diligence. I have never met the person who will write out a cheque for $145,000 to buy a franchised business, in which that person will be working for many years to come, without that person firstly running the franchise agreement past an accountant or lawyer or both.

In doing so, even without alerting such professional people to the newspaper advertisement or the Europark Plan – International Overview, one would have to be as thick as two short planks not to understand that a Franchise Management Fee is tax deductible under the provisions of the Australian Taxation Office (ATO), in particular, 'Pre-paid Expenditure'.

And if you don't want to go to the *initial* expense of talking to your accountant or lawyer then a twenty-cent phone call to the ATO will answer your query. Naturally, if you wish to proceed then professional people would be introduced. There was in effect no need whatsoever to use the words, "profits" or "tax deductibility", in the master franchise agreement, and its puerile of the judge to imply that we should have. And for him to move from this assertion to the statement that the tax deductible expenses of $125,000 is untrue, is a quantum leap. **The judge was provided with a full copy of the master franchise agreement.**

During the course of my being cross-examined, I had made the tax deductible nature of the management services fee of $125,000 as clear as anyone could. In this excerpt of the

transcript I am speaking with the judge.

MR EATON: … I am discussing at the present moment the tax deductibility of the $125,000 that is part of the $145,000 paid by a franchisee.

HIS HONOUR: But they are for management fees, aren't they?

MR EATON: For pre-payment of management fees, yes.

HIS HONOUR: Yes; if a person wanted to do it himself he would not employ a manager?

MR EATON: How do you mean, your Honour?

HIS HONOUR: Well, your advertisement says that an investor who prefers not to operate the franchise will be able to select a manager?

MR EATON: Yes, yes. That manager will still confer with the franchisor with regard to the development of the business plan.

HIS HONOUR: Yes; but in the absence of employing a manager ---?

MR EATON: Yes.

HIS HONOUR: ---one does not have any possibility of tax deductibility?

MR EATON: No, that's not correct, your Honour.

HIS HONOUR: Why is that?

MR EATON: Whether the franchisee operates the business himself or he operates it through a manager – through the appointment of a manager – the franchisee may just simply be an investor who appoints a manager – but, in either case, the pre-payment of a management fee is to the franchisor because the franchisor is the one preparing the business plans and advising – advising the manager of the franchise or advising the franchisee himself. So, in both cases, the tax deductibility exists for the owner of the franchise.

HIS HONOUR: All right. And that is the basis on which you made that statement?

MR EATON: Yes.

> … HIS HONOUR: Yes, so that if a person pays $145,000 to you, you say you represent that $125,000 of that, independently of whether they employ a manager or not, is tax deductible?
>
> MR EATON: That's correct, your Honour.

And again during the course of summing up at the close of trial.

> MR EATON: … The second area is tax deductibility. And I believe that what I did under examination was very similar to what myself and staff did and would do when presenting the franchise agreements to a prospective franchisee. And that is to draw the franchisee's attention to that relevant clause 3.2 within the Europark franchise agreements, master franchise agreements, which states that:
>
> *The $125,000 referred to is a management fee.*
>
> Then to move on, and draw to the attention of the prospective franchisee the manner in which income is generated by the franchisee within the territory involved. And in continuance of that, of course, to make it quite plain that the $125,000 would remain on the books of the franchisee and be slowly applied against profits produced as time passes. ...

In truth, it would have been more productive if I had sat outside the court having coffee and whistling *Dixie.* The judge simply wasn't interested. Facts were only going to impede his mission.

... Getting back to the matter of tax deductibility, there was more than sufficient evidentiary material before the judge to totally refute any accusation that the tax deductibility is untrue. But the evidence meant nothing to the judge.

All the ACCC or the AGS ever had to do was spend their twenty cents – say ten cents each – and phone the ATO. Furthermore, if the coffers of the Federal Court of Australia had been sadly depleted at the time of Spender J bringing down his Reasons for Judgment, I would have gladly called in and left twenty cents of my own money in the judge's chambers. And it would have been twenty cents after tax just to add to the magnanimity of my gesture.

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Judge's False Statement

2. *"Both patents recorded in the name of Willem Van der Horst as owner, being Australian Patent Nos 606728 and 639347 are both in force and can be renewed until 3 August 2008 and 21 May 2011 respectively."*

Response to Judge's False Statement – **2**

We were all shocked that a judge of the Federal Court of Australia could possibly go to print with a statement as blatantly false as this one.

I immediately wrote to Mr Greg Turner of Spruson & Ferguson, Patent Attorneys, asking him to confirm my understanding that both the VDH patents had expired. He faxed me on 7 May 1997 (Appendix "25") advising me that patent No. 606728 had expired on 7 March 1996 some five weeks before trial and patent No. 639347 had expired on 9 January 1997, six weeks before Spender J brought down his Reasons for Judgment. The judge had lied; but why so blatantly?

And then it became apparent to all of us that this particular lie would serve as the judge's base; a base upon which he could firstly give veracity to the Pizzey "stitch-up" – more later – and thereafter, from which he could launch a barrage of fabricated statements throughout his judgment – as he did. And to reinforce this attack, Spender J needed desperately to convince everyone that the two VDH patents were not only in force but that they were **valid.** Whereas he knew full well that they were **invalid,** given the existence of the expired Walker E. Rowe US patent.

Spender J had been flogged at every turn during the course of trial by Dr Ian de Jonge and Mr Trevor Dredge, both eminent patent attorneys. By the end of trial our judge had nowhere to move. His only hope of protecting ACCC and AGS officers, and VDH, was to dismiss the written and oral testimonies of Dr de Jonge and Mr Dredge; dismiss the findings of Janet Werner, the (Acting) Deputy Commissioner of Patent Examination, AIPO – Patent Office; dismiss the efforts of Justice Drummond, also a judge of the Federal Court of Australia, and then blatantly lie his way through the judgment.

And who's going to challenge him? The judge knew we couldn't afford an appeal.

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Judge's False Statement

12. *"I have no doubt that the marketing programme of the franchises is a scam…"*

Response to Judge's False Statement **– 12**

What does a judge do when the evidentiary material before him, in both written and oral form, has not provided the weapon needed to protect government officers within the ACCC and AGS from criminal prosecution and possible class actions? Nor is there any hope of using a single piece of evidence to support the protection of the ACCC's complainant, VDH, and that must be done if government officers are to be vindicated.

All Spender J has in front of him are the irrefutable facts supplied by expert witnesses which testify to the valid and patentable nature of the Europark technology and the corresponding right of International Technology Holdings Pty Ltd (ITH) to offer world-wide manufacturing and marketing rights to its wholly owned subsidiary Europark International Pty Ltd which, as a result, can lawfully appoint master franchisees, international licensees and manufacturing licensees.

But when you're a federal court judge you don't need to let facts impede your direction. Your power is absolute. If you have a job to do, no matter how damaging the ramifications are for the innocent, then do it. And Spender J did it with the **callousness of tyranny too often witnessed within the conduct of the Australian Judiciary.**

– · – · – · – · – · – · [Excerpt] – · – · – · – · – · – ·

Imagine, for just a few moments, that you have invested a quarter of a million dollars of your family savings into a mechanical carparking project which was, during the first four and a half years of development, plagued with violent intervention on the part of a fraudulent inventor. Nonetheless, you shared in the joy of winning World Bank funding for your European manufacturers and took pride in seeing the company you had invested in being awarded the highest export market development grant (EMDG) available in our nation.

You then derived a deep sense of achievement by working tirelessly to develop your franchise business in a designated international territory. But now for the past three years, you, along with many others, have been forced to endure a federal court battle based on the lies and deception of government officers as they move vigorously to support that fraudulent inventor. Fortunately, expert witnesses testify continuously in your company's favour, giving you hope that life can continue as it should. You eagerly await the results of trial.

After ten agonizing months, enter Justice Spender. He slams all of you with his litany of vile fabricated reasons for his judgment which culminates in the world being told that your franchise marketing program is nothing more than a scam. And I say, "your", because you, along with others, assisted in the development of that program.

If you have truly put your feet in the shoes of a franchisee, or investor, or mine for that matter, there will be a gut-wrenching, sickening feeling that begins to overwhelm you. But brace yourself, the worst is yet to come. The judge has only issued the death warrant. The Order to kill is yet to be given.

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