

*Mattila v Gardner (No 2)* [2013] NTSC 32

PARTIES: MATTILA, Allan Michael Jorma  
By his litigation guardian  
TERESA LATZER

v

GARDNER, Kelvin

TITLE OF COURT: SUPREME COURT OF THE  
NORTHERN TERRITORY

JURISDICTION: SUPREME COURT OF THE  
NORTHERN TERRITORY  
EXERCISING TERRITORY  
JURISDICTION

FILE NO: 106 of 2010 (21032189)

DELIVERED: 2 July 2013

HEARING DATES: 4, 5 and 6 June 2013

JUDGMENT OF: SOUTHWOOD J

**CATCHWORDS:**

ORDER FOR ACCOUNT – Power of attorney – defendant sole signatory on plaintiff’s bank account – monies disbursed from bank account – defendant to account for amounts misappropriated or wrongly disbursed – onus on defendant to explain what happened to money – money not given as change, but instead spent on alcohol and gambling – failure to account for cash cheques and payee cheques disbursements – judgment for plaintiff – falsifications due and payable to plaintiff plus interest.

*Powers of Attorney Act* (NT) s 11

*Glazier Holdings v Australian Men’s Health* (No 2) [2001] NSWSC 6;  
*Mattila v Gardner & Anor* [2012] NTSC 76

**REPRESENTATION:**

*Counsel:*

Plaintiff: A Young  
Defendant: A Wrenn

*Solicitors:*

Plaintiff: Bradley Solicitors  
Defendant: Direct brief to counsel

Judgment category classification: B

Judgment ID Number: Sou1303

Number of pages: 29

IN THE SUPREME COURT  
OF THE NORTHERN TERRITORY  
OF AUSTRALIA  
AT DARWIN

*Mattila v Gardner (No 2)* [2013] NTSC 32  
No. 106 of 2010 (21032189)

BETWEEN:

**ALLAN MICHAEL JORMA MATTILA**  
by his litigation guardian  
**TERESA LATZER**  
Plaintiff

AND:

**KELVIN GARDNER**  
Defendant

CORAM: SOUTHWOOD J

REASONS FOR JUDGMENT

(Delivered 2 July 2013)

**Introduction**

- [1] On 28 September 2012 I delivered my Reasons for Decision in *Mattila v Gardner and Anor.*<sup>1</sup> The judgment involved a number of claims and counterclaims between Mr Mattila and Mr Gardner, including a claim by Mr Mattila that Mr Gardner had breached his trustee and fiduciary obligations to Mr Mattila by withdrawing some of Mr Mattila's money from the AMJ Mattila – Building Account and using it for Mr Gardner's own purposes. In the suit for breach of trust and fiduciary obligations,

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<sup>1</sup> [2012] NTSC 76.

Mr Mattila claimed the sum of \$382,857.00 or, in the alternative, an account.

[2] I ordered Mr Gardner to account to Mr Mattila and pay Mr Mattila any amount which is found to have been misappropriated or wrongly disbursed. At the time I delivered my Reasons for Judgment, I also stated that I would hear the parties further about any ancillary orders in support of the order for an account.

[3] On 4 October 2012 I made the following ancillary orders:

1. Mr Gardner on or before 1 November 2012 is to file and serve on Mr Mattila his detailed account verified by his affidavit of all monies disbursed by Mr Gardner and any other person on his behalf from the AMJ Mattila – Building Account in respect of
  - (a) The amounts specified in par [100] of the Reasons for Judgment delivered 28 September 2012 (the Reasons for Judgment).
  - (b) The amount of \$132,732.05 specified in par [91] and par [107] of the Reasons for Judgment.
2. Direct that such account shall specify in respect of each disbursement the date and the amount thereof, to whom the payment was made and the purpose or account for or to which the amount was paid as the case may be.
3. Direct that the items of such account and statement be numbered consecutively and refer to any relevant cheque number, receipt, voucher or invoice and the date of such.
4. Direct that Mr Mattila be at liberty within 14 days after the service upon him of the said account and statement to apply to the Court to examine Mr Gardner in respect of the said account and statement.

5. Direct that Mr Mattila within 14 days of service upon him of the said account and statement or within 14 days of the conclusion of the examination of Mr Gardner have liberty to file and serve upon Mr Gardner his falsifications and objections (if any) thereto.
6. Direct that all vouching and any discovery of documents by Mr Gardner be done out of Court on or before 15 November 2012.
7. Direct that the evidence to be used on the said inquiry be oral evidence and the inquiry be conducted on a wilful default basis.<sup>2</sup>

[4] The amounts specified in par [100] of the Reasons for Judgment were:

Unexplained cash disbursements	\$21,000.00
Unexplained cash cheques disbursement	\$122,667.00
Unexplained payee cheques disbursement	\$128,304.00
Litchfield Tavern cheques disbursement	\$110,886.00

[5] I also made the following additional findings in my Reasons for Judgment:

1. Mr Mattila has a right to an account from Mr Gardner. Mr Gardner was in the position of a trustee and attorney in relation to Mr Mattila's money that was in the AMJ Mattila – Building Account. He was under a duty to render proper accounts to Mr Mattila. Mr Mattila also has a right to an account under s 11 of the *Powers of Attorney Act*.
2. Mr Gardner has failed in his duty as trustee and attorney by not rendering proper accounts. The accounts produced by Mrs Donna Gardner following the order made by Riley CJ are inadequate and are not proper accounts.

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<sup>2</sup> The significance of a wilful default basis is that the onus of proof is reversed and the accounting party must show the expenditure was authorised: *Glazier Holdings v Australian Mens' Health* (No 2) [2001] NSWSC 6 at [43].

3. Mr Gardner has misappropriated some of Mr Mattila's money. However, without an account, it is not possible to say that Mr Gardner has misappropriated the entire amount of \$382,857.00 which is unexplained at this stage.
4. Mr Gardner has misappropriated a good proportion of the money that he obtained by cashing cheques drawn on the AMJ Mattila – Building Account at the Litchfield Tavern. I would estimate that at least 80 percent of the cheques cashed at the Litchfield Tavern were misappropriated by Mr Gardner.
5. Mr Gardner has misappropriated at least \$11,000.00 of the \$21,000.00 that was not banked into the Berry Springs Caravan Park and Takeaway Account.
6. Mr Gardner has misappropriated some of the \$132,732.05 that was transferred from the AMJ Mattila – Building Account to the Berry Springs Caravan Park and Takeaway Account.
7. Mrs Donna Gardner told a lie to the Court when she said the “change” was given to Mr Mattila.
8. Shop fittings and equipment do not fall within the meaning of the words “repairs, improvements and building” which are used in the Lease Agreement. The ordinary meaning of those words is confined to the landscaping, infrastructure, buildings, other installations and fixtures on the land at 115 Oxford Road, Berry Springs.

[6] As matters transpired, Mr Gardner filed his first affidavit of account on 17 December 2012 and a further affidavit of account on 15 May 2013.

Mr Mattila filed his List of Falsifications at the start of Mr Gardner's oral examination. Mr Gardner was examined on 4 June 2013.

[7] Mr Mattila's List of Falsifications was comprised of the various statements of account which were annexed to Mr Gardner's affidavit of 17 December 2012 with a handwritten note of each falsification being made on the

extreme right hand side of each page. Each falsification noted was calculated as the difference between the amount of each cheque set out in Mr Gardner's statement of account and the particularised disbursements made from the money withdrawn by each cheque. For example, the statement of account headed "Accounting of Expenditure AMJ Mattila – Building Account KI Gardner T/A Berry Springs Caravan Park Takeaway", which is annexed to Mr Gardner's affidavit of 17 December 2012, shows that on 13 July 2006 cash cheque No 1003 for \$4000 was drawn by Mr Gardner on the AMJ Mattila – Building Account. The accounting for cheque No 1003 also shows that the total sum of \$2991.44 was spent on various items that are particularised in the statement of account, leaving the expenditure of the sum of \$1008.76 unexplained in relation to this particular cheque. Consequently, on the right hand side of the relevant page of the List of Falsifications, Mr Mattila has noted a falsification of \$1008.70(sic). Ultimately, for the reasons set out below Mr Mattila only claimed that 80 percent of the amount of \$1008.70 was used by Mr Gardner for his own benefit.

- [8] Having considered the accounting for expenditure provided by Mr Gardner, and his evidence during his examination, Mr Mattila only pressed the following amounts as the total of the falsifications for each of the amounts of expenditure for which the Court ordered Mr Gardner to account.

1. \$132,000.00 <sup>3</sup>	Nil
2. \$21,000.00 <sup>4</sup>	\$1,000.00
3. \$122,667.00 <sup>5</sup>	\$60,256.74
4. \$128,304.00 <sup>6</sup>	\$10,500.00
5. \$110,886.00 <sup>7</sup>	<u>\$88,708.80</u>
TOTAL FALSIFICATIONS CLAIMED:	\$160,465.54

[9] The falsification of \$1000 pressed in relation to the disbursement of the \$21,000.00 was pressed because of the contents of exhibit P3 which shows: (1) that instead of an amount of \$2,000.00 being wholly taken as drawings by Mr Mattila on 30 March 2009, \$500.00 of that amount was spent by Mr and Mrs Gardner on their personal shopping; and (2) that instead of an amount of \$1,000.00 being wholly taken as drawings by Mr Mattila on 11 May 2009, another \$500.00 was spent by Mr and Mrs Gardner on personal shopping.

[10] The falsification of \$60,256.74 pressed by Mr Mattila as the total of the falsifications in relation to the disbursement of the amount of each cash cheque drawn on the AMJ Mattila - Building Account was pressed on the

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<sup>3</sup> Total transfers from the AMJ Mattila – Building Account to Berry Springs Caravan Park Account, referred to in pars [91] and [107] Reasons for Judgment.

<sup>4</sup> Unexplained cash not banked into the Berry Springs Caravan Park Account – par [100] Reasons for Judgment.

<sup>5</sup> Unexplained cash cheques drawn on the AMJ Mattila – Building Account – par [100] Reasons for Judgment.

<sup>6</sup> Unexplained payee cheques drawn on the AMJ Mattila – Building Account – par [100] Reasons for Judgment.

<sup>7</sup> Litchfield tavern cheques disbursement – par [100] Reasons for Judgment.



following basis. In addition to the \$110,886.00 already identified as having been spent at the Litchfield Tavern, the statements of account provided by Mr Gardner failed to explain additional disbursements totalling \$75,320.93 which were part of the drawings of various cash cheques. Counsel for Mr Mattila submitted that the most likely explanation of what happened to this money is that it was not given to Mr Mattila as change; instead it was spent by Mr Gardner on gambling and alcohol at the Litchfield Tavern or other hotels. Consistent with the previous determination of the Court, 80 percent of the sum of \$75,320.93 would have been spent by Mr Gardner on himself or on alcohol for other members of the “Caravan Park crew”; 20 per cent of this amount would have been spent on Mr Mattila’s alcohol and gambling.

[11] Mr Gardner’s evidence was that he and Mr Mattila went to the Litchfield Tavern almost daily, and when they did, Mr Gardner spent significant amounts of money on alcohol and gambling. The distribution of the money in this way was not authorised by Mr Mattila. He had no way of knowing how much of his money was being held and spent by Mr Gardner who had a significant gambling habit. The onus was on Mr Gardner to explain what happened to this money.

[12] The falsification of \$10,500.00 pressed by Mr Mattila as the total of the falsifications in respect of the money disbursed by the payee cheques was confined to the cheque payments made to the Berry Springs Caltex Service Station. Mr Gardner gave evidence that, prior to Mr Mattila receiving his

inheritance, Mrs Gardner and he would spend between \$200.00 and \$1000.00 per month at the Caltex Service Station. After Mr Mattila obtained his inheritance, they used Mr Mattila's money to pay for all accounts at the Berry Springs Caltex Service Station. A fair and reasonable inference was that this included an average amount of \$500.00 per month which was spent on items used solely for the benefit of Mr and Mrs Gardner and that such expenditure occurred over a period of 21 months.

[13] Mr Mattila accepted a total falsification of no more than the 80 percent of the \$110,886.00 which the Court previously determined was misappropriated by Mr Gardner and spent on drinking and gambling at the Litchfield Tavern.

[14] In my opinion, Mr Gardner has failed to explain a total expenditure of \$160,465.54 and Mr Gardner should pay that sum to Mr Mattila less the difference between the \$124,000 previously awarded to Mr Gardner and the \$90,000.00 previously awarded to Mr Mattila plus interest on the net amount.

**The falsification of \$1000 maintained in respect of the \$21,000 cash not banked into the Berry Springs Caravan Park Account**

[15] As is stated in my Reasons for Judgement delivered 28 September 2012, when the AMJ Mattila – Building Account was closed, a series of large cash cheques were drawn on that account and the majority of the proceeds of those cheques was deposited in the Berry Springs Caravan Park Account operated by Mr and Mrs Gardner. A total amount of \$21,000.00 being part

of the proceeds of those cheques was not banked into the Berry Springs Caravan Park Account.

[16] The accounting for the \$21,000.00 is set out on page one of annexure KG50 to the affidavit of Mr Gardner sworn on 17 December 2012. That statement of account shows that the \$21,000.00 was disbursed as follows: a personal loan to Mr Gardner of \$10,000.00; a payment to Trevor McMahon of \$3,000.00 for electrical work; and the balance is shown as drawings made by Mr Mattila. In particular, there is an entry in the statement of account for 30 March 2009 which shows that on that day there was a drawing by Mr Mattila of \$2000.00; and an entry for 11 May 2009 that shows a drawing by Mr Mattila of \$1,000.00.

[17] Mr Mattila maintains that, of the \$2,000.00 attributed to Mr Mattila as drawings on 30 March 2009, \$500.00 is a falsification. Likewise, \$500.00 of the amount of \$1,000.00 attributed to him on 11 May 2009 is also a falsification. These claims are based on exhibit P3 which shows workings on the back pages of cheque books made by Mrs Gardner. Those workings show that, of the \$2000.00 attributed to drawings by Mr Gardner, \$500.00 was spent on shopping by Mr and Mrs Gardner; and of the \$1,000.00 attributed to drawings by Mr Gardner, another amount of \$500.00 was also spent on shopping.

[18] Mr Gardner's evidence about these falsifications was as follows.

Mr Young: Would you just have a look at these documents for me please? They are photocopies of the last pages of a cheque book for the Berry Springs Caravan Park account. Do you recognise them?

Mr Gardner: Yeah, well the writing, it is not my writing, it is my wife's writing.

....

Mr Young: Because it is substantially the same information as you set out in the page I have just taken you to. Just have a look through. Can you see the first one? The date is a bit unclear to me, but I imagine it is 12 March 2009. It says "\$10,000.00 building account, \$10,000.00 loan Kelvin". Do you see that?

Mr Gardner: Yes.

Mr Young: And \$1,000.00 Micko?

Mr Gardner: Yes.

Mr Young: Do you see the next entry, 30 March 2009, \$15,000.00 building account, \$1,500.00 Micko and \$500.00 shopping?

Mr Gardner: Yes.

Mr Young: I just want to stop you there. The page in your affidavit says \$2000.00 Micko drawing. It does not divide it up into \$1,500.00 Micko and \$500.00 shopping does it?

Mr Gardner: What entry is that? The 14<sup>th</sup> of ...

Mr Young: The entry for 30 March 2009?

Mr Gardner: 30<sup>th</sup> of March, yeah, and it says \$2,000.00.

Mr Young: Whereas the notation in the chequebook that I have taken you to says \$1,500.00 for Micko and \$500.00 for shopping doesn't it?

Mr Gardner: Well that is probably where it went. It still adds up to \$2,000.00.

Mr Young: What I am suggesting is that the affidavit material is not accurate. There were only \$1,500.00 drawings for Micko. \$500.00 was spent by you or Mrs Gardner on your own shopping?

Mr Gardner: You can jump to whatever you want. It adds up to \$2,000.00. \$2,000.00 was taken out of there, out of the account.

....

Mr Young: Do you know what the shopping was spent on?

Mr Gardner: It will be on groceries, and Micko probably helped eat those groceries.

....

Mr Young: Did he eat all of those groceries, Mr Gardner?

Mr Gardner: No. He had ... he would have eaten a share of it. What are we getting at here, nick for nack, for the paddy?

[There was then a similar exchange about the \$1,000.00 for 11 May 2009.]

[19] During his re-examination on this topic, Mr Gardner was asked by

Mr Wrenn if he could recall what was happening at the time the drawings

attributed to Mr Mattila were made. He answered that they were taking money out of the building account and putting it in the caravan park account. He said that if they took \$10,000.00 out of the account, \$9,000.00 would go into the caravan park account and they would take the other \$1,000.00 and use it to buy bits and pieces and do shopping and the change would go to Mr Mattila.

[20] I find that \$500.00 of the \$15,000.00 cash cheque number 1607 dated 30 March 2009 was a falsification, and \$500.00 of the \$10,000.00 cash cheque number 1613 dated 11 May 2009 was a falsification. Both lots of \$500.00 were spent by Mr and Mrs Gardner on their own personal shopping.

#### **The disbursement of \$110,886 at the Lichfield Tavern**

[21] In his final submissions to the Court, Mr Wrenn made the following concession, in the presence of Mr Gardner, about the \$110,886.00 spent at the Litchfield Tavern.

It is quite likely that the money was spent at the hotel.

....

The submission is that those cheques were cashed at the tavern. That your Honour's finding was and the submission from counsel was that [Mr Gardner] had a responsibility as trustee; he should have given [Mr Mattila] the Money. It should have been Mr Mattila's to do with as he wished at the hotel. [Mr Gardner] should not have interfered and sat there and drank with him. As a responsibility, he should not have cashed those cheques ... and sat there and drank and gambled with [Mr Mattila's] money.

I concede that the \$110,886.00 was spent in that way and accept ...

My only submission is that it should be 50 percent of the \$110,886.00. That is my submission in relation to that amount.

[22] This is a significant concession, albeit one that was partially consistent with the finding that had already been made by the Court. It acknowledges that Mr Gardner was in breach of trust when he drank and gambled with money that was obtained by cashing cheques drawn on AMJ Mattila – Building Account at the Litchfield Tavern.

[23] Mr Gardner also gave the following evidence about these monies.

I have never denied any of the cheques that have been cashed at the Litchfield Tavern. You can scratch all of them off the list if you like. I won't deny any of them, because that is what we did.

Alright, well I am not denying it because that is what we did. After work we went to the pub. I regret it now, but at the time we went there every afternoon just about.

[24] The only dispute was whether 50 percent or 80 percent of the money received by Mr Gardner when the cheques were cashed was spent for his own benefit. However, there was no further evidence led from Mr Gardner about how much of the money obtained by cashing cheques at the Litchfield Tavern was spent by him and not by Mr Mattila. In any event, I am bound by the finding that I made in my Reasons for Judgment. Consequently, I find that Mr Gardner has failed to account for the amount of \$88,708.80 of the \$110,886.00 obtained by cashing cheques at the Litchfield Tavern. That is, the falsifications total of \$88,708.80 in this regard.

**The unexplained amount of \$122,667.00 obtained by cash cheques drawn on the AMJ Mattila – Building Account**

[25] As stated above, Mr Mattila accepted that all but \$75,320.93 of the amount of \$122,667.00 had been explained by the further statements of account provided by Mr Gardner. He maintained that 80 percent of the amount of \$75,320.93, being \$60,256.74, had been wrongfully disbursed by Mr Gardner by gambling and drinking it at the Litchfield Tavern and other hotels.

[26] On behalf of Mr Gardner, Mr Wrenn submitted that, while it was likely that most of the \$75,320.93 had been spent on drinking and gambling at the Litchfield Tavern and other hotels, there had been no breach of trust with regard to these monies. He said that the Court should accept Mr Gardner's evidence that the \$75,320.93 had been given to Mr Mattila as change and Mr Mattila had then invited Mr Gardner to go drinking and gambling with him. Mr Mattila had consented to sharing this money, which he had in his possession, with Mr Gardner. What was done with these monies was distinguishable from the occasions when Mr Gardner simply cashed the cheques at the Litchfield Tavern and spent the money on drinking and gambling.

[27] I do not accept Mr Gardner's evidence that it was his practice to cash cheques drawn on the AMJ Mattila – Building Account from time to time, spend the money on the amounts for which receipts have been provided and then give the change to Mr Mattila. Many of Mr Gardner's answers about



these monies during his cross examination were dissembling and deflective. He feigned being unfamiliar with the statements of account that were annexed to his affidavits and he feigned having difficulty following Mr Young's questions. His evidence was also lacking in detail. I find that, consistent with how he dealt with the proceeds of the cheques that he cashed at the Litchfield Tavern, Mr Gardner kept control of the cash he received when cheques were otherwise cashed and he spent much of the money on his own drinking and gambling without Mr Mattila being informed about how much money was spent in this way. It is apparent from the statements of account that often when a cheque was cashed, the proceeds would be disbursed over a number of days. It was not a situation where Mr Gardner would cash a cheque, spend it on goods that were required to be purchased and then give the change to Mr Gardner all on the one day. It is also apparent from Mr Gardner's evidence that drinking and gambling at a hotel or tavern was invariably a daily event in circumstances where Mr Gardner was on a meagre pension of \$750.00 per fortnight. The most likely scenario was that Mr Gardner would cash a cheque drawn on the AMJ Mattila – Building Account. He would then keep the cash, spend it on goods that were required from time to time and on drinking and gambling until the monies were spent. He would then cash another cheque and so it would go. Mr Gardner acknowledged that he would keep the money "if Mr Mattila asked him to hold it". While Mr and Mrs Gardner were quite meticulous in the way they kept their receipts, they made no record of the change

Mr Gardner claimed to have given to Mr Mattila; nor did Mr Gardner give evidence that he accounted to Mr Mattila for the amount of money that had been withdrawn or the money that had been expended prior to when he says he gave change to him.

[28] I accept Mr Young's submissions and I find the falsifications total \$60,256.74 in this regard.

**The unexplained amount of \$128,304.00 payee cheques drawn on the AMJ Mattila – Building Account**

[29] As stated above, the total amount of falsifications pressed by Mr Mattila for the disbursement of the payee cheques was \$10,500.00, being a proportion of cheques drawn on the AMJ Mattila – Building Account and paid to the Berry Springs Caltex Service Station. In my opinion, the basis on which these falsifications were pressed is correct and they are made out.

Mr Gardner's evidence was that he and Mrs Gardner had opened a monthly account at the Berry Springs Caltex Service Station before Mr Mattila received his inheritance. Prior to Mr Mattila receiving his inheritance, Mr and Mrs Gardner's monthly accounts at the service station were anywhere from \$200.00 to \$1000.00. After Mr Mattila received his inheritance and work started on the Berry Springs Caravan Park, Mr Mattila applied for a monthly account at the service station but he was unable to obtain such an account, so they all used Mr and Mrs Gardner's account. Thereafter, all the bills from the Berry Springs Caltex Service Station were paid by cheques drawn on the AMJ Mattila – Building Account. I find that

the bills included items that were for the personal use of Mr and Mrs Gardner and that these items would have cost an average of \$500.00 per month.

[30] That Mr and Mrs Gardner continued to use the Berry Springs Caltex Service Station account to purchase items for their own personal use was, in substance, conceded by Mr Gardner during his cross-examination as the following questions and answers demonstrate.

Mr Young: All of the bills from the Caltex Service Station were paid for from [Mr Mattila's] account?

Mr Gardner: Yes.

His Honour: Yes, he said yes.

Mr Gardner: Yes, if we – that is what it was initially used for – it was Mr Mattila's Caravan Park.

Mr Young: You are suggesting your personal expenditure thereafter ceased?

Mr Gardner: What was my personal expenditure? What was it?

Mr Young: That your personal expenditure was?

Mr Gardner: How much was it?

His Honour: Mr Gardner now you have given evidence that prior to 2006 you spent between \$200.00 and \$1000.00 monthly, did that expenditure **continue** by you personally after 2006 [emphasis added]?

Mr Gardner: No it did not.

His Honour: Did it **cease** [emphasis added]?

Mr Gardner: Because we were operating ...

His Honour: Mr Gardner?

Mr Gardner: **It did not cease** because we used the same account your Honour [emphasis added].

His Honour: For your personal expenditure?

Mr Gardner: Yes it would have because we ... **not completely, we still used it**, but it became Michael's account because we were working on the caravan park [emphasis added].

Mr Young: You see your personal expenditure did not stop at all Mr Gardner?

Mr Gardner: We paid for stuff ourselves, and it will probably show there somewhere in our cheque books – cheque accounts. [This answer is inconsistent with the first answer above]

[31] Those questions and answers have to be considered in a context where Mr and Mrs Gardner had used the service station account to acquire items for their own personal use for sometime before Mr Mattila received his inheritance, they had acquired the account because the service station was conveniently located and they used it regularly, and all of the purchases made at the service station after Mr Mattila received his inheritance continued to be made by Mr and Mrs Gardner. Mr Gardner signed the cheques drawn on the AMJ Mattila – Building Account and, prior to the

commencement of this proceeding, he did not account to Mr Mattila about expenditure on the service station account.

**Conclusion**

[32] I find that there are a total of \$160,465.54 in falsifications and that there is an amount of \$126,465.54 due and payable (after an allowance of \$90,000.00 to Mr Mattila in respect of his claim for damages against Mr Gardner and after allowance of \$124,000.00 to Mr Gardner in respect of his cross claim against Mr Mattila) by Mr Gardner to Mr Mattila. Annexed to my Reasons for Decision is a Certificate of Account to this effect.

[33] There is also payable by Mr Gardner to Mr Mattila interest in the amount of \$34,317.22. Counsel for the parties both agreed on this calculation of interest in the event that \$126,465.54 was found to be due and payable by Mr Gardner to Mr Mattila. The applicable rate of interest is the Reserve Bank cash rate from 5 July 2006 to the present. The average rate of interest over that period has been 4.85 percent. The relevant period for the calculation of interest is 2.67 years.

[34] I order that there be judgment for Mr Mattila against Mr Gardner in the sum of \$126,465.54 plus interest of \$34,317.22.

[35] I will hear the parties further as to costs.

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IN THE SUPREME COURT  
 OF THE NORTHERN TERRITORY  
 OF AUSTRALIA  
 AT DARWIN

No 106 of 2010  
 (210321189)

BETWEEN

**ALLAN MICHAEL JORMA MATTILA**  
 by his litigation guardian **TERESA**  
**LATZER**

Plaintiff

AND

**KELVIN GARDNER**

Defendant

JUDGE'S CERTIFICATE

- Pursuant to the order made on 11 October 2012 I hereby certify that I have taken an account of the sums due to the Plaintiff from the Defendant as at 2 July 2013 and I find as follows –

SUMS DUE TO THE PLAINTIFF

**Item A Monthly Account Berry Springs Caltex Service Station**

Cheque Number	Description (from First Defendant's account document Ex D4)		Amount disallowed
1077	fuel and oil account	\$ 283.00	
1096	fuel and oil	\$ 408.49	
1110	fuel oil	\$ 464.17	
1122	fuel and oil	\$ 247.35	
1142	monthly account	\$ 527.03	
1148	monthly account	\$ 752.35	
1156	monthly account	\$ 554.51	
1179	monthly account	\$ 708.16	
1189	monthly account	\$ 971.39	
1202	monthly account	\$ 1,193.16	
1207	monthly account	\$ 1,213.39	

1226	monthly account	\$ 1,955.72	
1241	monthly account	\$ 1,573.40	
1267	monthly account	\$ 1,657.00	
1281	monthly account	\$ 792.47	
1286	monthly account	\$ 1,172.40	
1295	account	\$ 667.81	
1314	fuel account Mattila caravan park	\$ 1,856.41	
1328	account	\$ 1,661.84	
1333	account	\$ 1,040.24	
1344	account	\$ 1,568.65	
1352	account	\$ 1,292.25	
1360	account	\$ 1,189.47	
1383	fuel account Mattila caravan park	\$ 421.10	
1387	fuel account Mattila caravan park	\$ 506.65	
1393	account	\$ 1,051.25	
1461	account	\$ 1,186.04	
1479	fuel account Mattila caravan park	\$ 993.70	
	account	\$ 1,536.08	
1560	fuel account Mattila caravan park	\$ 1,249.18	
1582	fuel and oil account	\$ 628.54	
TOTAL		\$ 31,323.20	\$10,500

**Item B Transfers from the Building Account to the Berry Springs Caravan Park account.**

Cheque Number	Description	Amount disallowed
1607	\$15,000 cash cheque dated 30/3/2009	\$500
1613	\$10,000 cash cheque dated 10/5/2009	\$500
TOTAL		\$1,000

**Item C Drawings on Building Account**

Cheque number	Description (from First Defendant's account document Ex D1)	Plaintiff's claim for disallowance.	Amount disallowed (80% of plaintiff's claim).
1003	fridge, toolbox bore repairs cash for Michael Mattila and fuel money, diesel for machinery, gun safe	\$ 1,008.70	\$ 806.96

1005	food smokes booze and cash	\$ 1,000.00	\$ 800.00
1009	labourers payment Mattila caravan park,	\$ 911.04	\$ 728.83
1010	cash Michael Mattila	\$ 500.00	\$ 400.00
1011	400 cash shopping smokes and booze	\$ 829.83	\$ 663.86
1018	smokes 450 cash and clothes	\$ 695.00	\$ 556.00
1021	Michael Mattila	\$ 510.00	\$ 408.00
1022	material and labour welding 4 labourers for three days to weld and reinforce steel bracing . Shift tank, reinforce platform on which the tank sits, work had to be done with ladders and a cherry picker	\$ 4,305.37	\$ 3,444.30
1023	Michael Mattila	\$ 500.00	\$ 400.00
1024	Michael Mattila	\$ 1,000.00	\$ 800.00
1028	park work clearing	\$ 928.40	\$ 742.72
1029	clearing with dozer and dumping rubbish	\$ 851.65	\$ 681.32
1033	labourer wages, 100 for graeme jonsson to pickup cherry picker for work on the tank stand at park	\$ 500.00	\$ 400.00
1034	Michael Mattila 500 and shopping	\$ 418.00	\$ 334.40
1039	woolworths, booze and smokes Michael Mattila,labourer wages and 500 Michael Mattila	\$ 109.01	\$ 87.21
1041	Michael Mattila 500 shopping	\$ 468.00	\$ 374.40
1042	chemist, smokes shopping Michael Mattila	\$ 857.89	\$ 686.31
1044	auto electrician 300	\$ 200.00	\$ 160.00
1045	Michael Mattila	\$ 500.00	\$ 400.00
1050	Michael Mattila	\$ 500.00	\$ 400.00
1059	Michael Mattila 500, smokes booze ,groceries	\$ 344.55	\$ 275.64
1060	Michael Mattila 800 shopping 200	\$ 79.75	\$ 63.80
1064	Michael Mattila	\$ 500.00	\$ 400.00
1066	Michael Mattila	\$ 100.00	\$ 80.00
1067	Michael Mattila	\$ 100.00	\$ 80.00



1068	Michael Mattila	\$ 600.00	\$ 480.00
1069	Michael Mattila	\$ 200.00	\$ 160.00
1071	Michael Mattila	\$ 150.00	\$ 120.00
1073	300 Michael Mattila 300 LABOURE (sic)	\$ 300.00	\$ 240.00
1084	Michael Mattila 800 Bunnings JR lighting	\$ 339.52	\$ 271.62
1087	electrical 600 shopping booze smokes for Michael Mattila	\$ 700.00	\$ 560.00
1089	Michael Mattila	\$ 200.00	\$ 160.00
1090	Michael Mattila	\$ 200.00	\$ 160.00
1092	Michael Mattila	\$ 500.00	\$ 400.00
1097	farmworld/totalweld/wool ies/coventry fast	\$ 1,590.40	\$ 1,272.32
1104	Michael Mattila and shopping	\$ 831.00	\$ 664.80
1115	shopping Michael Mattila labourer wages	\$ 1,127.00	\$ 901.60
1120	Michael Mattila 1200 labourer 300 shopping 600	\$ 505.62	\$ 404.50
1124	Michael Mattila 700 shopping 250 labourers 350	\$ 483.15	\$ 386.52
1126	Michael Mattila woolworths	\$ 979.45	\$ 783.56
1127		\$ 1,100.00	\$ 880.00
1128	Michael Mattila	\$ 1,100.00	\$ 880.00
1129	Michael Mattila 250 Kelvin 250	\$ 500.00	\$ 400.00
1130	Michael Mattila 250 Kelvin 250	\$ 500.00	\$ 400.00
1131	Michael Mattila	\$ 500.00	\$ 400.00
1132	Michael Mattila	\$ 500.00	\$ 400.00
1135	Michael Mattila	\$ 500.00	\$ 400.00
1136	Michael Mattila	\$ 500.00	\$ 400.00
1141	Michael Mattila 1000 shopping 500	\$ 423.35	\$ 338.68
1143	Michael Mattila	\$ 600.00	\$ 480.00
1144	Michael Mattila	\$ 600.00	\$ 480.00
1145	Michael Mattila	\$ 500.00	\$ 400.00
1146	Michael Mattila and Kelvin	\$ 1,000.00	\$ 800.00
1147	Michael Mattila bought a share in a patent from Justin Morriss for the Mudskipper Shoes	\$ 4,000.00	\$ 3,200.00

1149	Michael Mattila and Kelvin	\$ 1,000.00	\$ 800.00
1151	Michael Mattila	\$ 1,100.00	\$ 880.00
1152	Michael Mattila 600 shopping	\$ 311.70	\$ 249.36
1158	Michael Mattila and Kelvin	\$ 1,400.00	\$ 1,120.00
1162	Michael Mattila	\$ 500.00	\$ 400.00
1164	Michael Mattila 500	\$ 386.90	\$ 309.52
1169	Michael Mattila and Kelvin	\$ 700.00	\$ 560.00
1174	Michael Mattila 1800 ute cover 250	\$ 463.50	\$ 370.80
1176	Michael Mattila and Kelvin	\$ 1,000.00	\$ 800.00
1178	cbc,	\$ 953.05	\$ 762.44
1180	Kelvin and Michael Mattila	\$ 1,000.00	\$ 800.00
1181	Independent Motor Mart 175.95 Michael Mattila 1000	\$ 861.15	\$ 688.92
1183	Austar bills wages Michael Mattila	\$ 2,000.00	\$ 1,600.00
1191	Michael Mattila 300, nim100, justin 300 shopping	\$ 300.00	\$ 240.00
1192	Michael Mattila 400,nim300, justin 300	\$ 446.25	\$ 357.00
1194	Michael Mattila and Kelvin	\$ 1,000.00	\$ 800.00
1195	Michael Mattila and Kelvin	\$ 1,000.00	\$ 800.00
1198	darwin kia manifold gasket, Michael Mattila and shopping	\$ 2,024.05	\$ 1,619.24
1199	Michael Mattila and Kelvin	\$ 1,000.00	\$ 800.00
1200	Michael Mattila and Kelvin	\$ 1,000.00	\$ 800.00
1201	Mattila cash and shopping for repairs & improvements Mattila caravan park	\$ 1,955.15	\$ 1,564.12
1205	nim 100 justin 130, Michael Mattila 1600	\$ 293.26	\$ 234.61
1206	Michael Mattila and Kelvin	\$ 1,000.00	\$ 800.00
1213	nim justin and Michael Mattila	\$ 971.00	\$ 776.80

1218	Michael Mattila	\$ 500.00	\$ 400.00
1219	Patent for Mudskipper Shoes	\$ 3,720.00	\$ 2,976.00
1221	wages Michael Mattila shopping cloths (sic) for Michael Mattila		\$ -
1225	austar phone Michael Mattila	\$ 838.19	\$ 670.55
1230	Michael Mattila	\$ 500.00	\$ 400.00
1231	Michael Mattila and Kelvin	\$ 600.00	\$ 480.00
1232	[Cash cheque, no description]	\$ 178.35	\$ 142.68
1236	Michael Mattila and Kelvin	\$ 1,000.00	\$ 800.00
1238	[Cash cheque, no description]	\$ 768.89	\$ 615.11
1254	Michael Mattila and Kelvin	\$ 1,000.00	\$ 800.00
1255	donna travelling expenses for her mums funeral loan)1600 Michael Mattila and Kelvin powerwater 400	\$ 3,414.91	\$ 2,731.93
1257	Michael Mattila	\$ 500.00	\$ 400.00
1258	Michael Mattila	\$ 600.00	\$ 480.00
1259	Michael Mattila	\$ 500.00	\$ 400.00
1263	Michael Mattila	\$ 500.00	\$ 400.00
1264	Michael Mattila	\$ 500.00	\$ 400.00
1266	Michael Mattila	\$ 500.00	\$ 400.00
1270	Michael Mattila and Kelvin	\$ 1,000.00	\$ 800.00
1271	Michael Mattila and Kelvin	\$ 1,000.00	\$ 800.00
1272	[Cash cheque, no description]	\$ 1,570.16	\$ 1,256.13
1275	Michael Mattila Kelvin	\$ 1,000.00	\$ 800.00
1276	[Cash cheque, no description]	\$ 1,843.23	\$ 1,474.58
1277	Michael Mattila and Kelvin	\$ 2,000.00	\$ 1,600.00
1278	Michael Mattila and Kelvin	\$ 2,000.00	\$ 1,600.00
1279	wages for park and shop labourers	\$ 1,000.00	\$ 800.00
1282	[Cash cheque, no description]	\$ 1,140.95	\$ 912.76
1283	labour building supplies shopping	\$ 457.20	\$ 365.76

	labour(1500)truck driver(1900)hire of tipper and driver to remove and dispose of rubbish from Mattila caravan park approx hours 3hours per day over a period of 14 days/repay T McMahon purchase of electrical supplies for Mattila caravan park 567.60		
1284		\$ 464.80	\$ 371.84
1287	Michael Mattila and Kelvin	\$ 1,000.00	\$ 800.00
1288	labour building supplies shopping	\$ 1,962.45	\$ 1,569.96
1292	[Cash cheque, no description]	\$ 605.15	\$ 484.12
1304	Michael Mattila	\$ 1,000.00	\$ 800.00
1309	wages 1500, shopping smokes ctn Michael Mattila	\$ 500.00	\$ 400.00
1320	Michael Mattila Kelvin cash for mechanic	\$ 4,300.00	\$ 3,440.00
1321	Michael Mattila and Kelvin	\$ 2,000.00	\$ 1,600.00
1323	[No description]	\$ 500.00	\$ 400.00
1325	wages bricks shopping Michael Mattila	\$ 1,507.65	\$ 1,206.12
1326	Michael Mattila and Kelvin	\$ 1,500.00	\$ 1,200.00
1345	Michael Mattila 1500 shopping wages	\$ 707.67	\$ 566.14
1346	Michael Mattila labourers wages brickie sand bricks shopping	\$ 2,700.00	\$ 2,160.00
1350	Michael Mattila and Kelvin	\$ 5,000.00	\$ 4,000.00
1351	Michael Mattila	\$ 1,000.00	\$ 800.00
1355	s/hand bench top deep fryer	\$ 430.00	\$ 344.00
1356	Michael Mattila	\$ 1,000.00	\$ 800.00
1357	Michael Mattila and Kelvin	\$ 2,000.00	\$ 1,600.00
1358	Michael Mattila labourers shopping	\$ 1,940.30	\$ 1,552.24
1363	Michael Mattila loan to darren 900, Michael Mattila cash 1200,shopping	\$ 500.00	\$ 400.00

1365	wages and miscellaneous purchases	\$ 1,306.25	\$ 1,045.00
1371	Michael Mattila and shopping	\$ 1,009.45	\$ 807.56
1372	Michael Mattila and Kelvin	\$ 500.00	\$ 400.00
1376	Michael Mattila middendorp	\$ 264.92	\$ 211.94
1378	Michael Mattila and Kelvin	\$ 500.00	\$ 400.00
1379	[No description]	\$ 400.00	\$ 320.00
1395	Michael Mattila and xmas shopping	\$ 972.00	\$ 777.60
1396	Michael Mattila and Kelvin	\$ 2,500.00	\$ 2,000.00
1398	Michael Mattila Kelvin and park crew xmas party	\$ 4,000.00	\$ 3,200.00
1402	shopping	\$ 1,090.50	\$ 872.40
1403	[No description]	\$ 1,000.00	\$ 800.00
1404	Michael Mattila 500	\$ 600.00	\$ 480.00
1405	Michael Mattila and Kelvin	\$ 1,000.00	\$ 800.00
1409	Michael Mattila Kelvin park crew	\$ 2,000.00	\$ 1,600.00
1410	Michael Mattila pay park crew shopping	\$ 1,255.66	\$ 1,004.53
1411	Michael Mattila Kelvin park crew	\$ 2,000.00	\$ 1,600.00
1412	Michael Mattila Kelvin park crew	\$ 1,000.00	\$ 800.00
1413	Michael Mattila shopping	\$ 905.15	\$ 724.12
1414	Michael Mattila	\$ 1,000.00	\$ 800.00
1418	Michael Mattila 500	\$ 352.80	\$ 282.24
1424	labour building supplies shopping	\$ 1,000.00	\$ 800.00
1460	Michael Mattila 1000 shopping 1000	\$ 890.45	\$ 712.36
1465	Michael Mattila	\$ 955.11	\$ 764.09
1466	loan donna glasses	\$ 300.00	\$ 240.00
1468	Michael Mattila, shopping for park, I&S springs parts for mower 65.00	\$ 1,032.11	\$ 825.69
1474	Michael Mattila and Kelvin	\$ 1,000.00	\$ 800.00
1475	Michael Mattila and park		\$ -

	crew wages		
1480	[Cash cheque, no description]	\$ 1,184.75	\$ 947.80
1482	Michael Mattila and Kelvin	\$ 1,000.00	\$ 800.00
1483	Michael Mattila and Kelvin	\$ 1,000.00	\$ 800.00
1487	Michael Mattila Bunnings shopping	\$ 2,118.45	\$ 1,694.76
1496	Michael Mattila and Kelvin	\$ 1,000.00	\$ 800.00
1498	Michael Mattila 1000/ darren nimy justin joe tim	\$ 2,300.00	\$ 1,840.00
1505	Michael Mattila 500 shopping	\$ 1,000.00	\$ 800.00
1511	Michael Mattila and park crew wages and shopping, darwin business machinew cash register service 45.45	\$ 1,774.60	\$ 1,419.68
1512	Michael Mattila and Kelvin	\$ 1,000.00	\$ 800.00
1513	Michael Mattila and Kelvin	\$ 1,000.00	\$ 800.00
1526	Cash, wages	\$ 1,200.00	\$ 960.00
1527	[Cash cheque, no description]	\$ 2,500.00	\$ 2,000.00
1530	Michael Mattila Kelvin and park crew	\$ 3,556.00	\$ 2,844.80
1536	Litchfield Tavern	\$ 2,000.00	\$ 1,600.00
1548	wages Naaman Justin Darren Joe, shopping Bunnings	\$ 1,061.11	\$ 848.89
1550	wages shopping park crew Naaman Justin Darren Joe	\$ 1,200.00	\$ 960.00
1553	wages and shopping Naaman Justin Darren Joe	\$ 863.55	\$ 690.84
1554	[Cash cheque, no description]	\$ 1,000.00	\$ 800.00
1557	[Cash cheque, no description]	\$ 988.10	\$ 790.48
1559	[Cash cheque, no description]	\$ 989.00	\$ 791.20
1561	wages and shopping	\$ 1,000.00	\$ 800.00
1578	naaman 500	\$ 500.00	\$ 400.00
1579	naaman 200	\$ 800.00	\$ 640.00

1581	naaman 200	\$ 324.75	\$ 259.80
1583	Michael Mattila 500	\$ 500.00	\$ 400.00
1585	Michael Mattila 300 naaman 300	\$ 407.56	\$ 326.05
1590	[Cash cheque, no description]	\$ 1,500.00	\$ 1,200.00
1594	Michael Mattila cash/ money for repairs improvements	\$ 831.45	\$ 665.16
1596	coles 114	\$ 1,128.62	\$ 902.90
1601	Cash, labour, building supplies, shopping	\$ 982.00	\$ 785.60
TOTAL		\$ 186,206.93	\$ 148,965.54

### Summary of sums due to Plaintiff from the First Defendant

Item A	\$10,500.00
Item B	\$1,000.00
Item C	\$148,965.54
TOTAL	\$160,465.54

After allowance of \$90,000.00 to the Plaintiff in respect of his claim for damages against the Defendant and after allowance of \$124,000.00 in respect of the Defendant's cross-claim against the Plaintiff the sum due and owing to the Plaintiff by the Defendant is \$160,465.54 less \$34,000.00, that is, **\$126,465.54**.