Ltd. The Full Federal Court said that the party applying the pressure may have the purpose proscribed by section 45D(1) notwithstanding that this purpose is a means to a greater end.

The Unions submitted that liability under section 45D was not made out in connection with one building site, because no loss or damage was sustained. The Full Federal Court held that the event stipulated by section 45D is not the incurring of actual loss or damage, but the likelihood that the relevant conduct would have that effect; so it is really no answer to say that, in the event, no loss was sustained.

In relation to another site, the Unions contended that the loss sustained by Troubleshooters as a result of the conduct of the Unions' officials could not properly be regarded as "substantial" since it was minor in relation to the company's overall activities. The Full Federal Court noted that the building industry in Melbourne was relatively close-knit so that a successful ban on Troubleshooters' men at this site would have been likely to encourage the imposition of bans at other sites. A successful ban would also have been likely to deter other clients, and potential clients, from maintaining or commencing a relationship Troubleshooters; possibly leading to the ultimate collapse of Troubleshooters' business. The Full Federal Court found that *Odco Pty Ltd's* case under sections 45D and 45E was made out.

So far as the tort of interference with contractual relations was concerned, the Full Federal Court held that there was no error in Woodward J's judgment that each of the elements of the tort of interference with contractual relations had been established. Whilst the authorities indicate that indirect interference will only suffice to establish the tort if the means used are unlawful, the interference here was clearly direct. In any event, the means adopted was unlawful procuring the breaches of contract.

Finally, the Full Federal Court found that Woodward J was correct in finding that the defence of justification had not been established. At the trial, the defence was framed on the basis of a belief by the Unions that the agreements by Troubleshooters and the builders were agreements to carry out work involving the engagement of employees upon terms which breached applicable awards. In the Appeal, the Unions contended that a bona fide and reasonable belief, even if wrong, was sufficient to justify the interference with contractual relations. The Full Federal Court concluded that the Unions were not so justified.

If remains to be seen to what extent this decision of the Full Federal Court will result in changes in methods of employment in the construction industry. The Financial Review comments in an article on the case (4 April 1991 at p.14) that the national prominence attained by the Troubleshooters' cases is puzzling as it is not the first firm of its type to hire out building employees as self employed contractors. The Financial Review estimated that there were 300 such firms operating throughout Australian industry. According to the Financial Review article Troubleshooters' list of contractors placed out on jobs nationally had fallen from 700 to 60, but Troubleshooters were hoping that this decision would mark a turning point in its fortunes.

- **John Tyrril.**

Trespass - Injunction - Removal of Scaffolding Encroaching Upon Airspace - Damages

LJP Investments Pty Ltd v Howard Chia Investments Pty Ltd (No 2), Supreme Court of New South Wales, Hodgson J., 27 November 1989 (1991) Aust Torts Reports ¶81-069.

LJP Investments Pty Ltd v Howard Chia Investments Pty Ltd (No 3), Supreme Court of New South Wales, Hodgson J., 3 December 1990, (1991) Aust Torts Reports ¶81-070.

Howard Chia Investments Pty Ltd ("Howard Chia") had sought consent to the erection of scaffolding protruding over the plaintiff's property. The plaintiff indicated that it would give consent for $30,000 plus rental. Howard Chia did not accept those terms and proceeded to erect scaffolding protruding over the plaintiff's property.

Action was brought for an injunction and damages. Howard Chia contended that an injunction should not be granted on the basis that damages was an adequate remedy and because an injunction would cause inconvenience in preventing the completion of the building. Evidence was given that the building could not be completed without leaving the scaffolding in place protruding into the neighbour's airspace and without continuing to use that scaffolding.

Hodgson J. proposed an injunction to enable completion of a smaller building involving the minimum of trespass, but made orders for the removal of the scaffolding, stayed those orders for a period and, in the meantime, continued an interim injunction against the use of the scaffolding. The purpose was to allow an appeal. However, this appeal did not proceed as Howard Chia found that another method of construction would enable completion of the building without the scaffolding. Howard Chia applied for an extension of the stay of the injunction for a period to enable this new method of construction to be put in place.

The matter came back before Hodgson J. as the plain-

tiff wished to proceed with a claim for damages, including exemplary damages. The plaintiff contended that the previous proceedings had not disposed of the matter, that the orders made were never final and that a claim for damages instead of injunction had always remained open. Howard Chia contended that the finding that the plaintiff was entitled to an injunction had disposed of the matter and that damages was not now open on the basis of res judicata. Hodgson J. held:

1. The earlier proceedings had not disposed of the matter. It had been decided that, in principle, the plaintiff was entitled to an injunction, but it was also decided that the Court would not give an injunction which would have the result of a permanently unfinished wall. The judgement contemplated further hearings. The regime of orders had been given to enable the defendant to appeal to test the rulings and was not a final disposition of the case.
2. What was left to be worked out was not just the mode of enforcement of orders, but the substantive rights had yet to be determined. It followed that the Court had a discretion to allow the plaintiff to claim damages.
3. This was a case where the plaintiff should be allowed to pursue damages, at least, unless there was a prejudice to the defendant which could not be overcome or the matter was futile. In the absence of any specific matter raised by the defendant which showed real prejudice, the plaintiff should be allowed to claim exemplary damages; that prejudice could be overcome by the imposition of conditions.

In the subsequent decision, *LJP Investments Pty Ltd v Howard Chia Investments Pty Ltd (No 3)*, Hodgson J. held that:

1. The plaintiff was entitled to restitutory damages equal to a reasonable payment for the land encroached upon, which was the amount asked for by the plaintiff as the licence fee - $30,255 once up payment, plus $570 per week for as long as the scaffolding was in place - for a total of $37,380.
2. If wrong on the question of restitutory damages, then exemplary damages should be awarded to bring the plaintiff's recovery up to around $38,000, because it should be made clear to developers that they cannot expect to do better by an unlawful trespass than by paying a price demanded by an adjoining owner, at least unless the price demanded is unreasonable.
3. It would not be appropriate to reflect the difference between the plaintiff's party and party costs and its solicitor own client or indemnity costs as a component of exemplary damages. Howard Chia's conduct of the case did not justify any special costs order.

- John Tyrril