

SENIOR CONSTABLE UPSTON

Q1 This is an electronic record of interview between Senior Constable David Upston of the New South Wales Water Police and Ken Mitchell at the Melbourne C.I.B. on Sunday, the 13th of February, the year 2000. The time by my watch is now 9 minutes past 2.00pm, and also present seated directly to my left is Detective Senior Constable Gray from Bega Detectives. Ken, for the purpose of the interview, could you please state your full name?

A My name is Kenneth Aston Mitchell.

Q2 Your date of birth?

A 24th of the 10th, 1931.

Q3 And your address?

A 72 Central Park Road, East Malvern, 3145.

Q4 O.K. Thanks, Ken. As I explained to you earlier, prior to commencing the interview, Detective Senior Constable Gray and I are making inquiries into the 1998 Sydney to Hobart Yacht Race where unfortunately six lives were lost as a result of a number of different incidences, and we are here today to talk to you about one particular incident where a sailor, one of the young, young sailors was lost over the side and his body was never recovered. He was wearing a safety harness and lanyard at the time and, as I explained to you earlier, there was a failure in one of those harnesses or in that particular instance the, the lanyard failed, and as a result he was not able to be

recovered. Now first of all I'd like to have a history or your history, involvement in Tough Marine, Australia. So could you just give me a little bit of history how you became involved in Tough Marine in Australia and also your involvement with Fort Holdings?

A Right. I founded the, the company Puma Australia Proprietary Limited in 1970 and was the managing director until 1986 of that company, when I retired and took an outside directorship for another two or three years with the company, but I wasn't actively involved. In the meantime Puma Australia was bought out or floated into a public company with a number, number of other small companies, one of whom was Tough Marine, and as an outside director I therefore had little involvement in Tough Marine. That meant attending directors' meetings once every month or once every 6 weeks and doing what I could with my past experience in the sporting industry to, to help Tough Marine make, make progress.

Q5 Right. Now Tough Marine was previously known as Tough Marine Industries, is that correct?

DETECTIVE SENIOR CONSTABLE GRAY

Accessories.

SENIOR CONSTABLE UPSTON

Q6 Tough Marine Accessories, pardon me?

A Yes.

Q7 And that was - - -

A They were the same people.

Q8 Right.

A

Q9 Well that, that company was owned by Mrs Ruth Plumber?

A I believe so. Mmm. Yes.

Q10 Right. Right. Do you, do you know of Ruth Plumber?

A Yes, I do.

Q11 O.K. What dealings have you had with Ruth Plumber?

A When, when Tough Marine was bought out by Fort Holdings, I became one of the contacts for, for Ruth, remember trying to help her develop the business, therefore saw, saw her on a monthly, 6 week basis and spoke to her on the phone occasionally.

Q12 O.K.

A I wasn't, I wasn't really involved with the technical side of the business at all, that's not my background.

Q13 All right.

A That was in 1988, I think, we purchased Tough Marine and after, really our association only went for 18 months or like that when it was, business was very difficult, had been through the 1987 recession and Fort decided to compact their business and one of the, one of the companies that they decided not to proceed with was Tough Marine, so it was closed down and the stock and, and all the assets were sold off. To the best of my knowledge all the creditors was certainly paid off.

Q14 Right. Right. And do you agree that Ruth for her 20 per cent share was paid a dollar as a result of the, the foreclosure?

A She wasn't paid any goodwill but she, she had a monthly salary or a weekly salary I think which was always honoured.

Q15 Right. Perhaps I should say that she was paid a dollar for her shares in that company. Are you aware of that?

A No. I probably was at the time, but I can't say that now.

Q16 O.K. Well, that's fine. Now are you aware of any harnesses that were manufactured by Ruth or Tough Marine Australia when Fort Holdings took over the company?

A Well, it would be, they had a very wide range of a boating accessories and certainly harnesses could well have been in the, in the range but if they did, did make, make them, they made very few, I would suggest.

Q17 O.K.

A Very, very few and that was one of the problems with the business, that everything they, everything they made was sort of a specialised item and there was a very minimal demand for it.

Q18 Mmm.

A So they weren't able to build up any volume.

Q19 I show you a harness here which is orange in colour, it has some white stitching and on the harness it has a stainless steel ring at the front with two stainless

steel buckles. It has the words, Sword of Orion, on it, C.Y.C.A, B which has been scrubbed out and 2006, to you agree with that, and also the number 5?

A Mmm.

Q20 Have you ever seen this type of harness before?

A I don't believe so. I, I mean, in working through the Tough Marine factory 12 years ago I may have, I, I may have seen it but it was nothing special to me, it didn't have much interest because - - -

Q21 O.K.

A - - - weren't really being manufactured in any quantity.

Q22 Do you recall seeing this patch which has been sewn onto the harness with the words, Tough Marine Australia, on it?

A I certainly remember seeing the, the main part of that, it's detail I don't remember seeing.

Q23 O.K. I'll also show you a port of a lanyard that is incomplete. It has only one hook on it where the other hook has, is not present with the stitching and it's all been torn away, and I also show you on that lanyard a sewn label with Tough Marine Australia with wording the same as the previous label.

A Mmm.

Q24 Do you agree with that?

A I can see that.

Q25 You don't recall ever seeing anything similar to that in, in, in your dealings with Tough Marine Australia?

A Not especially. No.

Q26 O.K.

A No.

Q27 When the company was then sold, or when the business was then sold, Tough Marine Australia - - -

A Got closed down.

Q27 - - - closed down, who was it and what content was sold? Who was it sold to and what content of that, of the property belonging to Tough Marine Australia was sold?

A I think there were a, there was a number of outlets, Len, Len Allan was one. I thought there was somebody else that Ms Plumber had a good contact with from, perhaps from the yacht club who had offered to refinance her and, and maybe redevelop the business because he was involved in sailing, but I don't know his name and it, it just comes to me that there was some, some fellow that had had a long association with her that thought there was potential in the business, and so that was one outlet. I don't know that that came to anything, he may have taken some stock to, as a sort of a trial before to see that the costings were O.K. before he bought the business, I don't know, but he was a sort of a prospect at one stage, and there was Len Allan and Ruth herself in the end bought back several machines, I think, and was going to start up again. Now whether she kept any of the raw materials to start making again, I, I don't know.

Q28 Do you know how, well how much, or when the, when the, when the business was sold, when the property was sold, all the, the dealings, the machines, all the goods and services and everything that was with it, do you recall how much that was sold for to this Mr Len Allan?

A Somewhere in the vicinity of \$100,000.00 I, I seem to remember.

Q29 Right. And then what happened?

A Well, there, we, we did we did have some cash sales too which opened up the factory. I don't know that we advertised in any way. We may have, may have advertised in some way but we opened up the factory and a little bit was sold that way too. Now the rest of the stock, I, when this all finally closed down and those people's interests were satisfied, there was very little stock left and I would have thought Ruth would have a much better knowledge of what happened to it than I, than I would. And I really never got that closely involved with the business, to be frank.

Q30 Right.

A I tended, took an interest and helped provide some small funds.

Q31 Now you informed me earlier that Mr Allan in fact didn't pay that \$100,000.00 or a portion of it, a large portion of it, I think you said. Could you just give us some details on that?

A Well, he must have identified the, from an inventory list of the, the range of products, whether they were

finished products or whether they were raw materials that were of interest to him, that he felt that he could make up and, and resell. He, as I said, I think he lived in the, one of the southern suburbs like Mentone and, and Mordialloc. To my knowledge we, as I recall it, he was written off in the end as a bad debt or, or it was never fully booked out, but he certainly didn't pay the value of the stock that was, that he took over.

Q32 Right. And you said earlier that he may, that to your knowledge he may have even been working out of the back of his residence in

A Could've been. Yes, yes I, I rather fancy the business was that sort of size.

Q33 All right.

A One man sort of operating it.

Q34 But you don't know that for certain?

A No, I don't. No, I don't.

Q35 And then was the situation that your partners then went to this address or somebody that you employed went to this address and brought the goods back? Is that, and took the goods back, is that correct?

A No, I don't remember that. We certainly would have gone to his place or, or made numerous phone calls in an effort to recover the, what was unpaid and the stock that he had, but whether we I, I don't recall us ever taking any stock back. I mean, we didn't want it.

Q36 Mmm. O.K. So no stock was, was actually recovered from Mr Allan? Or machinery?

A Well, I should say that I don't remember any stock - - -

Q37 O.K. All right.

A - - - coming back. There was probably, probably a bit of stock left with us that in the end was, might've been thrown out.

DETECTIVE SENIOR CONSTABLE GRAY

Q38 All right. So then in fact Mr, did the deal go through so far as Mr Allan and

A Well it, it must have - - -

Q39 Right.

A - - - Stuart, because he paid us a percentage of the, of the \$100,000.00 - - -

Q40 Right.

A - - - or whatever it was, he paid us some part of that so obviously a sale was made.

Q41 Right. The stock that we are aware that may have come back was machines that, that Ruth recovered?

A Mmm.

Q42 Are you aware of that?

A I can remember her getting some shares, some stock back - - -

Q43

A - - - or some machinery back. Whether she also got any raw material stock back or finished stock back, I don't know.

Q44 O.K.

SENIOR CONSTABLE UPSTON

Q45 How badly in your view from your experience of business, how badly was Tough Marine going, Accessories?

A Well it was in a climate of, of a very, very difficult business time, you know - - -

Q46 Yeah.

A - - - with the recession in 1987 and that, that produced an enormous amount of stress, stress on, on people, and including Ruth.

Q47 Mmm.

A And I guess made the business, made the product harder to sell.

Q48 Mmm.

A Because people were just not buying. So they were difficult, difficult times but she was personally, not personally financially - - -

Q49 Right.

A - - - injured.

DETECTIVE SENIOR CONSTABLE GRAY

Q50 So far as your role as a director in that company, the role that you played along with Mr Webb, was it a sort of a standoffish type role?

A Yes. Yes.

Q51 And you and Mr Webb were satisfied with the way in which Ruth conducted business so, so far as the products

A Oh yes, as far as the product and the quality were concerned, she was very proud of that.

Q52 Yes.

A But as far as getting the business going, well, she, she - - -

Q53

A - - - wasn't, wasn't successful.

Q54 All right.

A And, and it was, as I say, difficult times and I've had a lifetime experience in it and I wasn't able to - - -

Q55 Mmm.

A - - - turn it around either so - - -

Q56 Yeah.

A And we were going through a stage where we really wanted to condense the business during this difficult time and, and interest rates went to 22 per cent and this sort of, sort of thing - - -

Q57 Yeah.

A - - - and we were, you know, we were, things were pretty tight.

Q58 So was it a case of, from Fort's point of view, to sell the stock and recover whatever monies we can to sort of - - -

A Yeah, I guess, I guess, and yeah, and Ruth agreed with that too.

Q59 Yeah.

A I mean, she was under a lot of stress and sort of the buck seemed to stop with her a bit because she was there all the time, she had all the contacts.

Q60 Mmm.

A So I think that was by general agreement that we, that's the way we should go.

Q61 Mmm. O.K.

SENIOR CONSTABLE UPSTON

Q62 Do you recall or do you agree that Ruth had to purchase the equipment that was retained back from Len Allan from Fort Holdings?

A I can't honestly say, but I would expect so. Yes, I'd expect that that would be the It might have been a, a written down, of written down values, wouldn't know what else to do with them, I guess, but I'm sure she would have paid something.

Q63 O.K. All right, then, Ken, just prior to concluding on the interview I'll just stop one of the tapes and we'll play back a, a small portion of it just to see the quality.

A Mmm.

(TAPE PLAYED)

SENIOR CONSTABLE UPSTON

Q64 O.K. Ken that seems to have come out O.K. Thanks very much - - -

A Good.

Q64 - - - for your time.

A Mmm.

Q65 The, the time by my watch is now 2.25pm. This
 interview is now concluded.

INTERVIEW CONCLUDED