

firstnamed Defendant at the firstnamed Defendant's request.

18. On or about 19 November 1980 the firstnamed Defendant withdrew the requirement on the land within the meaning of s.569E(3)(ca), and on or about 24 November 1980 it notified the Registrar of Titles pursuant to s.569E(3)(d) that the subdivider had complied with the conditions of the requirement.

PARTICULARS

Both the minutes of the firstnamed Defendant's meeting dated 19 November 1980⁸⁰ *amended 12.6.91* and the notification to the Titles Office are in writing. Copies may be inspected at the offices of the Plaintiffs' solicitor by appointment.

19. On about 28 November 1980 the Registrar approved the plans of subdivision of the land by making the necessary endorsements of approval in conformity with s.569E(3)(e) of the LGA and s.97 of the Transfer of Land Act 1958.

- ★ 20. In the premises, the firstnamed Defendant was not entitled to retain and/or call up the first Bank Guarantee either pursuant to s.569E, or at all, for the following reasons:

(a) that it failed to comply properly or at all with the provisions of s.569 and s.569E. in that:

(i) there was no or no proper or sufficient notices given by the subdivider, pursuant to s.569(1) of the LGA;

(ii) the plans of subdivision sealed by the firstnamed Defendant in relation to the land contravened:

(A) s.569A(1)(a) in that each of them did not show at all, or distinctly all allotments into which the land was to be subdivided marked with distinct numbers or symbols;

(B) s.569A(1)(c) in that plans 79305E, 79305F, 79305G, and 79305H did not show at all or showed distinctly all new streets, roads, lanes or passages proposed to be made or laid out;

(iii) the firstnamed Defendant did not serve or cause to be served on the subdivider any, or any proper or

sufficient "requirements" within the meaning of s.569E(3)(b);

- (iv) the firstnamed Defendant did not retain copies of any or all of the purported "requirements", nor did it keep at all or sufficiently, at its offices (or anywhere else) an up to date summary in writing of all actions taken pursuant to s.569E in respect of the requirements - thus contravening s.569E(3)(c);
- (v) the purported "requirements" had been withdrawn by the firstnamed Defendant within the meaning of s.569E(3)(ca);
- (vi) that in contravention of s.569E(3)(d) the firstnamed Defendant caused to be lodged with the Office of Titles a statement to the effect that the purported "requirement" or "requirements" had been complied with by the owner, when such requirement or requirements had not been complied with and the firstnamed Defendant

knew that such requirement or requirements had not been complied with.

(b) there was no other valid and/or enforceable basis or ground upon which the firstnamed Defendant could retain and/or call up the first Bank Guarantee.

21. Further or alternatively, by reason of the matters detailed in paragraph 20 hereof, the request of the firstnamed Defendant detailed in paragraph 15 hereof was:

- (a) contrary to law; and/or
- (b) wrongful and in breach of the first warranty; and/or
- (c) negligent and in breach of a duty owed by it to the Plaintiffs.

22. Further or alternatively, by reason of the matters detailed in paragraph 20 hereof, the acceptance by the firstnamed Defendant of the sum of \$25,000.00 as detailed in paragraph 16 hereof was:

- (a) contrary to law; and/or
- (b) wrongful and in breach of the first warranty; and/or
- (c) negligent and in breach of a duty owed by it to the Plaintiffs.