

**IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COMMON LAW DIVISION**

No. 6321 of 2005

BETWEEN

GLENN ALEXANDER THOMPSON and CHERYL MAREE THOMPSON

Plaintiffs

and

MACEDON RANGES SHIRE COUNCIL

First Defendant

and

THE COLIBAN REGION WATER AUTHORITY

Second Defendant

FURTHER AFFIDAVIT OF MICHELLE ELIZABETH DIXON

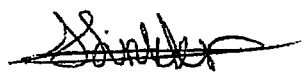
Date sworn: 28 October 2005
Filed on behalf of: The first defendant
Prepared by:
Maddocks
Lawyers
140 William Street
Melbourne VIC 3000

Solicitor's Code: 230
DX 259 Melbourne
Tel: (03) 9288 0555
Fax: (03) 9288 0666
Ref: MED: 764595
Attention: Michelle Dixon

I, Michelle Elizabeth Dixon, of 140 William Street, Melbourne in the State of Victoria,
Solicitor, make oath and say as follows:

1. I make this Further Affidavit in support of the Council's Summons dated 23 September 2005 by which it seeks, amongst others, the following orders:
 - A. Judgment for the Council against the Plaintiffs pursuant to Rule 23.03, alternatively pursuant to Rule 23.01; alternatively
 - B. That the proceeding be permanently stayed pursuant to Rule 23.01.
2. I have read the Affidavit of Glenn Thompson sworn 18 October 2005, together with the exhibits to that Affidavit ("Thompson Affidavit").
3. In the Thompson Affidavit, Thompson deposes, among other things, that:

- 3.1 At the time of signing the Terms of Settlement in the prior Tylden Road Proceeding Counsel for the Council and Waterboard handed him a large black folder containing copies of various documents. Thompson states that:
- "I took this material home and gave it a cursory glance but because I considered the matter to be at an end, I archived the folder and did not look again at its contents until August 2000"
- (paragraph 26).
- The Terms of Settlement in the prior Tylden Road Proceedings are dated 14 June 1991. A copy of the Terms of Settlement is behind tab 14 of the exhibit folder to my Affidavit sworn 23 September 2005.
- 3.2 At all times subsequent to settlement of the prior Tylden Road Proceeding until August 2000 he had no reason to suspect the existence of any of the conduct alleged in the current pleadings in relation to the Tylden Road Land (paragraph 49).
- 3.3 For the purpose of preparing a Defence and Counterclaim to a rates claim brought against him by Council he "began reviewing all of the documents available to [him]" and "re-examined the contents of the large black folder". (paragraph 53(a)).
- 3.4 Upon examining the documents within that folder "it became apparent that there were two versions of the plans for the industrial allotments of the Tylden Rd subdivision. Namely complete versions and clipped versions." Thompson states that he recognised the clipped versions as being the same as those which had been submitted into evidence by Wilson in the 1987 Magistrates Court proceeding and in the subsequent Supreme Court appeal, and that he noticed that the clipped versions had been clipped in copying in such a manner as to remove or omit the identifying number which was present on the complete version (paragraph 53(b)).
- Thompson exhibits the "complete" version of the plans as exhibit "GAT-7" to his Affidavit and the "clipped" version as exhibit "GAT-8".
- 3.5 The black folder also contained copies of the residential series of the Tylden Road plans of subdivision, that these plans had also been clipped



and that he "recognised these clipped plans to also be identical to those which had been admitted into evidence in the Magistrates Court and the Supreme Court Appeal" (paragraph 53(c)).

These "clipped" plans are exhibit "GAT-9" to the Thompson Affidavit.

3.6 He came to a number of conclusions in relation to the Tylden Road land as a result of "perusing the documents in the black folder... and reviewing the documents tendered in the Magistrates Court and the evidence given by Wilson in that Court". (paragraph 53(f))

3.7 Upon reaching those conclusions it became apparent to him for the first time:

"i) that the Council had acted maliciously or recklessly by sealing the residential plans contrary to its lawful obligation to refuse to do so.

ii) that Wilson's evidence given to the Magistrates Court had the effect of concealing the Council's true conduct from the Court and myself."

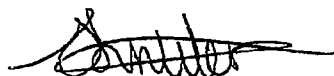
(paragraph 53(h))

3.8 It was upon reaching the conclusions in relation to the Tylden Road land that he began to consider the possibility that the Council may have acted unlawfully in relation to the Woodleigh Heights land and prompted him to reconsider the 1995 proceedings (being the prior Woodleigh Heights Proceeding) and the reticulation plan that had been provided to him in the Practice Court in September 1999. (paragraph 54(a))

4. Based on my review of the Thompson Affidavit I understand Thompson to be saying that:

4.1 it was his review of the documents in the black folder (provided to him in June 1991) in August 2000 that caused him to issue the current proceeding; and

4.2 the first time that the complete version of the plans was made available to him was when they were supplied to him in the black folder.



5. For the reasons set out below I believe that both the "complete" versions and the "clipped" versions of the plans, which are exhibits "GAT-7", "GAT-8" and "GAT-9" to the Thompson Affidavit, were discovered by Council in the prior Tylden Road Proceeding, and that those documents were inspected by Thompson's then solicitors, Neville & Co.
6. In the course of acting in this matter I have reviewed Court documents filed in the prior Tylden Road Proceeding. Maddock Lonie & Chisholm (as Maddocks was then known) acted for both Defendants in the prior Tylden Road Proceeding.
7. The Council gave discovery in the prior Tylden Road Proceeding by way of four affidavits of documents. Now produced and shown to me and marked:
- 7.1 "MED-7", is a copy of Council's Affidavit of Documents sworn 5 April 1989 in the prior Tylden Road Proceeding.
- 7.2 "MED-8", is a copy of Council's Supplementary Affidavit of Documents sworn 23 May 1989 in the prior Tylden Road Proceeding;
- 7.3 "MED-9", is a copy of Council's further Supplementary Affidavit of Documents sworn 17 July 1989 in the prior Tylden Road Proceeding; and
- 7.4 "MED-10", is a copy of Council's third Supplementary Affidavit of Documents sworn 3 January 1990 in the prior Tylden Road Proceeding,
- ("the Affidavits of Documents").
8. Now produced and shown to me and marked "MED-11" is a copy of a Consolidated List of Documents which lists each document discovered by the Council in the prior Tylden Road Proceeding according to its number in the particular Affidavit of Documents by which it was discovered, and by a numerical list of all documents discovered by the four separate Affidavits.
9. I have reviewed the documents discovered by Council in the prior Tylden Road Proceeding, listed in the Affidavits of Documents. Each of the documents which comprises exhibit "GAT-7" to the Thompson Affidavit, described by Thompson as the "complete" plans, was discovered by Council in the prior Tylden Road Proceeding as discovered document number 4 in its Supplementary Affidavit of Documents sworn 23 May 1989 (exhibit "MED-8"). These plans are numbered "53-4" in the top right hand corner, being their corresponding number in the

Consolidated List of Documents which is exhibit "MED-11". Now produced and shown to me and marked "MED-12" is a copy of these "complete" plans discovered by Council. I have compared them to exhibit "GAT-7" to the Thompson affidavit and have not been able to identify any differences between the two, save that the number "53-4" appears in a different corner of the document.

10. The documents exhibited as "GAT-8" and "GAT-9" to the Thompson Affidavit, which Thompson describes in his Affidavit as the "clipped" version of the plans, were also discovered by Council in the prior Tylden Road Proceeding as document number 13 in Council's Affidavit of Documents sworn 5 April 1989 (document number 13-13 in the Consolidated List of Documents). Copies of the "clipped" version of the plans discovered by Council are now produced and shown to me and marked "MED-13".

11. Further, it appears from the correspondence in the prior Tylden Road proceeding that Neville & Co requested, and were provided with, a copy of all of the documents discovered by Council by its Supplementary Affidavit of Documents sworn 23 May 1989, other than document number 9 (which document was not requested by them) on about 17 May 1989. This included a copy of the "complete" version of the plans which is exhibit "GAT-7" to the Thompson Affidavit.

12. In this regard I refer to the copy bundle of correspondence passing between Neville & Co and Maddock Lonie & Chisholm, and other documents from the prior Tylden Road Proceeding, which is now produced and shown to me and marked "MED-14". In particular I refer to:

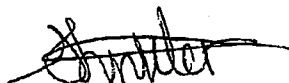
12.1 the letter from Maddock Lonie & Chisholm to Neville & Co dated 18 April 1989 which states in part:

"We refer to the above matter and confirm that you will attend at our offices to inspect documents on Friday 21 April at 10:30am"

(page 1 of exhibit "MED-14");

12.2 the letter from Maddock Lonie & Chisholm to Neville & Co dated 21 April 1989 which states in part:

"We refer to your inspection of documents at our office today and now enclose herewith copy documents numbered 3, 4, 5, 6, 7, 10, 12, 18, 24, 40, 42, 44 and 47 as requested by you"



(page 2 of exhibit "MED-14");

- 12.3 the letter from Neville & Co to Maddock Lonie & Chisholm dated 26 April 1989 which states, in part:

"We refer to your client's Affidavit of Documents and to our recent inspection of documents at your office and are instructed that your client's Affidavit is deficient in that certain notices and correspondence relating to the matters raised in the Statement of Claim have not been listed".

(page 3 of exhibit "MED-14");

- 12.4 the letter from Neville & Co to Maddock Lonie & Chisholm dated 15 May 1989 referring to our client's Supplementary Affidavit (supplied unsworn on 11 May 1989) and requesting a viewing of the documents within 48 hours. (page 4 of exhibit "MED-14");

- 12.5 the letter from Maddock Lonie & Chisholm to Neville & Co dated 17 May 1989 which states in part:

"We refer to our telephone conversation of the 16th May 1989 between our Ms Neal and your Mr Nugent and now enclose herewith copy documents as contained in our Supplementary Affidavit of Documents.

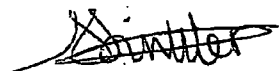
We confirm your advice that document 9 is not included as it is not relevant to these proceedings and also because our client is currently unable to locate it."

(page 5 of exhibit "MED-14");

- 12.6 the letter from Maddock Lonie & Chisholm to Neville & Co dated 21 July 1989 referring to Neville & Co's inspection of Council's discovered documents on 19 July 1989 and enclosing a number of documents. (page 6 of exhibit "MED14");

- 12.7 the letter from Neville & Co to Maddock Lonie & Chisholm dated 21 July 1989 which states in part:

"In relation to the Plaintiff's answers to interrogatories we advise that these cannot be fully considered until such time as the documents requested by Mr Thompson following his inspection of 20 July have been received at this office"



(page 7 of exhibit "MED-14");

12.8 an undated handwritten note signed by "G Thompson" which states in part:

"Please supply the following docs of further supplementary defendant"

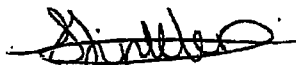
(page 8 of exhibit "MED-14").

SWORN at Melbourne in the State of
Victoria this 28th day of October 2005

)
)
)
)
)



Before me:



SUZANNE TINKLER
140 William Street, Melbourne, 3000
A natural person who is a current
practitioner within the meaning of
the Legal Practice Act 1996