

reasonably foreseeable and the fact that my Woodleigh Heights land had been rendered useless to anyone except interests associated with Buchanan had the obvious, and I say known and intended, effect of ensuring a forced sale of my Woodleigh Heights land and of ensuring it was saleable only to those interests.

- aa) To say that so many Councillors and Water Board members would not be party to such things is to ignore the fact that the Council and Water Board were stuck with the fact of and the facts of the initial conspiracy to avoid the effect of s.9. They had two subdivisions without services. It was a clear case of expose themselves and the conspiracy at that time, or unlawfully use Council and Water Board funds to do the required works, or defraud my family and I and do the things now set out in the present Amended Statement of Claim. The certain fact is that the Defendants did not expose themselves and did not use their own funds. They as a matter of fact did conceal the primary frauds and did do the things now set out in the present Amended Statement of Claim and perpetrated the secondary frauds against my family and I.
- bb) The two primary frauds were for the purpose of facilitating avoidance of the effect of s.9 and the two secondary frauds were for the purpose of concealing the primary frauds and facilitating construction of the required services which were absent due to the primary frauds.
- cc) As I will detail a little later the Defendants have retained and continue to enjoy the benefit of the frauds and the Plaintiffs continue to suffer the loss occasioned by their fraud.

59) Avoiding s.9 of the Sale of Land Act 1962.

- a) s.9 of the Sale of Land Act 1962 provides:-

"Where a notice of intention to subdivide land into three or more allotments has been given or is required to be given no person shall sell any such allotment unless the allotment is an allotment on a plan of subdivision approved by the Registrar pursuant to s.97"

- b) In paragraphs T7 and W8 of the present Amended Statement of Claim it is said that the purpose of doing the things alleged was to avoid the "effect" of s.9. The word "effect" provides an important distinction from the literal provisions of s.9 because as was discovered by me in August 2000 it was the "effect" rather than the literal provisions which the Defendants and Buchanan conspired to avoid.
- c) On a literal reading the provisions of s.9 appear intended to prevent the sale of allotments on subdivisions consisting of three or more allotments until such time as the plans have been approved by the Registrar of Titles pursuant to s.97.

- d) I will address "effect" as distinct from literal provisions a little later.
- e) In considering the following discussion "sale" and "sell" is defined in the Sale of Land Act 1962 as *"includes an agreement for sale an offer to sell and the giving of an option to purchase"*.
- f) On an ordinary understanding to "sell" means to complete a "sale" or in other words effect transfer of Title and obtain settlement. This ordinary understanding is an included meaning of "sell" in s.9.

60) Avoiding s.9. The simplistic or mistaken view. Buchanan's intentions as to avoidance.

- a) During the period 1979 to 1980 Buchanan had done the following things in relation to Tylden Rd:-
 - i) In 1979 he had offered me two of the allotments at a cheap price for the stated purpose of raising funds to construct the roads.¹²
 - ii) On 12th February 1980 he had filed a single plan showing all 18 residential allotments.
 - iii) On 4th March 1980 he had filed seven plans including six which were 2-lot plans of subdivision.
 - iv) He had advised me that he had sold two of the Tylden Rd allotments to an employee of his solicitors Palmer Stevens and Rennick.¹³
 - v) He had advised me that he could not settle the sales to the employee of Palmer Stevens and Rennick until bank guarantees for the road and waterworks had been filed with the Defendants.¹⁴
- b) At these times I knew nothing of s.9 let alone intended breaches of s.9.
- c) In 1982 I learned that Buchanan and his solicitors Palmer Stevens & Rennick were involved in dishonest land transactions.¹⁵
- d) In 1983 my then solicitor Danny Ginsburgh advised me that somehow Buchanan managed to manipulate the plans of subdivision to avoid the provisions of s.9 of the Sale of Land Act thereby enabling him to sell allotments and raise capital for the provision of roads and water which he ordinarily had an obligation to provide, or make provision for, prior to sale.¹⁶

¹² Paragraph 5 First Thompson Affidavit.

¹³ Paragraph 10 First Thompson Affidavit.

¹⁴ Paragraph 12 First Thompson Affidavit. Page 5 Book of Pleadings, SME 1 Volume 2 Tab 43.

¹⁵ Page 20 Book of Pleadings, SME 1 Volume 2 Tab 43..

¹⁶ Paragraph 51, page 12 First Thompson Affidavit.

- e) By 1983, for a variety of reasons I knew Buchanan to be dishonest and while I had reason to suspect the motives of the Defendants' then Secretary Mr. Stan Porter, I had no cause to suspect the Defendants, per se, of dishonesty.¹⁷
- f) In 1987 the First Defendants proceeded against me in the Magistrates Court. At this time I personally learned the relevant legislation.
- g) From the legislation and Buchanan's offer to sell allotments to me and the advice of Danny Ginsburgh and the fact of the contrived 2-lot plans of subdivision and the fact of the sales to the employee of Palmer Stevens & Rennick it was clear that Buchanan's intentions were to avoid what I then understood the provisions of s.9 to be. On that understanding avoidance is the only possible purpose for the contrived 2-lot plans and the fact of the two sales is clear evidence of that intent.
- h) **Notably the submissions of my ex-Council are commensurate with them holding a similar misunderstanding of the provisions of s.9 as that conveyed to me by Danny Ginsburgh in 1983.**
- i) Having regard to a correct understanding of the provisions of s.9 Buchanan's scheme to avoid s.9 depended upon deceptions as to intent. **2-lot plans of subdivision do not facilitate avoidance of s.9.** Although clearly for the purpose of avoiding the literal provisions of s.9 the 2-lot plans do not facilitate avoidance of s.9 because s.9 does not apply to plans per se. The fact is that s.9 applies to intention to subdivide so that where the intent is to subdivide into three or more allotments then s.9 applies no matter how many allotments may be shown on the plans filed. Contrived 2 lot plans are in fact a breach of s.569(1) because clearly any such contrived 2-lot plan submitted together with or as part of a Notice in the form of the Thirtieth Schedule do not disclose the developers intentions as required by s.569(1). Additionally any such plans are in clear breach of s.569A(1) because any such plan does not show all allotments. It follows therefore that there is no such thing as avoiding s.9 by means of contrived 2-lot plans. Any sales made, whether from a complete plan disclosing the true intention, or from contrived plans intended to deceive as to intention are sales made in breach rather than avoidance of s.9. 2-lot plans may purport to provide deception as to intent, 2-lot plans purport to but do not facilitate avoidance of a mistaken understanding of s.9.
- j) Once having breached, as distinct from avoided, s.9 by entering into the contracts of sale with the employee of his most accommodating solicitors Palmer Steven & Rennick, Buchanan found that he could not obtain settlement on those sales.¹⁸

¹⁷ Paragraph 51 First Thompson Affidavit, Page 20 Book of Pleadings, SME 1 Volume 2 Tab 43.

¹⁸ Page 9 Book of Pleadings, SME 1 Volume 2 Tab 43.

- k) While it was clear that Buchanan had contrived to avoid the provisions of s.9 by preparing the obviously unlawful plans and he had in fact breached s.9 by entering into contracts of sale with the employee of Palmer Stevens & Rennick, it was equally clear that he had been prevented from completing the sales because of the specific actions of the Defendants.
 - l) Buchanan had been prevented from completing the sales because the First Defendant had sealed the contrived plans of subdivision with a s.569E(3)(a) endorsement on them and the Registrar of Titles was thereby prevented from approving the plans because of the operation of s.569E(3)(e).
 - m) Buchanan was not able to complete the sales until the Bank Guarantees had been filed with the Defendants and the First Defendant had advised the Registrar of Titles that the s.569E requirement was at an end and the Registrar of Titles had then approved the plans of subdivision and issued separate titles.
 - n) It was clear therefore, that while there may have been a technical breach of s.9 in that contracts had been entered into, it was also clear that the sales could not be completed until such time as the Registrar of Titles had approved the plans pursuant to s.97 and separate titles had issued.
 - o) In other words it is impossible to complete a sale made in breach of or in avoidance of the literal provisions of s.9 until such time as the Registrar of Titles has approved the plan. It follows therefore that it is impossible to complete a sale in breach of s.9.
 - p) The contrived series of plans did not and cannot facilitate either avoidance of or breach of s.9.
- 61) The Defendants intentions and state of mind at the time of processing the contrived plans.**
- a) In this matter the intent and state of mind of the Defendants at the time of processing the plans is as important as the facts.
 - b) At the time of the Magistrates Court hearing in 1987 the First Defendant exhibited the documents referred to in paragraph 53(c)(i) of the first Thompson Affidavit.¹⁹ These documents included purported copies of the contrived series of plans. At the time they were assumed to have been photocopied poorly, at that time there was no concept of "clipped" plans.
 - c) The First Defendant gave the evidence set out in paragraph 53(c)(ii) of the first Thompson Affidavit. The relevant evidence for the present moment being that the plan of subdivision which showed all 18 allotments had been processed in several parts, those parts being sealed by the First Defendant on 21st May 1980.

¹⁹ GAT-24

- d) This evidence was entirely consistent with a common practice of developing subdivisions in stages, excepting that normally staged subdivisions have a time period between a Council sealing the plans for each stage.
- e) Accordingly as the series of plans had not and could not facilitate avoidance of s.9 and as the processing of staged developments was both lawful and legitimate then at that time there was simply no basis at all, either at law or logic, to fix the Defendants with any knowledge of or any complicity in, Buchanan's intention to avoid s.9 and no basis to show anything other than that claimed by the First Defendant in the Magistrates Court, which was that the plan showing all allotments had been processed in several parts.
- f) This evidence that the plan had been processed in several parts was later repeated in discovery in the previous Tylden Rd proceedings. In that proceeding the Defendants discovered the single plan of 20th February 1980 together with a single Notice to the effect of the Thirtieth Schedule. On the 30th Schedule Notice was a handwritten note which said "Note, Plans submitted in 5 sections, 30th schedules all identical to this"
- g) It was not until August 2000 that I realised the Defendants true state of mind which was to give effect to the conspiracy to avoid the effect of s.9.

62) Avoidance of s.9. The holistic view. An oxymoron. Avoiding the effect of s.9 by complying with s.9.

- a) On the simplistic view s.9 is intended to prevent the sale of allotments on subdivisions consisting of three or more allotments until such time as the plan has been approved by the Registrar of Titles.
- b) In August 2000, in the circumstances which I shall describe a little later, I arrived at a holistic view of the purpose and effect of s.9 and at that time I first became aware of an insidious method of avoiding s.9 by complying with it.
- c) On a holistic view the effect of s.9 is derived from 3 Acts:-
 - i) Pursuant to s.9 the sale of allotments on subdivisions consisting of three or more allotments is prevented until such time as the Registrar of Titles has approved the plans.
 - ii) The Registrar of Titles, in turn is prevented by s.97 from approving the plans unless the plan is a plan in accord with the plan sealed by the Council and the plan is not subject to the provisions of s.569E
 - iii) The Council may only seal a plan if it is not prevented from doing so by the operation of s.569B(7) and pursuant to s.569E(3)(a) it must endorse the plan if the plan is subject to s.569E.

- d) From this holistic view it is clear that the effect of s.9 is quite different from the apparent literal provisions. On the holistic view the true purpose and effect is not to prevent sales until the Registrar of Titles approves the plans, but is instead to prevent the sale of allotments on subdivisions consisting of three or more allotments until such time as the plans have been lawfully sealed by the Council and the required services are present and the allotments are useable and then until such further time as the Registrar of Titles approves the plans pursuant to s.97.
- e) On this holistic view avoidance of the effect of s.9 is facilitated or effected by the Council unlawfully sealing plans of subdivision in full knowledge that the required services are not present and that there is no lawful means of compelling provision of those services.
- f) Once sealed in this manner the Registrar of Titles will approve the plans pursuant to s.97 and the developer is then free to sell the land in compliance with the provisions of s.9 but in certain avoidance of the obvious intended and holistic effect of s.9.
- g) With the co-operation of a dishonest Council and a bargain between thieves a developer can avoid the effect of s.9 while complying with the literal provisions of s.9.
- h) As discovered by me in August 2000 this is what happened in respect to both Tylden Rd and Woodleigh Heights.

63) The Causes of action.

- a) As stated earlier the cause of action in respect to both Tylden Rd and Woodleigh Heights " . . . is that the Council did in breach of its specific duty seal the residential series of plans and the industrial series of plans and the plans of cluster subdivision in full knowledge that the allotments thereby created were unusable due to a lack of services and in full knowledge that *there was no lawful means to compel or cause construction of those services in order to make the allotments useable.*"
- b) **This is a single cause of action, arising from a single conspiracy** which was implemented in respect to at least two subdivisions in the municipality of the First Defendant and the district of the Second Defendant.
- c) **This conspiracy was a conspiracy to defeat the laws of the State of Victoria.**
- d) The conspiracy was for the purpose of providing profit and benefit to the conspirators without regard to the loss and damage which may be occasioned to any unsuspecting purchaser of the subject allotments.
- e) In relation to Tylden Rd the facts giving rise to this are, that the First Defendant sealed the plans of subdivision in full knowledge that the services were not present and that no lawful s.569E