

- He reconsidered the failed 1995 proceedings and the reticulation plan which had been shown to him in the Practice Court of this Court.
- He realised that the First Defendant had in fact sealed the plans of cluster subdivision in contravention of its statutory duty to refuse to so seal them and in full knowledge of the subdivision not being completed according to law. Furthermore, the reticulated water supply was not present in 1979 as required by law but instead was laid down in 1982.
- He was unable to reconcile the representation made to him in the Practice Court 1999 with his prior state of knowledge.
- The conduct of the Defendants in relation to the Woodleigh Heights Land was essentially similar to the conduct in the Tylden Road Land.
- The Defendants engaged in an ongoing course of conduct the effect of which was to conceal from Mr. Thompson the true facts as now known.

37. Mr. Thompson also swears that there has been a continuous course of conduct designed to conceal from him the true cause of loss and damage. In relation to the Tylden Road Land, he swears that false evidence and falsified documents were put into evidence in the Magistrates' Court. The defence in the County Court proceedings is also said to have been conducted in a manner to conceal the true defence and true facts. He swears that false admissions and incomplete discovery were made. In relation to Woodleigh Heights Land, he swears that he was induced to sign terms of settlement when the true facts had been concealed from him and the defence of the Supreme Court proceedings were conducted in such a manner to conceal the true course of action which was known to the Defendants and known to be fatal to the Plaintiff's claim.

38. The Second Defendant has referred me to some inconsistencies in the affidavits sworn by Mr. Thompson. In particular to the matters referred to in his first affidavit (para 37) that Mr. Thompson represented himself in the Practice Court. The Second Defendant alleges that Mr. Thompson was represented. I note that in the reasons for decision of Beach J, it appears that the Plaintiffs appeared in person whereas the Order of the Court refers to Mr. Tiernan of counsel appearing for the Plaintiffs.

39. Steven Mark Edward (solicitor for the Second Defendant) in response to the first affidavit of Mr. Thompson swore that he attended the Plaintiffs' solicitor's premises in

Orange, New South Wales on 4 and 5 February 1999, to inspect documents discovered by the Plaintiffs. He did not have enough time on those two dates to inspect all documents. The documents he inspected included surveyor's plan of the subdivision of Tylden Road Land.

40. In his second affidavit Mr. Thompson, in response to an affidavit sworn by Mr. Edward, solicitor, swears that in the course of the 1995 proceedings he made discovery and that the Second Defendant's solicitor Mr. Edward, did not attend at his solicitor's premises but attended at the domestic residence of Mr. Thompson and set up a photocopier in his kitchen area adjacent to his bedroom. Mr. Edward had a free range of all documents that were produced by Mr. Thompson but was required, as a matter of principle, to limit the copying of documents that related to the matters in question in the 1995 Supreme Court proceeding. He believes that Mr Edward copied numerous documents that he was not entitled to copy including confidential communications. Mr. Thompson did not object because as he was working and he had to leave Mr. Edward alone in his premises and did not have time to vet anything which Mr. Edward was doing.

41. In response to Mr. Thompson's affidavit, a further affidavit was sworn by Mr. Edward. He swears that on 23, 24 and 25 March 1999, he attended at the Plaintiffs' solicitors office and photocopied all documents produced by the Plaintiffs' for discovery. On 22 March 1999, he drove from Bendigo to Orange for the purpose of photocopying the Plaintiffs discovered documents. He went to the offices of Baldock Stacey and Niven at about 9am on the 23 March. He was present when a photocopying machine which he arranged to hire was carried to the room on the upper floor of the Baldock, Stacy & Niven (the Plaintiffs' solicitors) building. This was the same room where he carried out partial inspection of the Plaintiffs' documents on 4 and 5 February 1999.

42. In my view, Mr. Edward in his further affidavit provides a comprehensive and plausible explanation of the inspection process. He also refers to letters relating to the discovery that had been written by the parties. His explanation of the discovery process is to be preferred to matters deposed to by Mr. Thompson. The inconsistencies referred to by the Second Defendant whilst interesting do not lead to me to determine the issues in favor of the Defendants.