


122 Further in my view the "holistic" view of s.9 of the SLA put forward by the plaintiffs adds nothing of relevance to the self-evident proposition that unless notices were validly given under s.569E(3) LGA, no effective requirement would be imposed on the owner/subdivider.³³

123 Indeed the better view is that s.9 of the SLA was primarily directed to avoiding the possibility a series of terms contracts could come into existence, with respect to one lot in a plan of subdivision when there was no certificate of title available to that particular lot.³⁴

124 It was s.569E(3)(e) of the LGA which prevented approval by the Registrar of a plan of subdivision when a valid s.569E requirement was not stated to be complied with.

Concealment

125 There is a further fundamental problem confronting the plaintiffs' case as to fraudulent concealment of relevant facts.

 126 The black folder comprised documents discovered in the County Court proceedings. In this regard I accept the conclusions of Master Efthim at paragraphs [53] and [54] of his decision.

"53. It is clear from Mr. Thompson's first affidavit that critical documents from the black folder which led to this matter being

³³ This is not to deny that the provisions of the LGA were relevant to the mischief the SLA sought to address. Voumard, *The Sale of Land in Victoria*, 4th ed. states at 553:

"Also because of defects in the provisions of the Local Government Act relating to the sale and conveyance or transfer of land, subdividers frequently accepted deposits and sold land before the plan of subdivision was sealed by the local municipal council. They proceeded in the expectation that the plan would be sealed within the time prescribed by the *Local Government Act*. In most cases as this period proved to be unrealistically short, their hopes were not fulfilled and in the terms of the legislation the contract became void and of no effect. Any person who had paid any money under such an agreement was entitled to recover the amount he had paid.

However, often by the time a purchaser realised that his contract was void and sought a return of his deposit his vendor had become insolvent or disappeared. Where purchasers had resold the land there could be in existence numerous contracts which in themselves were not void but were dependant upon a contractual transaction which had become void."

Further, as Voumard points out, the LGA did not require investigation of title by councils, before plans of subdivision were sealed.

³⁴ See Voumard, *The Sale of Land in Victoria*, 4th ed., 553.

further litigated are the complete version of the plans of the industrial allotments of the Tylden Road subdivision. In relation to these claims, I note that Michelle Elizabeth Dixon, solicitor for the First Defendant, has sworn she has reviewed the documents discovered by the First Defendant in the Tylden Road proceedings heard previously. Each of the documents described by Mr. Thompson as the complete plans were discovered by the First Defendant in the Tylden Road proceedings as discovered document number 4 in its supplementary affidavit sworn 23 May 1989. She also swears that the clipped versions of the plans were also discovered. In addition it appears from correspondence that Neville & Co. solicitors acting on behalf of Mr. Thompson requested and were provided with a copy of all the documents discovered by the First Defendant by supplementary affidavit of documents other than document No. 9 (which was not requested by them). Complete versions of plans was therefore provided to Neville & Co.

Mr Edward, solicitor, for the Second Defendant swore that he undertook inspection of documents discovered by the Plaintiffs in earlier proceedings those documents include a copy of the complete version for the plans for industrial allotments.

54. Based on the material before me there has been nothing concealed from Mr Thompson. The documents contained in the black folder had been previously discovered to Mr Thompson."

127 It cannot be that to voluntarily provide copies of discovered documents to the firstnamed plaintiff at the time of the settlement of the proceeding in 1991, was to conceal the facts (even though the firstnamed plaintiff says he was given the folder to hold on 14 June 1991 and took it home accidentally).

128 Insofar as the documents demonstrate actions now complained of, those actions have not been concealed. They were voluntarily disclosed to the plaintiffs at least 15 years ago.³⁵

129 The significance of the documents in the black folder is said to be that in reflecting upon them the plaintiffs realised that plans may have been "clipped" to conceal the fact that requirements were made with respect to parts only of the roads within the subdivision as a whole. I interpolate that there is an obvious innocent explanation

³⁵ cf *Mann v The Commonwealth* [2001] NSWCA 236 in which facts were disclosed to the plaintiff by an affidavit in a prior proceeding.