

SUPREME COURT OF VICTORIA

COMMON LAW DIVISION

GLENN THOMPSON

Plaintiff

v.

MACEDON RANGES SHIRE COUNCIL & THE COLIBAN REGION

WATER AUTHORITY

Defendants

- - -

JUDGE: Osborn J
WHERE HELD: Melbourne
DATE OF HEARING: 29 November 2006

APPEARANCES

MR D. ISAKOW as a friend of the court

MR G. AHERN appeared on behalf of the 1st Defendant.

MR G. GARDE QC appeared with MS S. BURCHELL on behalf of the 2nd Defendant.

1 HIS HONOUR: Mr Isakow, I understand that - - -
2 MR ISAKOW: Good morning, Your Honour.
3 HIS HONOUR: - - - Mr Thompson is having difficulty travelling
4 by plane to Melbourne at present. Is that so?
5 MR ISAKOW: That is correct. I received a call a little bit
6 before ten if I could simply assist him and the court to
7 receive judgment.
8 HIS HONOUR: Yes, I'm grateful for that.
9 MR ISAKOW: Thank you.
10 (JUDGMENT FOLLOWS)

1 HIS HONOUR: Mr Garde, I take it there'll be consequential
2 applications, is that right?

3 MR GARDE: Yes, there is, Your Honour. We would make
4 application for costs of the appeal on an indemnity basis
5 for reasons that we've reduced into writing particularly
6 relating to the numerous allegations of fraud and
7 conspiracy, Your Honour, that have been made in the
8 course of these proceedings.

9 HIS HONOUR: Yes.

10 MR GARDE: That could either be done now or if Your Honour
11 considers it appropriate that it be done at another time
12 then we would make the application at another time.

13 HIS HONOUR: Yes. Insofar as the 1st defendants are concerned
14 is there a like application?

15 MR AHERN: There will be a supporting application, yes, Your
16 Honour.

17 HIS HONOUR: Mr Isakow, I'm inclined to receive Mr Garde's
18 written submission and there seem to me to be two
19 options. The first is that we stand the matter of costs
20 down until say midday today and the second is that we put
21 it off to a date next week and that will give Mr Thompson
22 the opportunity to look at my judgment and to look at
23 Mr Garde's written submission. Do you have a view as to
24 which is the better course?

25 MR ISAKOW: I'm of course in a difficult position. I have no
26 instructions whatsoever. However, notwithstanding that
27 obviously to further reduce costs if the matter could be
28 disposed of today that would be preferable to next week.
29 However, can I simply put to Your Honour that I'll
30 attempt to make a call to Mr Thompson to see whether he
31 is in a position to attend at 12.

1 HIS HONOUR: Where is he now as you understand it?

2 MR ISAKOW: I didn't ask him save that he said that he was
3 unable to - and I'm not sure whether he either couldn't
4 leave because of inclement weather or he couldn't land,
5 I'm not sure, but words to the effect that he couldn't
6 get here and it couldn't be at a worse time so I don't
7 know.

8 HIS HONOUR: I see. Mr Isakow, on the basis of what you've
9 just told me I don't think standing the matter down for
10 two hours sounds as though it's going to achieve very
11 much. The question is whether it should go over to a
12 date next week or it could I suppose go over to 2.15 this
13 afternoon. If it goes over to 2.15 and counsel is
14 retained for the other parties well effectively it will
15 be claiming brief fees on the basis that it's a full
16 day's matter and we've heard they're claiming those fees
17 on an indemnity basis.

18 Now if your client were able to be here at 2.15
19 himself evidently it would be better to sort this out
20 today but I suppose conversely if I stand it down to 2.15
21 and you turn up and tell me he can't be here it would be
22 a great waste of everyone's time and potentially of his
23 money. I think what I'll do is I will leave the Bench
24 for 15 minutes and I will give you the opportunity to
25 ascertain whether he can be here at 2.15 and whether he
26 can't and I suppose whether he wishes to be.

27 I think you can say to him that as he will
28 anticipate an application will be made for indemnity
29 costs on the bases that were put to the master and as I
30 understand it they are principally that these proceedings
31 in effect have substantially been brought in breach of

1 settlement agreements, that's the first basis. The
2 second basis is the basis that Mr Garde has flagged,
3 namely the rule relating to costs in respect of
4 allegations of fraud. There have been many cases
5 including one notable case in the local government area
6 where parties in fact have succeeded on one basis but
7 because they failed on allegations of fraud they've had
8 orders for costs made against them.

9 In this case Mr Thompson has failed and he's failed
10 inter alia in making allegations of fraudulent
11 concealment. Now I therefore anticipate that there will
12 be some argument about costs. It's not simply a question
13 of the ordinary order of the costs following the result.
14 It may be that he will or will not wish to contest those
15 matters. If he is on his way then the sensible thing
16 would be to reconvene at 2.15, but if he hasn't taken off
17 then the sensible course is to list it at 9.30 next week.

18 So I'll come back on the Bench at half past ten and
19 it's really for you to see if you can get instructions.
20 As I ruminate, as it were, the more I think about it I'm
21 inclined of the view that unless you're sure he's going
22 to be here at 2.15 it may be better to put it over to
23 next week because then he can read the judgment, he can
24 look at Mr Garde's written submission, and things will be
25 a lot quicker. But for the moment I'll stand the matter
26 down for a quarter of an hour.

27 MR ISAKOW: Thank you.

28 MR GARDE: Perhaps Your Honour before that occurs I should hand
29 up a copy of my submissions, it may be a convenient
30 moment, and also indicate since I'm due elsewhere at
31 10.30 that Ms Burchell will carry on.

1 HIS HONOUR: Yes, thank you, Mr Garde.
2 (Short adjournment.)
3 HIS HONOUR: Now, Mr Isakow, as I understand it Mr Thompson
4 can't be here today or tomorrow, is that right?
5 MR ISAKOW: That's correct.
6 HIS HONOUR: I think in that event we'll put it over until
7 Thursday of next week. I've got some difficulties on
8 Wednesday and on Friday and he's got difficulties on
9 Mondays and Tuesdays, is that right?
10 MR ISAKOW: Yes, he does.
11 HIS HONOUR: But I had better hear from Ms Burchell as to
12 whether she can accommodate Thursday?
13 MS BURCHELL: Your Honour, it does suit me however Mr Garde is
14 only available on the Tuesday or Friday at 9.30.
15 HIS HONOUR: I see. We have a directions day on the Friday and
16 I think that if Mr Thompson can't be here on the Tuesday
17 - I've really got to give him the chance to answer the
18 allegation as it were so I think I will fix it at half
19 past nine on the Thursday.
20 MS BURCHELL: If it please the court.
21 HIS HONOUR: Mr Garde may still be able to make his application
22 even if he has to go somewhere else at ten. He can be
23 first cab off the rank as it were.
24 MS BURCHELL: Yes, I'll pass that on to Mr Garde.
25 HIS HONOUR: Yes. I will adjourn the further hearing of this
26 matter with respect to costs to Thursday next at half
27 past nine in the morning and otherwise we will adjourn
28 sine die.
29 ADJOURNED UNTIL THURSDAY 7 DECEMBER 2006

Description	Case: Thompson (His Honour - SCT Osborn, J) OCE - JUDGMENT
	Hearing details:
	Glenn Thompson v. Macedon Ranges Shire Council and Trial Anor
	Appearances:
	Mr D. Isakow - A friend of the court. Mr. G. Ahern - 1st Def Mr. G. Garde - QC w/ Ms. S. Burchell - 2nd Def
	Spellings:
	Isakow, Daniel Mr
Date	29/11/2006
	Location VIC SCT5