

MR GARDE: It's the sort of matter that unless one is comprehensive in one's material for reasons that are evident from the conduct of this matter and what's transpired, you'll find the missing bits will be filled in in an unexpected way by suggestions coming forward from the plaintiff. It's a matter in which we've had to provide very complete information.

MASTER: The only thing that I've worked out on reading all these submissions a couple of times is I'm going to have to read all the pleadings, I'm going to have to read the affidavits carefully, and after reading the plaintiffs' submissions again last night I'm really going to have to consider this matter. Let me put it to you this way, I don't think it's straightforward until I go through all the material.

MR GARDE: Once you do all that it's very straightforward. You've got to do the hard yards first and then you'll see how straightforward it really is.

MASTER: I have no preconceived ideas is what I'm saying.

MR GARDE: Yes, Master. There's one document I do wish to

refer you to additionally from what I did yesterday and I'd invite you, if you were to take up the exhibit which is SME1 volume 2, and this is the Tylden Road action, and invite you to turn to the document at tab 43. Because it's a very comprehensive book of pleadings that's been interpolated by the plaintiffs,

I draw your attention to what's actually in it. We say that what's in it shows very comprehensive knowledge on the part of the plaintiffs of the Tylden

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Road situation and over a period of time it's a blow by blow account of what transpired.

The pages in this document are numbered by and large in the top right corner of each page but if you would - - -

MASTER: I don't think they're numbered on mine.

MR GARDE: They're not initially and then they are. They pick up - some of them are given C numbers and some are given ordinary numbers. I'm looking at the page which is 3 in the top right corner and I propose to do this, really, by way of highlighting to you what's there. You've got extracts from council minutes there, extracts from the Local Government Act with a commentary setting out the plaintiffs' view about all these things.

Then you go to p.5 and you then have a plan of subdivision with approval details. At p.6 you have the Thirtieth Schedule notice from the council in relation to the subdivision.

The next page, which is 7, you have the notice of requirements under s.569E with commentary. At p.8 you have photocopied extracts from the Local Government Act and relevant provisions. At p.9 you have extracts from Sale of Land Act with commentary. At p.10 you have correspondence between the plaintiffs and Mr Wilson, of the shire, and you will see, as you progress through this document, that you have the relevant statutory provisions, you have the council resolutions, you have various allegations of fraud and misconduct interspersed in all this.

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You've got p.12. You've got various sealing resolutions from the council following the engineers report at p.13. This is where comments about people really commence. You've got allegations made at p.13 about Mr Buchanan. At p.14 you've got allegations made by Mr Buchanan and then there's a reference in the middle of p.14, "At the time of providing the guarantee I had the reasonable ... (reads) ... requirement upon Buchanan". Then there are allegations that the council let Buchanan off the hook which are made there, and that continues on to 15.

Then you've got extracts from the pleading and answers to interrogatories and if you turn over to - this goes on to extracts from reports, documents at 17, 18, and 19. Then at 20 you've got, "In April of 1982 I discovered Buchanan ... (reads) ... in these sales". Half-way down, "After discovering the ... (reads) ... to the police".

MASTER: Who prepared this?

MR GARDE: This is the plaintiff's.

MASTER: Who actually wrote this?

MR GARDE: Mr Thompson. This is all expressed in the first person. At 21 we've got the correspondence from the council relating to the fact that the water main should have been laid. There's a reference to the fact that on the rate records two of the lots have been sold, the owners have enquired of council when the works would be completed, considered the water main should be laid forthwith and the roadworks commenced. Then there's allegations that this is

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false, on 21. These allegations continue on 22, 23. Discussions between - his version of discussions with Mr Porter.

At 24 that notice be given, this is a resolution of the council which is fully set out and signed by the Chairman, obviously from the minutes, "Confirmed 14 July 1982 ... (reads) ... at his costs", so there's a resolution of the trust along those lines.

Then at 25 you'll see correspondence between the trust secretary and the plaintiffs. The trust consider it should proceed forthwith. That's a reference to the fact that the "sub allotments have been sold and there's no indication ... (reads) ... undertake the construction itself". Then at the next, 25(a) you'll see a further letter along those lines from the trust secretary to the plaintiffs. Then at 25(b) the resolution of the trust that - advising the plaintiffs that the trust intends to proceed to call the bank guarantee to pay for the installation of a water main to serve the approved subdivision. Then there's more correspondence advising of that in the traditional way at 26.

At 27 you'll see commentary from the first-named plaintiff in relation to all that, that it asserts that, "If the guarantees were called on I'd be forced to sell the land", and sets out his position. That continues for a number of more pages. At 29 he starts to list specific lies that he alleges. He alleges Mr Porter deliberately lied. At 30 he sets out his position that Porter was lying about the water supply.

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agreement. More allegations of that general type found on that page through to 32.

Then he turns to C1 he sets out the pleadings and I won't read all this out but it's a very lengthy commentary on the pleadings, the interrogatories, the answers to interrogatories and there are very comprehensive commentary which shows that he's absolutely fully across the matter and the complaints that he has which are expressed with considerable vehemence and with very significant allegations of lying, fraud and the like alleged against a whole variety of people. That's the basis of the Tylden Road action in the book of pleadings as it was available on the County Court file leading up to the trial of this proceeding.

We respectfully submit he has a very considerable state of knowledge and level of information about the Tylden Road action as demonstrated by his preparation of that document.

I have to correct one thing I said. My instructing solicitor informs me he was provided with that document by the plaintiffs. It's not the document that was on the file. It's a document that was provided to him by the plaintiffs. I correct that.

MASTER: It wasn't a document on the court file.

MR GARDE: Not on the court file but it was one provided to our instructing solicitor.

MASTER: That was provided around about 1980.

MR GARDE: It was provided - in March '99 it was provided to us.

MASTER: That's the end of that exhibit?

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