

p.14, "At the time of ... (reads) ... the following facts", and then he sets out about plans of subdivision so there's some 1987 behaviour of Mr Wilson that's relied upon by our learned friends and that's when that behaviour starts and ends. It's before he issues his 1998 proceeding and it's certainly well before he issues his second proceeding being the Woodleigh Heights proceeding.

The second complaint that's made in these paragraphs at p.14 is the witness says this, that - in sub-para (d), "Upon further examining ... (reads) ... of the road being constructed". He's relying upon one key document being the plan reference 79305G in saying when I found that it opened up the puzzle to me and what it told me, because these are the so-called new allegations, it told me there were breaches of the Sale of Land Act, it told me there were seven subdivisions, not five, it told me the plans the subject of the council's February 1980 resolution were not the ones sealed and sent to the titles office.

Let's see about when he first found out about those things because what we do know is he certainly knew all of those things at the time he made the handwritten notes in the documents in tab 43, every single one of them, and he even wrote them all down so we weren't in any doubt about it.

Despite all the affidavits Mr Thompson doesn't say is when he made these handwritten notes but we would so say that the inescapable inference that the court should and must draw is that they were made

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before this proceeding was settled in 1991 because there's no other reason one would annotate and make a book of pleadings, and we will invite you to quietly look through these annotations. I think you'll clearly form the conclusion that they must've been made before 1991.

If we start please with the page which is numbered 2 and I'll be pretty quick about this but it is important to go through them, I think, in sequence because it shows that the facts were known and also that the complaints that were now made about different lots of plan of subdivision were also known.

The first handwritten note at the top of the page, p.2, "On 12 February 1980 ... (reads) ... to the Local Government Act". If we then go to p.5 and you weren't taken to this handwritten note, this is very important, "Notwithstanding it was illegal ... (reads) ... notice of disposition opposite". One might say, why was it illegal, "in order to avoid the provisions of s.9 of the Sale of Land Act". Isn't that interesting, "which at that time ... (reads) ... of more than two allotments". Buchanan then lodged - what did he do? He lodged seven separate plans which were contrived, written in the plaintiff's own hand, to create several subdivisions of two lots each. This is the critical piece of information you're being told that this poor man didn't find out until 2000 and didn't realise that he had this great case.

If we then go over to p.6, at the top of the page he writes, "Buchanan lodged ... (reads) ... 4 March

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1980". That means the notices are notices after the 20 February resolution and he knows it because the new notices are dated 4 March 1980 and if we go over to the next page, p.7 at the top of the page, he says this, "The council served a separate ... (reads) ... 79305E-79305K". Within that sequence one would think would be letter G but we don't have to speculate because Mr Buchanan made his own note about plan G - Thompson, I'm sorry.

If we go over to p.10, the note says, "Buchanan therefore approached the council" and this is the letter from Buchanan of 7 March 1980 that says in the last paragraph, "Would it be ... (reads) ... may be lifted". Then if we go forward - I should have read at the top of p.8, "Mr Buchanan thought he'd exploited ... (reads) ... one plan showing each allotment". That's at the top of p.8. The bottom of the note says, I think you were taken to 569A by Mr Middleton, his clients note that not one of the plans submitted comply. So he knew that when he made that note. It's no wonder he wasn't very happy about what he thought have been a waiver of privilege.

If we then go forward, because I said to you that he knew about the particular plan which is number (g). If we go forward to C5.

MASTER: Yes, I have it.

MR DELANY: You'll see, "Note on the bottom of the previous box is incorrect as the plans were in fact seven in number". The error however is explained and continued in document discovered in defendant supplementary

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affidavit no.2, that is the discovery of the plans to which our instructing solicitor's affidavit refers, the plans he'd had since 1989, if you go down to the bottom of the page where he's set out an extract from the letter from the Shire of Kyneton, from Mr Wilson, you'll see 79305GHIJK identical. He's got (g) and he knows it's identical to all the other plans and he knows it's part of the sequence of plans, and if you turn back to page no.12 he's even be discovered by these so-called fraudulent council officers the engineers' report and the resolution which is carried for the sealing of the plans, and you'll see item (c) that, "Plan reference 79305G ... (reads) ... of the Local Government Act".

MASTER: He refers to it in his own writing.

MR DELANY: That's right.

MASTER: You go back to his affidavit and say he must've known this - - -

MR DELANY: All the things he relies on now, which were outlined to you, not only did he know but he made notes about, and what's more we've had a complaint about the giving of false evidence in the Magistrates' Court at Bendigo.

I invite you to have a look at document C4 - actually start with C3. What he's doing here is annotating the pleadings in the action. In the middle of the page he says, "The claim was derived from the evidence of the Shire's engineers given at the Bendigo Magistrates' Court", and then he says over at C4, "Discovery, however, indicates that council's ...

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(reads) ... 4 March 1980". Now, that's exactly the complaint that he now wants to make. He wants to say now they were dated March 1980 so they were later than the February ones and he also knows that they're separate plans from p.12 that I took you earlier to because each plan had a separate plan reference number.

The concealment, if there ever was any, was well and truly over; not only was the concealment over at the time of discovery in this proceeding but also it was known to him. So nothing was in fact concealed from him. If one says maybe the test is and it isn't but maybe it's when you find out, well, he found out then.

If we go forward to C9, this is the extract from the council minutes and remember Mr Middleton said he'd need to have the minutes and he'd need to have the plans. Well, he has the minutes. Council minutes, "This is about ... (reads) ... plans be sealed", and then there's a reference to three plans which are the - with two lots.

MASTER: Where are you reading from?

MR DELANY: About half-way down the page. It's got A reference 79305B, two lots, next one two lots, and so on.

MASTER: Yes, I've got it.

MR DELANY: If we go down below that we see that there's (g) and he knows that the industrial land is separately being dealt with in these two lot plans because item 6 starts off "Industrial lots", and the

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bottom section I was reading from just related to residential.

What he finds is he knows, which he says he didn't find out until 2000, that it's all part of a sequence of plans because the sequence is there set out in the council minutes and as we know the plans themselves have been discovered in 1989.

Can I take you to C12 and this is his critically new complaint, "Mr Buchanan had illegally sold two of the lots", now that's not his complaint but this is, "and had been able ... (reads) ... two lot subdivisions". Now, if there's a new complaint, which we say is antecedent to the real complaint, that's what it is.

If we just go back to C13, and I accept you'll need to look at these at your leisure.

MASTER: I will.

MR DELANY: Sorry, it's actually C15.

MASTER: Yes.

MR DELANY: You'll see, "Subsequently upon receipt ... (reads) ... Registrar of Titles".

I won't go to any further material there but what we would say is if you compare the handwritten notes made by Mr Thompson at a time that he's not decided to tell us about, although he's sworn a number of affidavits, but certainly we would say must be in 1991 before - at least prior to 1991 that they're exactly the same facts and not only the facts and the documents are available to him, he drew - if his case has got any legs or validity now, he drew what might

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Thompson