

finding more material to prove your case. So let's say I had one witness to prove a meeting and something was said. I know what was said. I've got one witness. I get five other witnesses. I can't come along to the court and say, well, I had to wait till I got five witnesses. That won't be any good. But I don't know there was that meeting existed, assuming that meeting was an important meeting for constituting the cause of action. I don't know, then the cause of action is not complete. That's our point, that's the distinction.

It's an important distinction. It's a distinction about material facts that one would plead to constitute your cause of action. The best way to think about it, in our respectful submission, is to think about it as a pleading.

MASTER: Applied here.

MR MIDDLETON: Applied here. We did not know that the subdivision was originally flawed and unlawful and we found that out in August 2000.

MASTER: Therefore?

MR MIDDLETON: Therefore then s.27 bites, we get the benefit of it. We say that must be right and the distinction between finding more facts and getting a stronger case is readily understood if one keeps in mind evidence and material allegations of fact.

Let's just think of a few examples. You've got a builder and an owner who have an ongoing relationship through a contract. In the course of that contractual relationship, the windows don't accord with the

.VTS:DT 15/11/05

Thompson