IN THE SUPREME COURT OF VICTORIA AT MELBOURNE.
COURT OF APPEAL – Civil Division.

Court Number: **6321 of 2005**

BETWEEN:

GLENN ALEXANDER THOMPSON
& CHERYL MAREE THOMPSON *Appellants*

- and -

MACEDON RANGES SHIRE COUNCIL *First Respondent*

- and -

THE COLIBAN REGION WATER AUTHORITY *Second Respondent*

APPELLANTS' OUTLINE OF SUBMISSIONS

Date of Document: - 24th June 2009.
Filed on behalf of: The Appellants
Prepared by: The Appellants

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1) If this Court is to make orders for indemnity costs then it must do so in the face of clear evidence that **(a)** Ms Michelle Elizabeth Dixon, Mr. J Delany SC and Mr. G Ahern for the Council and Mr. Steven Edward, Mr. Greg Garde QC and Ms S. Burchell for Coliban **carefully cooperated** with one another to mislead the Court. **(b)** Justice Osborn constructed Reasons for Judgment which fly in the face of the law and the facts before him, the effect of which was to ignore, deny conceal and/or otherwise make wrong the further fact, **known to him**, that Dixon et al and John Middleton had misled the Court. **(c)** The present application relies upon further misleading this Court.

2) That **(a)** Dixon et al, misled the Court, **(b)** Justice Osborn was aware that they misled the Court **AND (c)** Justice Osborn's Reasons **cohesively** fly in the face of the law and the facts before him, cannot be reasonably denied.

3) **In relation to Tylden Rd**, at paragraphs 82 to 85 of their Outline of Submissions dated 30th October 2006[1] Dixon et al represented that 2-lot plans of subdivision facilitate avoidance of section 9 of the Sale of Land Act 1962 ("s.9") and that a document, compiled by me and entitled "Book of Pleadings", contained evidence that at the time of compiling that document I was aware that s.9 had been avoided by means of these 2-lot plans of subdivision. (at para T7 the Amended SOC carefully alleged avoidance of the **EFFECT** of s.9, not avoidance of s.9).

4) At paragraphs 74 to 80 of that Outline Dixon et al represented that I had concluded these things from a "complete plan" of subdivision provided by the Council and that the Council had therefore openly disclosed that s.9 had been avoided by means of these 2-lot plans and thereby openly disclosed the cause of action.

[1] Book of Pleadings page G3. – This Outline was put to Justice Osborne at my appeal from the orders of Master Efthim.

5) **These representations were false. (a)** 2-lot plans did not and **could not** facilitate avoidance of s.9 or its EFFECT. **(b)** The "book of pleadings" expressly said that s.9 had not been avoided, it had been broken[2]. **(c)** It was not possible to avoid s.9 at all. **(d)** No document in existence or capable of existing, much less the "complete plans", can disclose that 2-lot plans facilitated avoidance of s.9. **(e)** Unlawful plans per se did not and could not comprise any part of the cause of action. **(f)** they relied upon ignore of the words "effect of" at para T7 of the Amended SOC. As outlined below Dixon et al fabricated their complete case and concealed it to the last minute.

6) **In relation to Woodleigh Heights**, at paragraphs 94 to 96 of the same outline Dixon et al further represented that *"the "reticulated water supply"..."* was laid in 1982 and that the Council had disclosed that fact by discovering a copy of "the 1982 Water Reticulation Agreement" in 1998. These paragraphs also represent that a letter written by me on 24th August 1987 disclosed that at that date I was aware that "the "reticulated water supply" had been laid in 1982 and not 1979."

7) **These further representations were false and deceptive**. Neither the Water Supply Agreement nor my 1987 letter[3] disclosed any evidence of the cause of action that the **water mains** for the water supply defined in the plans and submissions[4] referred to in clause 8 of Planning Permit 2191[5] ("the 1979 Water Supply") had **not** been laid in 1979. Dixon et al were also fully aware that the 1982 Water Supply Agreement was unlawful for the reasons set out in the Amended Statement of Claim and in my 1987 letter. Their representations relied upon misleading the Court that the question before it related to "a" water supply per se and not specifically the 1979 water supply. They also relied upon concealing/denying that the 1982 Water Agreement was overtly unlawful.

8) At the time of the hearing before Master Efthim I was represented by Mr. John Middleton QC (now Justice Middleton of the Federal Court) and Neil Adams of Counsel. For reasons best known to them Middleton represented[6] **(a)** that 2-lot plans facilitate avoidance of s.9. **(b)** that unlawful sealing per se constituted the cause of action. **(c)** that I was unaware of these things until 2000.

9) **These submissions by Middleton were carelessly false and misleading**. They flew in the face of the law, the facts, my affidavit, the Amended Statement of Claim, his own Outline of Submissions and my specific written instruction to him. Three days before the hearing I specifically advised him and Adams in writing that **I knew about the unlawful 2-lot plans in 1985** and that **they were irrelevant**. Four months before Judgment I wrote a very strongly worded letter to Middleton advising of his abject neglect and demanded refund of the $86,000 paid to him. I also correctly forecast that on the submissions made Master Efthim must come down against me.

10) In addition Dixon et al falsely represented that the causes of action in the present proceeding had been previously pleaded whereas, in relation to the matters and things constituting the true causes of action, the facts before them were: **(a)** in relation to Tylden Rd that the present proceeding pleaded that the Council had **omitted**

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[2] Appeal Book pages D-318 to D322

[3] Water Supply Agreement at Appeal Book D2167 -- 1987 letter at Appeal Book page D-1928

[4] Appeal Book D1984

[5] Planning Permit 2191 – Appeal Book D1983.

[6] Transcript 15th November 2005 at pages 35, 38, 44, 45, 70, 71 Appeal Book B TabB2

to serve the Notice of Requirement of 20th February 1980 while paragraph 7 of previous proceeding had squarely pleaded[7] that it **had been served**. **(b)** In relation to Woodleigh Heights the present proceeding pleaded that the reticulated water supply referred to in planning permit 2191 was **not present** in 1979 while the previous proceeding squarely pleaded[8] that the supply and mains **were present** in 1979. The present and previous proceedings were in fact mutually exclusive. Being mutually exclusive, polar opposite, causes of action the previous releases did not and could not encompass and bar the cause of action of the present proceeding.

11) The things set out in paragraphs 3 & 4 herein were not ascertainable from the Outlines and affidavits put to Master Efthim, as outlined below, they were concealed until put orally in the closing minutes of the second day. Master Efthim was misled and he adjudicated on these things to the exclusion of the true causes of action.

12) At the appeal before Justice Osborn I appeared personally and I specifically advised him of **the fact** of these misrepresentations by Dixon et al and Middleton. In addition, being aware of the operation of s.9 and the causes of action set out in the Amended Statement of Claim, Justice Osborn **was himself aware of the fact of the misrepresentations** made by Dixon et al and Middleton. I also advised Justice Osborn that Greg Garde QC had made previous misrepresentations in relation to the Water Supply Agreement and particularly that he had falsely represented it to be a lawful and enforceable agreement.[9] At pages 193 and 197 of the transcript of 1st November 2006, before Justice Osborn, Greg Garde QC repeated his earlier misrepresentations and added "... *under the water agreement the development company owned and operated the water reticulation system within the cluster subdivision...* ". **This was false and known to be false**. Inter alia, the agreement provided for supply to lands **not owned** by the company, the reticulation system was common property owned by the body corporate.

13) Justice Osborn was squarely faced with the fact of, **and my allegations** that; **(a)** the representations made by a number of "friends of the court", one of whom by that time was a Judge of the Federal Court, **were false** and did not address the true causes of action. **(b)** Master Efthim had made his decision squarely based upon the misrepresentations made before him. **(c)** Greg Garde QC, an apparent close "friend of the court" had squarely and **consistently** misrepresented the legal status of the Water Supply Agreement and the 1982 water supply.

14) Justice Osborn **could not** dismiss my appeal on the misrepresentations of Dixon et al, he instead acted as advocate for the Council and Coliban and introduced his own false arguments and then **fabricated** Reasons for Judgment which fly in the face of the law and the facts known to him. By way of non limiting example:

    a) Justice Osborn misrepresented the gravamen of both the previous Tylden Rd proceeding and the previous Woodleigh Heights proceeding. **(a)** In relation to the previous Tylden Rd proceeding, at his paragraph 104 and elsewhere he says the previous County Court proceeding specifically alleged that the Council **did not serve** any or any proper Notice of Requirement whereas the facts before Justice Osborn were that paragraph 7 of that Amended Statement of Claim specifically and unequivocally alleged that such notice, for roads and water, **was served**. Notably at table item (ii) at page 6 of her affidavit of 23rd September 2005

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[7] Present Amended SOC at paragraph T5. Appeal Book page A-9 - Previous SOC para 7 at Appeal Book page D-236

[8] Present Amended SOC at paragraph W10(b). Appeal Book page A22 - Previous SOC at paragraph 13 Appeal Book D-1558

[9] Appeal Book page G-126 to G129 and particularly subparagraph (v) at Appeal Book page G-129.

Dixon swore[10] that paragraph 7 of that previous Amended Statement of Claim alleged that such a notice **was served**. **(b)** In relation to the previous Woodleigh Heights proceeding, at his paragraph 148 Justice Osborn said: **(1)** it was the 1982 water supply to which the plaintiffs were denied access and **(2)** this denial formed the gravamen of the previous Woodleigh Heights proceeding. Whereas the facts before Justice Osborn were that the 1982 water supply was not lawfully provided and the gravamen in that proceeding was that I/my land had entitlement to the 1979 water supply and the Council and Coliban concealed that entitlement.

b) At his paragraph 160 Justice Osborn said of Planning Permit 2191, *"...Condition 8 does not impose a requirement which must be met prior to the sealing of the plans of subdivision"* whereas on the facts known to Justice Osborn the plans and submissions referred to in condition 8 contained all of the details of the cluster subdivision including number of allotments, size of allotments, common property details, roads, etc. These details were not defined anywhere else. Compliance was fundamental **and required by law**, Justice Osborn knew it. **His assertion was false**. This false assertion was necessary to his false assertions as to the 1982 water supply at his paragraph 148 and elsewhere and his **not** holding the 1982 water supply unlawful.

c) At his paragraph 117 Justice Osborn purports to transcribe relevant extracts from the "Book of Pleadings" and asserts that these extracts support his assertions at his paragraph 118 whereas these extracts do no such thing. Justice Osborn **omitted to transcribe** the numerous extracts which contradict his assertion. For example at the page numbered 9 of the "Book of Pleadings" I say "....a 'Notice of Requirement' had been served....."[11]. He knew the truth and that non service of the Notice of Requirement had been concealed.

15) Justice Osborn's reasons: **(a)** as to the releases depend upon his misrepresentations as to the gravamen of each of the previous proceedings. **(b)** as to service of the Notice of Requirement depend upon misrepresenting the previous Amended Statement of Claim and the "Book of Pleadings" and **omitting** relevant paragraphs from each. **(c)** as to the Water Supply depend upon misrepresenting need to comply with the Planning Permit and **not** holding that the 1982 Water Supply Agreement was unlawful. Justice Osborn's Reasons were **overtly wrong** in a carefully coordinated and calculated manner, he did not and could not hold either a reasoned or judicial belief as to his reasons, they ignore, deny and conceal the fact **known to him**, that "friends of the court" misled the court.

16) At subsequent proceedings before the Court of Appeal Dixon et al continued to mislead the Court: **(A)** On application for security for costs they represented that the judgments of Master Efthim and Justice Osborn were properly obtained and reached whereas the facts outlined herein were known to them. The Court ordered that I file security for costs. **(B)** By practice note number 2 of 1995 Dixon et al were required to compile a summary of facts. I requested orders that this requirement be complied with before settling the Appeal Book. Before Master Lansdowne, Ahern and Burchell represented that they could not agree with me as to the facts and causes of action whereas the fact known to them was that they could not state the facts without exposing their misrepresentations. Master Lansdowne excused them from compliance with practice note number 2. A further **chance for truth was lost** by the Court relying on the further misrepresentations of Ahern and Burchell.

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[10] Appeal Book page C-15

[11] Appeal Book page D-323

17) I recognized that I, Glenn Thompson, citizen, stood no chance against silk that mislead the courts with a clear and well grounded sense of immunity and impunity. My grounds of appeal required the Court to make judgment on friends of the court and a brother judge. I attempted to engage silk with the **integrity and courage** to put the facts to the Court. I was unsuccessful in that regard and abandoned the appeal in favour of addressing the core problem, **dishonesty in this court.** I have now laid appropriate information with the police and the Attorney General regarding in particular the conduct of Dixon et al and Justice Osborn. My allegations include **conspiracy** and **perverting the course of Justice.**

18) After I abandoned my appeal Edward and Garde made application for indemnity costs on the grounds that my allegations were unfounded and that I had vilified officers of the court. The hearing came on before Justices Neave and Mandie. I provided submissions whereby **they could not find my allegations unfounded.** For specious reason they declined to adjudicate on the grounds of the application and instead, like Justice Osborn, raised grounds of their own, namely, given the findings of Justice Osborn that the claims were the subject of full and complete releases, the appeal must be regarded as being one that was hopeless. The ground adopted by them relied upon an aspect of Justice Osborn's Reasons which, **they were on notice**, specifically flew in the face of the facts, namely Justice Osborn's misrepresentations as to the gravamen of the previous proceedings and that the releases extended to the present proceeding. Their reason for declining to adjudicate on the grounds of the application was specious; manifestly, determining whether an allegation is unfounded or not does not determine the allegation. They were on notice as to the things set out in this outline. They chose to avert their eyes.

19) In recent months I have conducted a forensic examination of the conduct of Dixon et al. In summary the evidence that will be provided at the hearing of this application demonstrates that they **could not** mount a case on the true facts and causes of action. They instead, **very carefully cooperated** with one another in **fabricating, concealing and then executing** their joint misrepresentations before Master Efthim. In relation to Tylden Rd:

(A) They fabricated a case around 2-Lot plans, s.9 and the "Book of Pleadings". **(B)** Edward swore affidavits to legitimize his wrongful possession of the "Book of Pleadings". **(C)** Edward exhibited the "Book of Pleadings" secreted within 1795 pages of substantially extraneous exhibits (@ $1.50 a page). **(D)** To introduce the "Book of Pleadings" while concealing the purpose of it Garde and Burchell authored **nonsense** outlines of submission which referred to the "Book of Pleadings" but benignly and **deceptively** said "*the handwritten notes reflect what the plaintiff has deposed*". **(E)** In her affidavits of 23rd September and 28th October 2005 Dixon provided a table of pleadings COMMON to the previous and present proceedings and she provided what she said to be her "**understanding**" of what I had said in my affidavits. **(F)** Dixon's and Edward's affidavits then proceeded to demonstrate that the words, which by her "understanding" Dixon had, for deceitful purpose, placed in my mouth, were false. **(G)** Dixon et al then prepared an Outline of Submissions dated 9th November 2005 which morphed the things contained in Dixon's affidavits into outright misrepresentations. In their Outline the table of COMMON allegations became a table which demonstrated that the previous and present proceedings made the SAME allegations. Dixon's "understanding" of what I said became express statements by me. **(H)** During this process not one of the documents or lawyers intimated what matters and things constituted the causes of action

which they alleged offended limitations, Anshun and/or res judicata. They instead used euphemisms such as "fresh allegations", "the allegations", "the events", "the claims sought to be advanced" and so on and so on. **(I)** By these euphemisms Dixon et al concealed their intended misrepresentations leaving me and my lawyers to believe that their affidavits and Outline related to the things constituting the true cause of action, namely **omitting** to serve the Notice of Requirement of 20th February 1980. **(J)** At the hearing before Master Efthim, in their opening submissions they did not articulate anything giving a clue as to their planned misrepresentations. **(K)** Delany led off but said nothing of consequence and used euphemisms and allusions. **(L)** Garde came next, he introduced the "Book of Pleadings", he read part of it but made no allegations at all other than I had comprehensive knowledge. **(M)** John Middleton QC, possibly beguiled by Delany's allusions, then responded but carelessly/recklessly/negligently and squarely misrepresented the law, me personally and my case.

(N) Then Delany replied, and for the first time, five minutes before the bell, for Dixon et al, he disclosed their **carefully planned and, until then, concealed** misrepresentations in relation to s.9 and the "Book of Pleadings".

20) If the misrepresentations by Dixon et al were as a consequence of incredibly coordinated collective neglect, rather than deceit, they would have boldly led with their case based on the "Book of Pleadings". They did not!

21) Dixon et al weren't so reticent before Justice Osborn, with a Judgment in the bag **they boldly set out** their misrepresentations (vide para 3 & 4 hereof) in their Outline dated 30th October 2006. Had they done this in their initial outline and affidavits before Master Efthim instead of deceitfully using euphemisms and concealing the purpose of the "Book of Pleadings" and their planned misrepresentations we would not be here today.

22) Dixon et al brought false strike out proceedings founded in deceit. Justice Osborn was aware of this fact but he protected them from that fact and the consequences of my specific allegations as to that fact. Subsequently Justice Neave and Mandie were on notice as to these things but they chose to avert their eyes. Any court where lawyers can and do mislead it with impunity because the court protects them and/or looks away is a sham. On the conduct of this matter to date **the Supreme Court is a demonstrated sham**, a kangaroo court. The present application could only be made in surety of impunity and immunity, the facts must be known to the deponent Ms Jacqueline Partridge; she was privy to the conduct of the proceeding and was present in Court. The Council's outline of 15th June 2009 is signed by Ahern and Maddocks; they each know that outline to be further deceit.

23) **With due respect to this Honourable Court** <u>as presently constituted</u> the Supreme Court per se is now on <u>further</u> **notice** as to the deceit of Dixon et al and the conduct of itself to date and in particular Justice Osborn.

24) Dixon et al exploited the trust of the Court of Master Efthim, which ought be entitled to believe silk, and won. The Supreme Court, via Justice Osborn, concealed that fact and dishonestly delivered Judgment to them. So far Dixon et al have been <u>REWARDED</u> <u>and paid</u> half a million dollars for their deceit. They have a further third of a million pending. **They ought not to be awarded more**. This present Court ought (A) **Recommend** <u>**independent**</u> **inquiry** into the conduct of this matter. (B) **Reject** the present application. (C) **Refuse** to tax outstanding costs until that inquiry is complete; <u>**AND**</u> (C) **Make such other orders** commensurate with the fact that Dixon et al <u>**carefully cooperated**</u> to deceive the Court of Master Efthim AND that the Supreme Court has been aware of, and **accessory to**, that fact since Justice Osborn became well aware of it. **The Court is presently well compromised.**

GWENN THOMPSON 24/6/2009.