

122 Further in my view the "holistic" view of s.9 of the SLA put forward by the plaintiffs adds nothing of relevance to the self-evident proposition that unless notices were validly given under s.569E(3) LGA, no effective requirement would be imposed on the owner/subdivider.³³

123 Indeed the better view is that s.9 of the SLA was primarily directed to avoiding the possibility a series of terms contracts could come into existence, with respect to one lot in a plan of subdivision when there was no certificate of title available to that particular lot.³⁴

124 It was s.569E(3)(e) of the LGA which prevented approval by the Registrar of a plan of subdivision when a valid s.569E requirement was not stated to be complied with.

Concealment

125 There is a further fundamental problem confronting the plaintiffs' case as to fraudulent concealment of relevant facts.

126 The black folder comprised documents discovered in the County Court proceedings. In this regard I accept the conclusions of Master Efthim at paragraphs [53] and [54] of his decision.

"53. It is clear from Mr. Thompson's first affidavit that critical documents from the black folder which led to this matter being

³³ This is not to deny that the provisions of the LGA were relevant to the mischief the SLA sought to address. Voumard, *The Sale of Land in Victoria*, 4th ed. states at 553:

"Also because of defects in the provisions of the Local Government Act relating to the sale and conveyance or transfer of land, subdividers frequently accepted deposits and sold land before the plan of subdivision was sealed by the local municipal council. They proceeded in the expectation that the plan would be sealed within the time prescribed by the *Local Government Act*. In most cases as this period proved to be unrealistically short, their hopes were not fulfilled and in the terms of the legislation the contract became void and of no effect. Any person who had paid any money under such an agreement was entitled to recover the amount he had paid.

However, often by the time a purchaser realised that his contract was void and sought a return of his deposit his vendor had become insolvent or disappeared. Where purchasers had resold the land there could be in existence numerous contracts which in themselves were not void but were dependant upon a contractual transaction which had become void."

Further, as Voumard points out, the LGA did not require investigation of title by councils, before plans of subdivision were sealed.

³⁴ See Voumard, *The Sale of Land in Victoria*, 4th ed., 553.