

- 25) The sum claimed by the Council includes rates and interest.
- 26) The Defendants say that the Council is prevented by section 5 of the Limitations of Actions Act 1958 from instituting a proceeding to recover that part of the interest which arose more than six years prior to the institution of the present proceeding and is further precluded from claiming compound interest on that interest.
- 27) The Defendants say that the Council is prevented by section 5 of the Limitation of Actions Act 1958 from instituting proceedings to recover those rates which may be lawfully due but which preceded the present proceeding by more than six years.
- 28) **An alternative and/or additionally equitable setoff.**
- 29) In the alternative and/or additional to the setoffs pleaded above and in the circumstances where the right to equitable setoff is extinguished by fluxion of time the Defendants say that the rates and interest lawfully due up to and including about 1997 have already been setoff.
- 30) In its application for summary judgment in the 2005 proceeding the Council alleged that the Defendants became aware of the cause of action in relation to the Tylden Rd land in 1991.
- 31) On the representations of the Council time within which the Defendants could begin an action to recover the damages resulting from that cause of action was at any time up until about 1997.
- 32) The Defendants first refused to pay rates in about 1984 as a consequence of the things being done by the Council and Water Authority and particularly the fraudulent representation that WHRD owned and operated the water supply and reticulation system to the Woodleigh Heights Land.
- 33) The defendants have at all times claimed setoff as against the damages done and the defendants say that each rate lawfully levied and due up to about 1997 was in fact equitably setoff as and from the time each rate was levied.
- 34) **This Court does not have jurisdiction to determine this matter in favour of the Council.**

- a) If the Court accepts any one or more of my other grounds for defence then the question of the legitimacy of the rates purportedly levied does not necessarily arise however if the Court does not accept any one of my other grounds for defence then the defendants say that this Court does not have jurisdiction to determine as to whether or not the Council was empowered to levy at least part of the purported rates now claimed.
- b) The purported rates presently claimed includes rates which were purportedly levied during the period about 1983 until 1991 on land described by the Council as Lot 1 LP 135199, Lot 2 LP 135200 and lots 3 to 6 LP 135201 and during the period 1992 until the present on Lot 1 LP 134684
- c) The land purportedly rated during the period 1983 until 1991 never existed except as allotments on unlawful plans of subdivision which were contrived by the developer and unlawfully sealed by the Council for the purpose of avoiding the provisions of section 9 of the Sale of Land Act 1962.
- d) The Council is estopped from denying that the said plans were contrived and sealed for the purpose of avoiding section 9 of the Sale of Land Act 1962.

Particulars.

- i) In its application for summary judgment of the 2005 proceeding the Council asserted that the plans were contrived for the purpose of avoiding section 9 of the Sale of Land Act 1962.
- e) Each of the contrived plans was endorsed to the effect that a requirement pursuant to s569E of the Local Government Act 1958 had been made and even if lawful the Registrar of Titles was prevented from approving the plans.
- f) Each of the contrived plans was also in breach of section 97 of the Transfer of Land Act in that none of the plans showed all of the allotments into which it was intended to subdivide the parent title.

- g) The Lodged Plans 135199, 135200 and 135201 were never approved by the Registrar of Titles and the land being the allotments set out on them never existed lawfully or at all.
- h) The defendants say and allege that the Council did not and could not validly rate those allotments which were set out on the contrived plans and which land never existed as allotments on plans capable of being approved by the Registrar of Titles.
- i) The defendants further say that the rates purportedly levied in relation to the allotments set out on the unlawful were levied for fraudulent purpose, namely to provide verisimilitude to the conspiracy to avoid section 9 of the Sale of Land Act 1962.
- j) The Local Government Acts of 1989 and 1958 only empowered the Council to rate land, not allotments set out on unlawful plans contrived to avoid the law and which plans could not be lawfully processed so as to create or define a parcel of land capable of being separately owned, used or rated.
- k) The defendants say that section 183 and 184 of the Local Government Act only apply in relation to rates levied on actual land and not to allotments set out on unlawful plans which could not be lawfully processed so as to create actual ratable land capable of being either owned, occupied or rated.
- l) The Council has previously issued two proceedings in relation to these purported rates and in the case of proceeding D32 of 1988 in the Magistrates Court at Kyneton the Council refused to comply with discovery and then withdrew once orders for discovery were made. In the case of the proceeding 212 of 1991 in the Magistrates Court at Kyneton the Council again withdrew and from then on ceased purporting to rate the allotments set out on the unlawful plans and instead began to rate the parent title.
- m) The defendants say that this Court is precluded by s.100(2) of the Magistrates Court Act 1989 from determining as to whether or not these non existent lands were validly rated or, not fraudulently rated, or rated at all.

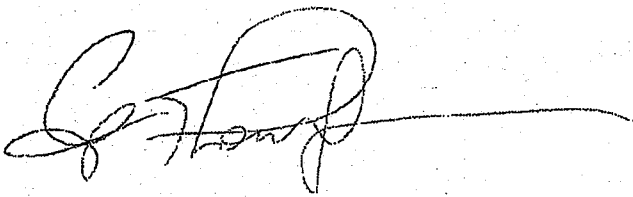
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n) The Defendants say that the Supreme Court is the only valid jurisdiction to determine as to whether or not the allotments set out on the unlawful plans constituted ratable land capable of being owned, occupied, lawfully transferred and rated at all.

o) As this court cannot assert that the allotments on the unlawful plans constituted ratable land or land at all then it cannot determine this proceeding in favour of the Council.

35) If this Court determines that it does have jurisdiction the defendants allege those things set out in subparagraphs (a) to (h) above and say that this court should find that the land purportedly rated during the period about 1984 to 1991 did not exist and the rates on the said allotments were not validly levied or levied at all.

Filed 22<sup>nd</sup> September 2009



Signed by Glenn A. Thompson (First Defendant).

The address of the Defendants is

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The address for service of the defendants is as above.