

1 HIS HONOUR: And it follows that if that were the case, then
2 they were ultimately registered as - in consequence of
3 that unlawful sealing?
4 MR THOMPSON: Yes.
5 HIS HONOUR: What that means in terms of s.9 might be
6 debatable, but you can explain to me what you do or don't
7 say.
8 MR THOMPSON: Perhaps let's look at it another way. I also
9 make at Paragraph - sorry, W8 of the amended statement of
10 claim - - -
11 HIS HONOUR: Yes.
12 MR THOMPSON: - - - I also make the allegation that s.9 of the
13 Sale of - the effect of s.9 of the Sale of Land Act was
14 also avoided in relation to the Woodleigh Heights
15 subdivision. Now what's interesting about the Woodleigh
16 Heights subdivision, and this sort of places it in
17 context - - -
18 HIS HONOUR: But that's the same proposition in a sense, isn't
19 it? What you say about the cluster subdivision is that
20 on your interpretation of the planning permit it was
21 unlawful that Council would seal it?
22 MR THOMPSON: No, no that's not what I say sir.
23 HIS HONOUR: That you say - - -
24 MR THOMPSON: That's not what I say at all. No, what I say is
25 that - now first of all I'll just make the point that in
26 relation to a cluster subdivision there is no such thing
27 as unlawful two lots plans of subdivision, you can't do
28 the same thing as what was done in respect of Tylden
29 Road.
30 HIS HONOUR: Yes, that's not what I was putting to you
31 Mr Thompson. You say it was in breach of the planning

1 permit because - as I understand it, because there was no
2 articulated water supply.


3 MR THOMPSON: Yes. Yes, that's correct.

4 HIS HONOUR: Yes.

5 MR THOMPSON: It was in breach of the planning permit.

6 HIS HONOUR: That's what you say.

7 MR THOMPSON: Yes.

8 HIS HONOUR: Yes, and it depends on construction of the
9  planning permit as to whether that's right, but that's
10 not the sort of question that would be resolved at this
11 stage.

12 MR THOMPSON: No, that's quite right, and I understand that.
13 See the thing in question here is, at the moment is
14 whether or not my allegations on the face of it, were
15 fraudulently concealed and/or res judicata and Anshun
16 apply is my understanding of the situation. Is
17 that - - -

18 HIS HONOUR: Well I think it's simpler than that.

19 MR THOMPSON: Sorry?

20 HIS HONOUR: In relation to Woodleigh it seems to me on the
21 face of it the release is a complete bar to your claims.

22 MR THOMPSON: On the face of it yes. However, you see what is
23 interesting here is that in respect to the present
24 statement of claim at Paragraph W10 I say that the water
25 supply was not there and - - -

26 HIS HONOUR: It doesn't matter.

27 MR THOMPSON: - - - in respect to Woodleigh Heights this is and
28 all - - -

29 HIS HONOUR: How does that matter?

30 MR THOMPSON: Well all else in the present statement of claim
31 in respect to Woodleigh Heights flows from that. In the