

IN THE SUPREME COURT OF VICTORIA AT MELBOURNE  
COURT OF APPEAL  
CIVIL DIVISION

No. 6321/2005

BETWEEN:

**GLENN ALEXANDER THOMPSON  
and CHERYL MAREE THOMPSON**

Appellants

-AND-

**MACEDON RANGES SHIRE COUNCIL**

First Respondent

-AND-

**THE COLIBAN REGION WATER AUTHORITY**

Second Respondent

**AFFIDAVIT IN SUPPORT OF SUMMONS FOR INDEMNITY COSTS**

---

Deponent: Steven Mark Edward  
Date of Document: 22 July 2008  
Filed on behalf of: The Second Respondent  
Prepared by:

**Mason Sier Turnbull**  
Lawyers  
315 Ferntree Gully Road  
Mount Waverley VIC 3149

Solicitor's Code: 6907  
Tel: 03 8540 0200  
DX: 32001 Mt Waverley  
Ref: Steven Edward


---

I, **STEVEN MARK EDWARD** of 315 Ferntree Gully Road, Mount Waverley, in the State of Victoria, Solicitor, **MAKE OATH AND SAY** as follows:

1. I am a solicitor in the sole employ of Mason Sier Turnbull and I have the care and conduct of this appeal on behalf of the Second Respondent.
2. I make this affidavit from my own knowledge.

**GROUNDS FOR THE COSTS ORDER SOUGHT***Procedural History*

3. By Writ dated May 2005 and Amended Statement of Claim dated 4 November 2005, the Appellants claimed damages, interest and costs on the basis of numerous allegations against the Respondents of fraud, alleged fabrication of plans of subdivision under the *Local Government Act 1958* (Vic) and the misuse of public office in respect of land known as the Tylden Road residential and industrial lots and the Woodleigh Heights Estate. A copy of the Writ dated May 2005 and Amended Statement of Claim dated 4 November 2005 are found in the Appeal Book Volume 1 at pages A1 to A41.
4. By Summons dated 20 September 2005, the Second Respondent sought orders before Master Eftim against the Appellants that the proceeding be dismissed or permanently stayed as against it under Rule 23.01 of the Supreme Court Rules, alternatively, that the proceeding be dismissed or permanently stayed as against the Second Respondent as frivolous, oppressive and an abuse of process and costs of and incidental to the proceeding and of the application on an indemnity basis. A copy of this summons is set out at Appeal Book Volume 1 at pages A54 to A55.
5. It was alleged by the Second Respondent that the proceeding was an abuse of process in circumstances where the Appellants sought to:
  - (a) re-agitate issues which were raised and resolved upon settlement of earlier proceedings between the parties and subject to releases in favour of the Respondents in both the County Court proceeding summons no 880949 issued on 7 November 1988 and Supreme Court action no 7966 of 1995 issued on 26 October 1995;
  - (b) agitate as the subject matter of the present proceedings claims which were so closely connected with the subject matter of the earlier proceedings that it was not open to the Appellants to bring on new



claims such that the doctrines of res judicata and the principles of law set out in *Port of Melbourne Authority v Anshun Pty Ltd* (1981) 147 CLR 589 applied; and

- (c) agitate claims which were statute barred pursuant to s. 5 of the *Limitations of Actions Act 1958* (Vic).

A copy of the submissions made by the Second Respondent is set out at Appeal Book Volume 1 at pages A 59 to A75. The legal considerations are found at paragraph 13 of the submissions at Appeal Book Volume 1 at page A63.

6. On 23 September 2005, the First Respondent issued a similar application returnable before Master Efthim. A copy of the First Respondent's summons is set out at Appeal Book Volume 1 at pages A 56 to A58.
7. The Respondents' applications for summary judgment were successful in the first instance as set out in the reasons for decision of Master Efthim in *Thompson & Anor v Macedon Ranges Shire Council & Anor* dated 15 May 2006 in this proceeding. A copy Master Efthim's judgment is set out at Appeal Book Volume 10 at pages E1 to E27.
8. On 19 May 2006, Master Efthim made orders that the Appellants pay the Respondents' costs on an indemnity basis. A copy Master Efthim's order is set out at Appeal Book Volume 10 at pages F1 to F2.
9. On 19 May 2006 the Appellants filed a notice of appeal from a judgment and on 23 May 2006 they filed a notice of appeal from an order of a Master. A copy of the notice of appeal filed 19 May 2006 is set out at Appeal Book Volume 10 at page G1. A copy of the notice of appeal filed 23 May 2006 is set out at Appeal Book Volume 10 at page G2.

Handwritten signatures in black ink, appearing to be 'S. L.' and 'S. S.'.

10. On 29 November 2006 Justice Osborn published his reasons cited as *Thompson & Anor v Macedon Ranges Shire Council & Anor* [2006] VSC 458 in which the Respondents' applications for summary judgment were upheld on appeal. A copy Justice Osborn's judgment is set out at Appeal Book Volume 11 at pages I1 to I58.

11. On 7 December 2006, Justice Osborn ordered that the Appellants pay the Respondents' costs on an indemnity basis. The Second Respondent submitted that:

- (a) Not only had the Appellants made unfounded fraud allegations against the Second Respondent but also in the oral submissions made by the First Appellant and in the Appellants' written submissions, they made further allegations of fraud, conspiracy, deceit and perjury against the Respondents.
- (b) In Part 1 of the written submissions, allegations of fraud and misconduct were made against their former counsel.
- (c) Part 2 of the Appellants' submissions extensively vilified the Second Respondent's counsel and instructing solicitor, the First Respondent's counsel, Mr Delany SC and Mr Ahern, and the Appellants' former counsel, the now Honourable Justice Middleton.
- (d) Similar allegations of fraud, scandalisation and vilification of the Court and legal representatives was made by the Appellants in their Costs Submissions dated 8 December 2006 (sic).

A copy of the Appellants' Submissions Part 1 is set out at Appeal Book Volume 10 at pages G60 to G117 and a copy of Part 2 is set out at Appeal Book Volume 10 at pages G118 to G176. Now produced and shown to me and marked **SME-60** is a copy of the Costs Submissions.



12. His Honour's orders of 29 November 2006 and 7 December 2006 were re-issued on 31 May 2007 in accordance with the slip rule. A copy Justice Osborn's orders are set out at Appeal Book Volume 11 at pages J1 to J3.
13. On 21 December 2006, the Appellants filed a 14-page notice of appeal against the whole of the judgment and orders of Justice Osborn. A copy of the Notice of Appeal is set out at Appeal Book Volume 11 at pages K1 to K14.
14. By summons filed 15 June 2007 by the First Respondent and by summons filed 9 July 2007 by the Second Respondent, the Respondents sought orders for security for costs of the appeal.
15. On 5 September 2007, Justices Buchanan and Redlich ordered that the Appellants provide security for costs of the appeal of the respective Respondents in an amount of \$30,000 by payment into Court or in a form acceptable to the Prothonotary on or before 4.00pm on 5 October 2007. A copy of the orders made on 5 September 2007 is set out at Appeal Book Volume 11 at page L1. Now produced and shown to me and marked **SME-61** is a copy of the ruling of Justices Buchanan and Redlich.
16. On 29 May 2008, the appeal was fixed for hearing for 19 August 2008. Now produced and shown to me and marked **SME-62** is a copy of the letter of 29 May 2008.
17. On 23 June 2008, the Appellants served on the Second Respondent a notice of change of address for service, being care of Isakow Lawyers, and a notice of discontinuance by the Appellants. Now produced and shown to me and marked **SME-63** is a copy of the notices.
18. There was no prior advice or suggestion that the appeal would be discontinued, and no explanation for the discontinuance has been given.



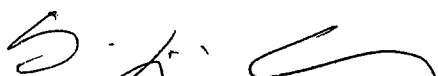
*Appellants' Conduct of the Appeal*

**(1) The Notice of Appeal**

19. In the Appellants' notice of appeal dated 21 December 2006, the Appellants make various allegations about false admissions, concealment of fraud, fraudulent representations, fraud of the Respondents and misconduct by his Honour.
20. A copy of the Appellants' notice of appeal dated 21 December 2006 is set out at Appeal Book Volume 11 at pages K1 to K14.
21. Examples of the various allegations mentioned above are as follows:

	<b>Description</b>	<b>Para Reference</b>
1.	<b>False admissions:</b> The Appellants allege that the Respondents on four separate occasions made false admissions to paragraph 7 of the Statement of Claim and Amended Statement of Claim in the previous Tylden Road proceedings and concealed the fact that the section 569E Notice of Requirement had never been served.	1(b)(ii)
2.	<b>Concealment of Fraud:</b> The Appellants submit that the Respondents concealed both the fact of the false evidence and false admissions.	1(b)(ii)
3.	<b>Fraudulent representations:</b> Each of the previous proceedings was predicated on the fraudulent misrepresentations of the Respondents.	1(e)(ii)-(viii)
4.	<b>Fraudulent Concealment:</b> The releases from the proceedings are based on facts which were specifically	1(e)(xiii)

	concealed at the time of the purported releases.	
5.	<b>Fraud of Respondents:</b> The facts alleged in the previous proceedings were not facts, they were falsehoods, fabrications and thought to be fact by the Appellants but known to be misrepresentations by the Respondents.	1(e)(xv)
6.	<b>Fraud of Respondents:</b> Subject matter of previous proceedings existed in the fraud of the Respondents.	1(e)(xvi)-(xviii)
7.	<b>Misconduct of His Honour:</b> Justice Osborn made his orders in the full knowledge that his reasons were substantially wrong and not in accordance with the evidence before him.	1(g)
8.	<b>Fraud of Respondents:</b> The First Respondent had lied to the Magistrates Court and the Supreme Court and had falsified documents for the purpose of misleading the Court and concealing the facts.	4(a)(13)
9.	<b>Fraud of Respondents:</b> False evidence given in the Magistrates Court and the Supreme Court and false admissions of both respondents to paragraph 7 of the Statement of Claim and the appellants' allegations of statutory fraud and fraudulent conduct.	5(c)
10.	<b>Fraud of Respondents:</b> The allegations of the previous proceedings were based on the false representations of the Respondents and that the Respondents continued to conceal the falsity of those representations by mounting sham defences including false admissions in each of the previous proceedings. The present proceeding is predicated on the facts which were previously concealed by	5(d)-(e)




	the Respondents.	
11.	<b>Fraud of Respondents:</b> The supposed facts are all falsehoods which were known only to the Respondents.	6(b)(v)
12.	<b>Misconduct of His Honour:</b> Grounds for a reasonable public belief or public apprehension that his Honour was biased against the Appellants, was prejudiced against the Appellants, pre-determined the matter and justice was not done.	7(c)(i)-(iv)

**(2) Outline of submissions dated 22 August 2007**

22. In the Appellants' outline of submissions dated 23 August 2007 in opposition to the Respondents' application for security for costs, the Appellants vilify the Court and the legal representatives of the Respondents and also make allegations of fraud against the Respondents. Now produced and shown to me and marked **SME-64** is a copy of the Appellants' outline of submissions dated 23 August 2007.
23. The Appellants assert at paragraphs 24 to 25 of the 22 August 2007 submissions that the Honourable Justice Osborn "fabricated" orders made in this proceeding deliberately to prejudice the First Appellant.
24. The submissions as to the allegations of fraud and misconduct are as follows:

	Description	Para Reference
13.	<b>Fraudulent concealment:</b> The Appellants allege that the necessary fraudulent concealment for section 27 of the <i>Limitations of Actions Act</i> was manifestly present.	15(b)



14.	<b>Concealment of Fraud:</b> The Appellants submit that the Respondents have fraudulently concealed the matters and things giving rise to the cause of action.	15(d)
15.	<b>Vilification of Legal Representatives:</b> The solicitors and barristers for the Respondents did not identify the facts pertinent to the questions before the Court. They instead obscured those facts by deception and obfuscation. They then concocted false argument, which specifically deceived the Court.	15(e)
16.	<b>Vilification of Legal Representatives:</b> The Appellants' counsel did nothing to dispel, but instead provided verisimilitude to the deceptive submissions of solicitors and counsel for the Respondents.	16(a)
17.	<b>Misconduct by His Honour:</b> Justice Osborn personally elected to act outside his authority.	17
18.	<b>Mala Fides:</b> The amended statement of claim contains allegation, which demonstrate mala fides.	18(a)(ii), 18(i), 19
19.	<b>Misfeasance:</b> The amended statement of claim alleges that things have been done either maliciously or with reckless disregard.	18(c)
20.	<b>Fabrication:</b> Paragraphs T5 and T12 of the amended statement of claim allege that the section 569E Notice of Requirement was never served and was fabricated.	18(d)
21.	<b>Fabrication:</b> Paragraph T5 of the amended statement of	18(g)(i)

	claim allege that the section 569E Notice of Requirement was never issued and served and paragraph T12 states it was fabricated.	
22.	<b>Malice:</b> The plans of subdivision and cluster of subdivision were sealed with either malicious knowledge or careless disregard.	18(h)
23.	<b>Vilification of Legal Representatives:</b> The solicitors and barristers for the Respondents relied upon deception by falsehood, omission and obfuscation so as to specifically conceal or obscure the true issues.	21, 21(a), 21(b), 21(c)
24.	<b>Vilification of Legal Representatives:</b> Master Efthim was deceived by two Queen's Counsel, two junior Counsel and a bevy of lawyers and this deception was provided verisimilitude by the neglect of the Appellants' Counsel and solicitor in failing to follow the First Appellant's written instructions.	22(b)
25.	<b>Fraudulent Concealment:</b> The fact that the notice had never been either issued or served was fraudulently concealed from the Magistrates Court and the Supreme Court and the First Appellant and was concealed for the purposes of obtaining false judgment and concealing the present cause of action and the County Court and the Appellants were deceived by false admissions and deceptive discovery.	22(d)(vi), 22(d)(x), 22(d)(xiv) (pages 10, 11, 12)
26.	<b>Vilification of Legal Representatives:</b> The solicitors and barristers for the Respondents deceived Master Efthim.	22(d)(xvii), 22(f)(ii), 22(2),

		22(2)(b)(i) (pages 13, 14)
27.	<b>Fraud of Respondents and Vilification of Legal Representatives:</b> Paragraphs W20 to W71 of the amended statement of claim alleges that the water supply provided in 1982 was supplied in fraudulent circumstances and used for the purpose of fraud. The illegality was well known to Senior Counsel for the Second Respondent and was or ought to have been known to the other solicitors and barristers for the Respondents.	22(f) (page 15)
28.	<b>Vilification of Legal Representatives:</b> Paragraph 88 of the First Respondent's outline of submissions dated 9 November 2005 is an outright falsehood and deception. Every oral submission given in support of that submission is a further utterance of that falsehood and deception.	22(3) (page 16)
29.	<b>Vilification of Legal Representatives:</b> Submissions made by the Respondents' solicitors and barristers were false, misleading, deceptive and crafted to obfuscate and mislead.	22(6), 22(8), 22(9) (page 17)
30.	<b>Vilification of Legal Representatives:</b> The solicitors and barristers for the Respondents repeated their deceptive submissions before Justice Osborn. The Appellants' Part 1 and Part 2 submissions set out and allege the deception and the serious misconduct of Senior Counsel and the solicitor for the Second Respondent.	23(b)
31.	<b>Misconduct by His Honour:</b> Justice Osborn manufactured facts by himself without notice.	23(2), 23(d) (pages 27,




		28)
32.	<b>Misconduct by His Honour:</b> Justice Osborn acted outside his authority and unfairly and unjustly and for the apparent purpose of finding against the Appellants.	23(f) (page 28)
33.	<b>Fabrication of orders by His Honour:</b> The purported authenticated orders appear to have been fabricated and the effect of that fabrication was to nullify or make wrong the First Appellant's allegation that Justice Osborn's orders were made in the knowledge of the matters and things set out in the Appellants' costs submission.	24, 25 (pages 30-36)
34.	<b>Vilification of Legal Representatives:</b> The solicitors and barristers for the Respondents have a vested interest in preventing the appeal from ever being heard as they are required to expose their own deception and misrepresentations.	31, 32, 33 (page 36)
35.	<b>Fraudulent concealment:</b> The attributes of fraudulent concealment for section 27 relief.	36(d)(i) (page 39)
36.	<b>Vilification of Legal Representatives:</b> The Solicitor for the Second Respondent used methods intended to intimidate and in circumstances, which were known to him to be wrong and unethical re the Second Defendant's taxation of costs.	36(iv)(3) (page 40)
37.	<b>Vilification of Legal Representatives:</b> The Solicitor for the Second Respondent used specific and deliberate untruths and false affidavits.	36(iv)(4) (page 40)
38.	<b>Vilification of Legal Representatives:</b> The Respondent's	36(vi)(2) (page 41)

	assertions about resiling from previous terms of settlement are simply false and misleading.	
39.	<b>Vilification of Legal Representatives:</b> Endemic deception practiced by non-judicial officers of this Court.	36(x)(1) (page 42)
40.	<b>Vilification of Legal Representatives:</b> Master Efthim was misled by the submissions, which were made to him by the solicitors and barristers for the Respondents.	36(5)(a) (page 44)
41.	<b>Vilification of Legal Representatives:</b> If the facts and allegations set out in the Appellants' Submissions Part 1 and Part 2 in the opinion of Justice Osborn and the solicitors and barristers for the Respondents are vilification then so be it.	36(5)(b) (page 45)
42.	<b>Vilification of Legal Representatives:</b> The Respondents' affidavits and submissions contain untruths and half-truths, which mislead the Court of Appeal.	38(c)(i)
43.	<b>Vilification of Legal Representatives and Court:</b> Serious indictment of the system as it is practised and a serious indictment on some officers of this Court both judicial and non-judicial.	40

(3) **Letter dated 28 October 2007**

25. The First Appellant's letter dated 28 October 2007 was sent to the Respondents' solicitors, the Respondents' board members and the Minister for Water and the Minister for Local Government whilst legal proceedings were on foot.



26. The letter of 28 October 2007 purported to inform the addressees of the conduct of the Court proceedings to date and in the future (page 1); the individual dishonest, unlawful, improper acts of fraud covering the period from 1979 to 1990 (page 2); the "dishonest and unethical" things done on the Respondents' behalf such as a "wrongly and unethically contrived" act of Bankruptcy by the solicitor of the Second Respondent on the First Appellant (page 4-5) and the conduct of Senior Counsel and the Solicitor for the Second Respondent generally, such as misrepresentation of fact; concealment of fraud; swearing false affidavits; making false submissions and misleading the Court (pages 3-7).
27. Now produced and shown to me and marked **SME-65** is a copy of the First Appellant's letter dated 28 October 2007.

**(4) Directions Submissions dated 12 February 2008**

28. The Appellants' directions submissions dated 12 February 2008 include the following examples of vilification about the Respondents' Counsel and allegations of fraud made against the Respondents:

	Description	Para Reference
44.	<b>Vilification of Legal Representatives:</b> The Respondents brought on strike out proceedings, which did not even allude to the causes of action but instead misled Master Efthim and initially Justice Osborn.	10
45.	<b>Fraud against the Respondents:</b> The causes of action were concealed from the Appellants until discovered by them in August 2000.	13
46.	<b>Fraud against the Respondents:</b> The notices of	15

	requirement were fabricated and issued without lawful authority.	
47.	<b>Fraud against the Respondents:</b> The Respondents overtly concealed the causes of action.	21
48.	<b>Vilification of Legal Representatives:</b> The facts were plainly known to the Respondents yet these facts remained concealed from Master Efthim.	22
49.	<b>Fraud against the Respondents:</b> The First Respondent gave false evidence and falsified documents to the Magistrates Court and the Supreme Court and both Respondents deceived the County Court and the Appellants and made eight separate instances of false admission in four separate defences.	23
50.	<b>Fraud against the Respondents:</b> The Respondents concealed details including a concealment of the fact that the water mains, which were required to be present when the plans were sealed, were not present; made false admissions in the previous Supreme Court proceeding and failed to discover the reticulation plan.	24
51.	<b>Vilification of Legal Representatives:</b> Master Efthim had no idea of either the true causes of action or the concealment and he was specifically misled by the submissions made by the various QCs.	28
52.	<b>Vilification of Legal Representatives:</b> The legal representatives for the Respondents knew facts and they must have been aware that Master Efthim was deceived or misled by the collective submissions made to him.	32




53.	<b>Vilification of Legal Representatives:</b> The Respondents' legal representatives knew relevant facts in relation to Woodleigh Heights.	35
54.	<b>Vilification of Legal Representatives:</b> It appears from Master Efthim's reasons that he was deceived or misled into believing that the water supply was one and the same as the reticulation supply. The legal representatives of the Respondents did not even attempt to make these distinctions clear to the Master.	36
55.	<b>Vilification of Legal Representatives:</b> Justice Osborn elected to make punishing costs orders on the submissions of the Respondents to the effect that the First Appellant is a vexatious litigant and that he had vilified the barristers and solicitors who the First Appellant says are responsible for what he continues to say is the farce of the proceedings to date.	41

29. Now produced and shown to me and marked **SME-66** is a copy of the Appellants' directions submissions dated 12 February 2008.

### Proposed Orders

30. In view of the Appellants' numerous unfounded allegations of fraud, scandalisation and vilification of the Court and legal representatives, the Second Respondent seeks the costs of this appeal on an indemnity basis. The Appellants have now abandoned their appeal prior to the hearing date of 19 August 2008 without explanation or apology, and as a consequence, are liable to pay the costs of the appeal on a party/party basis, unless this Court should otherwise order.



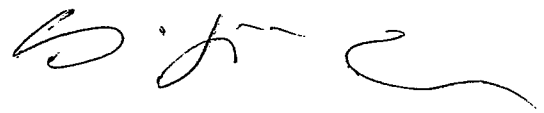



31. Having regard to the Appellants' conduct of the appeal, I request that the Court order that the Appellants pay the Second Respondent's costs on an indemnity basis.
32. The Appellants have paid into Court the sum of \$30,000 as security for the Second Respondent's costs in the appeal pursuant to the order of Justices Buchanan and Redlich made on 5 September 2007. In the circumstances, the Second Respondent is entitled to the funds paid into Court in the sum of \$30,000 and the interest thereon in partial payment of its costs of the appeal. I seek that the monies held in Court be paid out to the Second Respondent's solicitors, Messrs Mason Sier Turnbull, in accordance with the terms of the orders sought in the Summons.

### Conclusion

31. In the circumstances, I request that orders be made in accordance with the Summons filed herein.

SWORN by the Deponent at Mount Waverley)  
in the State of Victoria this  
22nd day of July 2008



Before me:-



**NATALIA TODOROVIC**  
315 Ferntree Gully Road, Mount Waverley  
An Australian Legal Practitioner within the  
meaning of the Legal Profession Act 2004