

**IN THE SUPREME COURT OF VICTORIA AT MELBOURNE**

No 7966 of 1995

BETWEEN

**-GLENN ALEXANDER THOMPSON and CHERYL MAREE THOMPSON**

Plaintiffs

- and -

**THE MACEDON RANGES SHIRE COUNCIL and OTHERS**

Defendants

**DEFENCE OF THE FIRST DEFENDANT**

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Filed on behalf of the first defendant

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Mr. Mark Huntington

By way of defence to the Statement of Claim dated 20 September 1996, the first defendant says:

1. It does not admit paragraph 1.
2. It does not admit paragraph 2.
3. Save that it admits:
  - (a) that the third defendant was employed as shire secretary of KSC from 1 December 1984 to June 1995; and
  - (b) that he was employed as manager of KWB from 1 December 1984 to 30 June 1992;it denies each and every allegation in paragraph 3.
4. Save that it admits that the fourth defendant was employed:
  - (a) as shire engineer of KSC from October 1973 to 1987;
  - (b) as shire engineer and chief executive officer of KSC from 1987 to 1992; and
  - (c) as chief executive officer of KSC from 1992 to 12 May 1995;

it denies each and every allegation in paragraph 4.

5. It does not admit paragraph 5.
6. It does not admit paragraph 6.
7. It does not admit paragraph 7.
8. Save that it admits that in respect of the Woodleigh Heights Estate there was a proposed privately owned and operated water supply and reticulation system, which proposal included provision for dams, tanks, pumps and pipes, it does not admit paragraph 8.
9. It does not admit paragraph 9.
10. It does not admit paragraph 10.
11. It admits paragraph 11 and says further that there existed no requirement for KSC to refer the plans of subdivision to KSWWT.
12. It does not admit paragraph 12.
13. It does not admit paragraph 13.
14. It admits that the plaintiffs had the rights alleged in paragraph 14, subject to the qualification that those rights only existed if the plaintiffs used the land purchased by them in accordance with the relevant permit.
15. It does not admit paragraph 15.
16. It does not admit paragraph 16.
17. It does not admit paragraph 17.
18. It does not admit paragraph 18.
19. It admits paragraph 19 and says further that there existed no requirement for KSC to refer the plans to KSWWT.
20. It does not admit paragraph 20.
21. It does not admit paragraph 21.
22. It does not admit paragraph 22.
23. It does not admit paragraph 23.

24. It does not admit paragraph 24.
25. It does not admit paragraph 25.
26. It does not admit paragraph 26.
27. It does not admit paragraph 27.
28. It does not admit paragraph 28.
29. It does not admit paragraph 29.
30. It does not admit paragraph 30.
31. It does not admit paragraph 31.
32. It does not admit paragraph 32.
33. It does not admit paragraph 33.
34. Insofar as it makes allegations against it, it does not admit paragraph 34. It says further that the KSC had no right to provide to the plaintiffs a copy of or access to the Water Agreement, as that agreement was not the property of the KSC.
35. It does not admit paragraph 35.
36. It does not admit paragraph 36.
37. It does not admit paragraph 37.
38. It does not admit paragraph 38.
39. It does not admit paragraph 39.
40. It does not admit paragraph 40.
41. It does not admit paragraph 41.
42. It does not admit paragraph 42.
43. It does not admit paragraph 43.
44. It does not admit paragraph 44.
45. It does not admit paragraph 45.
46. It does not admit paragraph 46.

47. It does not admit paragraph 47.
48. It does not admit paragraph 48.
49. It does not admit paragraph 49.
50. Save that it admits that LJ Hooker was apparently involved in the plaintiffs' attempts to sell their land, it does not admit paragraph 50.
51. It admits paragraph 51.
52. Save that it admits the following matters, it denies each and every allegation in paragraph 52:
- (a) the fourth defendant told the parties present that he believed the plaintiffs' land did not have an entitlement to town water supply;
  - (b) the fourth defendant told the parties present that he believed the plaintiffs' land was not entitled to access town water supply;
  - (c) the fourth defendant told the parties present that he believed that KWB would not supply town water to the plaintiffs' land;
  - (d) the fourth defendant told the parties present that he believed that without a reticulated water supply building permits from KSC were not available to the plaintiffs' land;
  - (e) the fourth defendant told the parties present that he believed that in 1978 at the time of the application for Cluster Subdivision the subdivision was for KSC planning purposes considered to be outside the Kyneton Waterworks District of the KWB and the plan of Cluster Subdivision was not referred to the KWB;
  - (f) the fourth defendant told the parties present that he believed that the Body Corporate of CS1134 was not entitled to town water supply or related reticulation system within CS1134;
  - (g) the fourth defendant told the parties present that he believed that KWB and KSC had been advised by WHRD Pty.Ltd. of the recent court action between the plaintiffs and WHRD Pty.Ltd. and the terms of settlement;

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52A. Further, the fourth defendant told the parties present that he was not the KWB and did not represent it and that he was merely putting his belief as to the position of the KWB. He further told the plaintiffs to contact the KWB directly in relation to the matter of water supply to the plaintiffs' land.

53. It does not admit paragraph 53.

54. It does not admit paragraph 54.

55. It does not admit paragraph 55.

56. Save that it admits:

- (a) that during the period July 1986 to 1988 the plaintiffs made numerous telephone calls to the fourth defendant; and
- (b) that during the period November 1985 to 1988 the first plaintiff made numerous visits to the KSC offices; and
- (c) that at a date it cannot identify with precision, but which it believes was between 1986 and 1988, the fourth defendant on behalf of KSC attended a meeting with the first plaintiff and KWB;

it does not admit paragraph 56.

57. It does not admit paragraph 57.

58. It denies each and every allegation in paragraph 58.

58A. Further, any representations made by the first defendant to the plaintiffs or one of them or to any other person in relation to the subject matter of this proceeding, were made by officers of the first defendant who held a genuine belief that they were true.

59. It denies each and every allegation in paragraph 59.

60. It denies each and every allegation in paragraph 60.

61. It denies each and every allegation in paragraph 61.

62. It denies each and every allegation in paragraph 62.

63. It denies each and every allegation in paragraph 63.

64. It does not admit paragraph 64.
65. It does not admit paragraph 65.
66. It does not admit paragraph 66.
67. It denies each and every allegation in paragraph 67.
68. The causes of action upon which the plaintiffs rely arose more than six years prior to the date on which this proceeding was instituted, and accordingly by reason of the provisions of section 5(1) of the *Limitation of Actions Act* 1958, the plaintiffs' claim is statute barred.



Phillips Fox

Solicitors for the first defendant

JOHN LANGMEAD