

**IN THE SUPREME COURT OF VICTORIA AT MELBOURNE.
COURT OF APPEAL – Civil Division.**

Court Number: **6321 of 2005**

B E T W E E N :

**GLENN ALEXANDER THOMPSON
& CHERYL MAREE THOMPSON**

Appellants

- and -

MACEDON RANGES SHIRE COUNCIL

First Respondent

- and -

THE COLIBAN REGION WATER AUTHORITY

Second Respondent

ADDEMDUM TO APPELLANTS' WRITTEN SUBMISSION

Date of Document: - 27th August 2009.

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This document should be read after the Appellants' Written Submission of 27th August 2009. The paragraph numbers and page numbers follow on from that document.

THE SCHEME OF DIXON ET AL TO DECEIVE THE COURT.

- 52) As demonstrated above the submissions of Dixon et al in relation to the "Book of Pleadings" and avoidance of section 9 of the Sale of Land Act 1962 by means of contrived 2-lot plans of subdivision was a complete fabrication.
- 53) Dixon et al, consisting of two Q's C and two junior barristers and a platoon of lawyers very carefully cooperated with one another to put that fabrication to the court.
- 54) Plainly the submissions made did not arise from any factual basis or knowledge of law.
- 55) Plainly the submissions made could not have occurred to the mind of each individual separately. The idea to deceive the court in the manner which occurred could only arise in the mind of one individual and then be communicated to the others or alternatively it could have arisen at a meeting between Dixon et al and arisen as a consequence of collective effort.
- 56) The certainty is that they conspired with one another for the purpose of deceiving the court.

57) The scheme centred upon two documents, firstly and primarily the "Book of Pleadings" and secondly the complete copies of the industrial plans³⁸.

58) Steven Mark Edward was the sole person who knew about the "Book of Pleadings". In the circumstances set out below he had improperly obtained it and he was not legally entitled to possession of it. It was a privileged document³⁹.

Preparing the strategy of deceit.

59) Dixon et al wished to have my 2005 proceeding struck-out by the Court without trial.

60) For the purposes of a strike-out application, Dixon et al needed to be able to demonstrate to the Court:

- a) That I was aware of the "cause of action" too long ago
- b) That the Council and Water Authority had not only not concealed the "cause of action", they had openly disclosed it.

61) Dixon et al could not demonstrate these things in relation to the matters and things giving rise to true "cause of action" so they contrived a dishonest strategy to deceive the Court.

62) As I have said, an allegation of the 2005 proceeding was that the Council sealed the plans for the **purpose** of avoiding the "effect" of section 9 of the Sale of Land Act and the "effect" of section 97 of the Transfer of Land Act.⁴⁰ This allegation was set out at paragraph T7 of the Amended Statement of Claim.

63) The page numbered 5⁴¹ of the "Book of Pleadings" when taken out of context and in ignorance of the law can be read to mean that I understood that Buchanan had avoided section 9 of the Sale of Land Act by means of 2-lot plans.

64) The strategy developed by Dixon et al was to falsely represent that the allegation **and purpose** at paragraph T7 of the Amended Statement of Claim constituted the "cause of action" and to then take page 5 of the "Book of Pleadings" to demonstrate that I had knowledge of their fallacious, fabricated, **pseudo** "cause of action".

65) The strategy developed by Dixon et al and subsequently implemented by Maddocks, Mr. J. Delany SC and Mr. G. Ahern was to (mis)represent to the Court:

- a) That 2-lot plans of subdivision facilitated avoidance of section 9.
- b) That avoiding section 9 of the Sale of Land Act by means of the "contrived" 2-lot plans was or constituted the "cause of action" (hereinafter referred to by me as the **pseudo** "cause of action").

³⁸ Appeal Book pages D1798-1800

³⁹ See Appeal Book page D-285

⁴⁰ The "effect" of section 9 is set out at Justice Osborn's Reasons at paragraph 96.

⁴¹ Page numbered 5 of Book of Pleadings is at Appeal Book page D-319

- c) That the "Book of Pleadings" and in particular the page numbered 5 demonstrated my awareness of the **pseudo** "cause of action" in 1991 when I compiled the "Book of Pleadings".
- d) That I discovered or learned of the **pseudo** "cause of action" from perusing a "complete copy" of a plan of subdivision for the Industrial portion of Tylden Rd.
- e) That the Council and Water Authority had provided me with a copy of that complete plan during the 1988 proceeding.
- f) That having given me a copy of the "complete plan" there was no concealment of the **pseudo** "cause of action".

66) Each and every one of these strategic things was false:

- a) The **pseudo** "cause of action" plainly cannot exist except as a figment of a fabrication which misrepresents both law and fact because section 9 applied to **intention** and could **not** be avoided by means of 2-lot plans or at all
- b) 2-lot plans specifically breach section 97 of the Transfer of Land Act which requires all allotments and roads to be shown.
- c) No document in the world or capable of existing at all could provide evidence of or disclose the **pseudo** "cause of action", it was merely a figment of the fabrication of Dixon et al.
- d) Unlawful plans per se cannot cause loss and damage and therefore cannot constitute or give rise to a "cause of action" so even if section 9 could be avoided by 2-lot plans then no damage is done. The lots created are manifestly identical to those which would have been created by a plan showing all allotments.

Facilitating the strategy

- 67) First of all Dixon et al had to make the "Book of Pleadings" available and legitimise Edward's possession of it. To this end, (as detailed below) before the summons was issued, Edward swore **false** affidavits and prepared exhibits which included the "Book of Pleadings" effectively concealed within 1795 pages of extraneous documents. So extraneous that Master Efthim asked why they were there.⁴²
- 68) Secondly, as detailed below, Dixon et al kept the strategy and the **pseudo** "cause of action" secret by using euphemisms. Dixon et al prepared a number of affidavits and Outlines of Submissions yet not one of these documents disclosed or even intimated what constituted the "cause of action" let alone the **pseudo** "cause of action" which they intended to represent. In addition (as detailed below) Edward, Garde and Burchell introduced the "Book of Pleadings" in a deceptive manner which specifically represented that the content of the "Book of Pleadings" was consistent with my affidavit and thereby

⁴² See Transcript 14/11/05 Page 97.

concealed their intended (mis)representation of the "Book of Pleadings". Edward, Garde and Burchell's outline was, well, self contradicting garbage,⁴³ without regard to anything.

69) Ms. Michelle Elizabeth Dixon swore two affidavits. The first dated 23rd September 2005⁴⁴ in purported support of the summons included a table of allegations **common** to the 2005 and the previous proceedings. The second dated 28th October 2005⁴⁵ purported to be in response to my affidavit of 18th October 2005⁴⁶. In this second affidavit Dixon says what she purports to "*understand*" from reading my affidavit and effectively puts words into my mouth which were never said or even implied by me. Had I in fact said them there would have been no need for her deceptive "understanding".

70) As detailed below, from these two affidavits Dixon, Delany and Ahern then morphed the table of **common** allegations and Dixon's "understanding" into a number of false statements which were then expressed as truth and fact in the Outline of Submissions of Dixon, Delany and Ahern⁴⁷. These "true lies" were developed for the purpose of demonstrating that the "complete plan" disclosed the **pseudo** "cause of action" and that the Council and Water Authority had given me that complete plan and thereby openly disclosed the **pseudo** "cause of action" A further purpose of the "true lies" was to **put words into my mouth and to then show that those words were false**. They did all this while continuing to use euphemisms.

71) This is a very clever deceitful ploy, swear an affidavit and then lie in the Outline which purports to rely on or reflect the affidavit. (As set out herein Master Efthim swallowed this ploy hook line and sinker)

72) By doing these things Dixon et al for the Council and Water Authority had prepared their case without mentioning or even alluding to the matters and things giving rise to any cause of action let alone the **pseudo** "cause of action" which they intended to deceive the court with. By using the euphemisms they had led me to believe that they were referring to the true "cause of action" and, in that context, the "true lies" were merely nonsense which confused me.

73) Executing the strategy in Court

74) In the normal course of events a party bringing an action leads off in court and makes their case in a clear manner. The defendant then has the opportunity to respond to that case and then the party bringing the case has an opportunity to respond to anything new raised by the defendant. This did not occur in this case:

- a) Dixon et al had mounted a strike out proceeding without once even alluding to the thing which they alleged offended limitations, res judicata and/or Anshun.

⁴³ See comments on Garde and Burchell's Outline at appeal Book page G-120 to G-121

⁴⁴ Appeal Book Page C-10

⁴⁵ Appeal Book page C-61

⁴⁶ Appeal Book page C-34

⁴⁷ Appeal Book page A-76

- b) As detailed below Delany led off, he put the "true lies" while still using euphemisms. During this submission Delany gave a conveniently erroneous "understanding" of section 9 of the Sale of Land Act thereby laying the groundwork for his subsequent misrepresentations in relation to the pseudo "cause of action" and "Book of Pleadings". He did not put his case in relation to the **pseudo** "cause of action" or the "Book of Pleadings".
- c) As detailed below Garde then made his submission. He introduced the "Book of Pleadings" but said nothing of significance in relation to it. Garde did not even intimate the **pseudo** "cause of action" nor the use which had been planned for the "Book of Pleadings", which was to misrepresent its content.
- d) As detailed below my barrister, Mr. John Middleton QC then purported to give my defence, for reasons which are beyond me he specifically misrepresented me and my case. His submissions flew in the face of the law, the Amended Statement of Claim, his own Outline of Submissions and my specific written instructions to him.
- e) **In supposed reply**, (as detailed below) in the final minutes of the hearing, Delany finally dropped his camouflage and showed his true colours, he overtly misrepresented the law and the "Book of Pleadings" and represented the **pseudo** "cause of action" to be the "cause of action" set out in the Amended Statement of Claim.

75) Each and every representation by Dixon, Delany and Ahern, in court, was an overt misrepresentation:

- a) They falsely represented:
 - i) That section 9 of the Sale of Land Act 1962 could be avoided by means of "contrived" 2-lot plans.
 - ii) That the "contrived" 2-lot plans lodged by Buchanan and processed by the Council and Water Authority facilitated avoidance of section 9. (this and the previous dot point constitute the **pseudo** "cause of action" as fabricated and misrepresented by them)
 - iii) That the "Book of Pleadings" contained evidence of my knowledge of these things as misrepresented by them.
 - iv) That the **pseudo** "cause of action" was or was identical with the "cause of action" alleged in the Amended Statement of Claim.
 - v) That the "complete industrial plan" was the "critical document" which enabled me to conclude the **pseudo** "cause of action".
 - vi) That the "complete industrial plan" had been provided to me and the **pseudo** "cause of action" was thereby openly disclosed.
 - vii) That having provided me with the "critical document" there was no concealment.

- b) They omitted:
- i) All mention and consideration of section 97 of the Transfer of Land Act
 - ii) All mention and consideration of the fact that no lawful Notice of Requirement was ever served.
- 76) Each and every one of these misrepresentations was a fabrication which flew in the face of the law and the facts which were squarely before each of Dixon et al.
- 77) **The false affidavits of Steven Mark Edward.**
- 78) The Scheme of Dixon et al centred upon the “Book of Pleadings”. Steven Mark Edward had acquired it illegitimately. The first step in the scheme was to legitimise his possession of that document..
- 79) Back at the time of the previous Woodleigh Heights proceeding I was experiencing death by documents, Greg Garde had convinced the Judge that there was no such thing as a Deed of Assignment and Steven Edward convinced the Judge that I had not made proper discovery because one of the discovered documents referred to a nondescript letter which had not been discovered. To put an end to all of this I agreed to let Edward have access to essentially all of my personal documents so that he could take copies of any document relevant to the proceeding. The initial arrangement was that this would occur in the office of my sometime solicitors Baldock Stacy and Niven (“BSN”) at Orange. The building was an old hospital which had three levels. BSN occupied the lower two levels and I occupied the entire top floor as a personal residence. The top floor was the old nurses quarters.
- 80) Because of the vast volume of documents held and because I was concerned about them on the appointed day I decided that inspection would occur in my private residence and not in the offices of BSN. (at that time I maintained two residences and two valid addresses, at the present time I maintain two residences and I have four valid addresses).
- 81) On the appointed day Edward was shown up to my private residence and he then organized for a high speed photocopier to be delivered, it was brought upstairs via my external entry, the fire escape, with great difficulty, by Xerox as I recall.
- 82) Over two separate periods Edward seemed intent on copying all of my documents without regard for content or relevance however this did not concern me as I had nothing at all to hide. On my recollection he copied about 6000 documents all up. He needed a station wagon for the boxes.
- 83) **In the present proceeding** Steven Mark Edward swore an affidavit dated 3rd November 2005⁴⁸, at paragraphs 5 and 6 of that affidavit, ostensibly for the purpose of demonstrating he had viewed certain plans of subdivision in my possession, he said that he copied my documents in my solicitors’ office and that they were discovered documents. The fact however was that he had copied them in my private residence and the plans were neither discovered nor discoverable because they bore no relationship to

⁴⁸ Appeal Book page C-137

the Woodleigh Heights proceeding in respect of which he was authorised to copy documents, This was minor but annoyed me so I responded by affidavit and said that he copied the documents in my private residence and that he had copied many documents which were neither discovered or discoverable documents⁴⁹.

- 84) In reply to my affidavit Edward swore a further affidavit dated 11th November 2005⁵⁰ wherein he **strongly asserted** that he had copied my documents in the solicitors' offices and not in my private residence. He sets out extensively the arrangements which were made to copy in the offices of BSN however the fact is this simply did not occur, many complex plans are laid which are changed at the last minute, the planning is evidence of nothing but planning.
- 85) Edward could have simply blandly said that he had copied documents which I had made available and that would have been absolutely true and I would have said nothing in reply.
- 86) As I now know and understand and Edward introduced the solicitors office aspect and discovered documents aspect so that he could legitimise his quite illegitimate possession of the "Book of Pleadings" which not only was not either a discovered or discoverable document, it was a privileged document.
- 87) Edward did not make mention of the "Book of Pleadings" in his affidavits, only the plans which were also an integral part of the scheme.
- 88) Edward makes a couple of mistakes, in his affidavit of 11th November 2005 he says that the room where he copied the documents had trestle tables covered with documents and he also says that this was on the top floor.
- 89) I now refer to the appeal book at pages G-138 and G-139 for a description of some photographs. These photographs are now exhibited at exhibit GlennAT2 at tab1.
- 90) I also refer to the three affidavits at GlennAT2 tabs 2, 3 and 4.
- 91) The affidavit at Tab 4 is self explanatory; the first two, at Tabs 2 and 3 depose that within the last number of years there has never been any trestle tables in the offices of BSN and that the upper floor is a residence that could not be mistaken for the offices of BSN.
- 92) I say Edward swore false affidavits for the purpose of legitimising his possession of the "Book of Pleadings" and for the purpose of a conspiracy between himself and the remainder of Dixon et al and this was step one in the carefully coordinated scheme of Dixon et al.

⁴⁹ Second Affidavit of Glenn Thompson – Appeal Book page C-142 – see at appeal book page C-146,147

⁵⁰ Appeal Book page C-156

Details of the Strategy.

93) Developing the "true lies" expressed in Delany and Ahern's Outline of Submissions

94) For the purpose of providing verisimilitude to the submissions which they planned to make the lawyers developed a number of "true lies" which they included in their Outlines of submissions and then submitted to the Court and which were then relied upon and expressed as fact in the written Reasons of Master Eftim.

95) The first "true lie"

a) Ms. Michelle Elizabeth Dixon of Maddocks, solicitors for the Council swore an affidavit dated 23rd September 2005⁵¹ and which was sworn in purported support of the Councils strike-out summons. This document alleges *"Plaintiffs seek to litigate issues which were the subject of earlier proceedings"*. [see paragraph "C" on page 2]

i) This document then goes on to make a comparative tables of common allegations between the previous proceedings and the 2005 proceeding. [see paragraph 22 on page 5]

ii) Of specific note here is that the comparative table is expressly restricted to common allegations. It does not even purport to set out or compare the different and new allegations and does not even purport to define the "cause of action" in either of the previous proceedings or the 2005 proceeding.

96) Then at paragraphs 17 of the First Outline of Submissions dated 9th November 2005⁵² authored by Mr. J. Delany S.C. and Mr. G. J. Ahern. Paragraph 17 states, in relation to Tylden Rd,

a) *"The comparative table set out at paragraph 22 of the first Dixon summary Judgment Affidavit shows quite clearly that the allegations of fact made in the prior Tylden Road proceeding are the same allegations sought to be relied upon by the plaintiffs in this proceeding to constitute the cause of action relied upon and the relief sought"*.

97) On the face of it this is very clever and devious. Swear an essentially true affidavit for false reason. Leave the lies to the unsworn document.

98) Delany and Ahern's paragraph 22 makes essentially the identical misrepresentation in relation to Woodleigh Heights.

99) The statements by Dixon, Delany and Ahern, at their paragraphs 17 and 22 are on the face of it false. The Dixon affidavit does not even purport to make a comparative table of anything except "common" allegations. The Dixon affidavit manifestly omitted to compare numerous paragraphs and does not set

⁵¹ Appeal Book page C-10

⁵² Appeal Book page A-76

out the differences. Yet at their paragraphs 17 and 22 of the First Outline they assert that the allegations "to constitute the cause of action" are the same.

100) The second, third and fourth "true lies" - Here Dixon places the words at her paragraphs 4.1 and 4.2 in my mouth so that she may subsequently demonstrate them to be false.

a) Dixon's affidavit dated 28th October 2005 purports to analyse my affidavit of 18th October 2005. At her paragraph 4 she says;

i) *"Based on my review of the Thompson Affidavit I understand Thompson to be saying that:*

4.1 It was his review of the documents in the black folder (provided to him in June 1991) in August 2000 that caused him to issue the current proceeding; and

4.2 The first time that the complete version of the plans was made available to him was when they were supplied to him in the black folder." (my emphasis)

ii) Now Dixon must have known that her first purported understanding at 4.1 was false. Just three paragraphs earlier, at her paragraph 3.6 she had said *"He came to a number of conclusions in relation to Tylden Road as a result of "perusing the documents in the black folder.... and reviewing the documents tendered in the Magistrates Court and the evidence given by Wilson in that Court.....".*

iii) She also must have known that her second purported understanding was false. It is simply not possible for a reasonable person to reach such an "understanding" from my affidavit. However it is clear that Ms Dixon's "**understanding**"(s), were an integral part of the strategy.

101) Notice that at her paragraph 3.6 and 3.7 Dixon purports to make her conclusions from paragraphs 53(f) and 53(h) of my affidavit and sets out her "understanding" at her paragraph 4. At her paragraph 3.6 she says that I came to a number of conclusions and then at her paragraph 3.7 she says *"Upon reaching those conclusions it became apparent" to me "for the first time that the Council had acted maliciously that Wilsons evidence given in the Magistrates Court had the effect of concealing the Council's true conduct "*

102) Now of significance is that Dixon omitted to transcribe the "conclusions" which she knows that I reached. These conclusions are set out at subparagraphs (53)(f)i) to (53)(f)(iii) of my affidavit, they are in subparagraphs of the very paragraph 53(f) that she referred to. These conclusions were;

a) *"..... the Notice of Requirement had been falsely dated"*

b) *"... the plan of subdivision considered by the Council had been abandoned "*

c) *"That the Notice of Requirement had in fact been fabricated* "

103) Now, on the face of it these conclusions set out in my affidavit relate to the true "cause of action" which included that the Notice of Requirement related to the 18-lot plan considered by the Council on

20th February 1980 had never been served. The certainty is that these conclusions of mine do not and cannot relate to that **pseudo** "cause of action"

104) We know however that Dixon, Delany and Ahern are developing misrepresentations related to their **pseudo** "cause of action"

105) At paragraph 36 of their First Outline Delany and Ahern develop and embellish Dixon's "understanding" at her paragraph 4.1 and they say "*.... in respect of the Tylden Rd land the 'critical document' from the black folder which led Mr. Thompson to reach the conclusions which are said by him to underpin the 'fresh allegations' he now wishes to advance was the copy of the complete version of the plans.*" (my emphasis)

106) So at their paragraph 36 of their Outline Dixon, Delany and Ahern

- i) use the euphemism "*fresh allegations*"
- ii) introduce the notion of a single "*critical document*"; and
- iii) identify that "*critical document*" as being the "*complete version*" of the plans
- iv) they assert that in my affidavit I say that this "*critical document*" underpins the "fresh allegations".

107) These are, respectively, the second, third and fourth "true lies" which are being developed by them for the purpose of supporting their overt misrepresentations in relation to that pseudo "cause of action"

108) We know that there is no document existing or capable of existing which underpins the "*fresh allegations*" being the **pseudo** cause of action as understood between Dixon, Delany and Ahern. It is also clear from my paragraph 53(f) that my affidavit refers to the things giving rise to the true "cause of action" and not that **pseudo** "cause of action" as understood by Dixon et al.

109) The fifth "true lie"

- i) Ms Dixon then goes on to develop the fifth "true lie" herself before it is taken up and developed by Delany and Ahern.
- ii) After making her (false) assertion as to her "understanding" at her paragraph 4.2 she goes on at her extensive paragraphs 5 to 12.8 to demonstrate that I had possession of the "*complete version*" of the industrial plan prior to getting the "black folder"
- iii) The purpose of this was to demonstrate that the words that she had placed in my mouth were false.
- iv) Delany and Ahern then pick up on Dixon's "true lie" at their paragraph 36 where they say;

(1) "*..... as the objective documentary material exhibited to the first Dixon summary judgment affidavit and the 3 November Edward Affidavit establishes; in fact: (a) a copy of the complete*

plans was provided to the Plaintiffs solicitors in the prior Tylden Rd proceeding in may 1989
..... " (Note:- Delany and Ahern's reference to the "*first Dixon summary judgment affidavit*"
should be a reference to Dixon's second affidavit dated 28th October 2005)

- v) Delany and Ahern's paragraph 36 also relies upon an affidavit sworn by Steven Mark Edward on 3rd November 2005 wherein Edward deposes that he undertook inspection of my discovered documents and in my possession was a copy of the complete version of the plans for the industrial allotments.

110) The fifth "true lie" is that Dixon, Delany and Ahern assert and establish that contrary to the words which Dixon put into my mouth at her paragraph 4.2 I was in fact provided with the "critical document" being the "complete plans" prior to getting the "black folder". The lie being that I never even implied that I did not previously have a copy of the "complete plan"

111) Delany and Ahern then develop these "true lies" further when:

- a) at their paragraph 52 they say "*..... Taking Mr. Thompson's affidavit at face value whatever 'fraudulent concealment' or fraud is said to have occurred; the documents now relied upon to seek to establish the cause of action have been in the possession of Mr. Thompson since 1991... "*
- b) at their paragraph 53 they purport to set out representative representations of my affidavit but deceitfully only refer to the "black book"
- c) at their paragraph 54 they say "*It is apparent from the Thompson summary judgment affidavit that the 'critical document' from the black folder which led Mr. Thompson to reach the conclusions which now underpin the allegations was the copy of the 'complete plans' No other documents from the black folder are mentioned by Mr. Thompson in his affidavit as assisting him in reaching the conclusions he did.*" (my emphasis)

112) These paragraphs are overtly false and intended to deceive.

- i) The words "*No other documents from the black folder are mentioned by Mr. Thompson as assisting him "* are deceptive, certainly no other documents from that folder are mentioned but numerous documents not from the black folder are mentioned. [see my affidavit paragraph 53)c)i)]
- ii) At my paragraph 53)b) I clearly refer to "*two versions of the plans for the industrial allotments ... namely complete versions and clipped versions*" from the "black folder"
- iii) At my paragraph 53)c) I clearly refer to "*copies of the residential series and these plans had also been clipped*" from the "black folder"
- iv) my paragraph 53)c)i) goes on to mention a number of documents not from the "black folder"

- v) the words "*the allegations*" in their paragraph 54 is a euphemism for that **pseudo** "cause of action" and no document capable of existing can "underpin" that **pseudo** "cause of action".
- vi) It is clear from my affidavit that I actually discovered the truth from a review of many things including the Magistrates Court proceedings, the plans in the Black Book merely led me to hypothesise "clipped". The complete plans contain no evidence as to whether or not the Notice of Requirement was served and no evidence at all as to whether the 18-lot plan of 20th February 1980 was abandoned.

113) Delany and Ahern then consolidate these "true lies" when at their paragraph 55 they say;

- i) *"The complete version of the plans for the industrial allotments is considered by Mr Thompson to be the 'critical piece of the puzzle' which enabled Mr. Thompson to comprehend fully the events which he now alleges took place twenty five years ago in 1980."*

114) So step by step Delany and Ahern evolve or morph Dixon's "understanding" so that it became the "true lie" asserted by them to be something I said or believe, at their paragraphs 54 and 55 they say;

- i) That I consider the plan for the industrial allotments to be the "critical piece of the puzzle which enabled me to "*comprehend fully the events* " (Dixons "**understanding**" has been transformed into my express assertion or state of mind)

115) In the circumstances and on the evidence I think it reasonable to conclude that this is a "damn lie". They used euphemisms to conceal what they were asserting and the simple fact is, as I have said, there is no document capable of being the "*critical piece of the puzzle which enabled*" me, or them or anyone at all, to "*comprehend fully*" that **pseudo** "cause of action"

116) Delany and Ahern then rely on their "damn lie" to say at their paragraph 64 "*.... after the black folder containing the 'critical document' was handed to Mr. Thompson* there could not be and was no intentional concealment thereafter of any relevant material on the part of the Council" and at their paragraph 66 they say " *..... Council's conduct in voluntarily providing to Mr. Thompson the black folder containing "the critical piece of the puzzle" is not conduct evidencing a consciousness of wrongdoing or involving dishonesty or moral turpitude* "

117) Delaney and Ahern then compound their "true lies" at their paragraphs 69 and 70 so that they become "true outright fabrications". In these paragraphs they say that I fail to mention certain facts and they then go on to say;

- i) *"the critical piece of the puzzle which led Mr. Thompson, according to him, to the conclusions is said to be the copy of the complete version of the plans... "* and *"The picture Mr. Thompson seeks to paint in his ... affidavit is that the first time the plans were available to him was when they were supplied to him in the black folder That is not so"*

118) Delany and Ahern then build upon their "true outright fabrication" when at their paragraph 71 they say;

- i) *"What Mr. Thompson fails to disclose is that (a) the complete version of such plans were discovered (e) Mr. Edward undertook inspection of documents those documents included a complete copy of the 'complete' versions of the plans"*

119) So the evidence indicates that Dixon's "understanding" has been, carefully, purposefully and deceitfully transformed into my failure to disclose that I had this "*critical document*" which was a discovered document. This is quite a transformation.

120) The purpose of this entire strategy of "true lies" was so as to enable Delany and Ahern to develop the "true outright fabrication" that the complete plan was "*the critical piece of the puzzle*" that openly disclosed that pseudo "cause of action" and it had been openly disclosed therefore there can be no concealment.

121) The entire strategy was predicated on the initial true lie of that pseudo "cause of action" and that pseudo "cause of action" further depended upon omission of reference to or consideration of section 97 of the Transfer of Land Act.

122) Delany and Ahern continue to develop this lie but I have said enough. Master Efthim subsequently relied upon these "true outright fabrications", as intended by Dixon, Delany and Ahern they became true in Master Efthim's mind. He specifically transcribed and relied on these "true lies" in his Reasons.

123) The fact is of course that no document or group of documents existing or capable of existing can disclose the pseudo "cause of action" so all of this deceit was predicated on even baser deceit, that the figment of their fabrication, the pseudo "cause of action" can be understood from or disclosed by the "*critical document*".

124) This is a case study in clever deceit, with contemptuous disdain for the court and any notion of honesty let alone justice. Dixon Delany and Ahern played the court of Master Efthim for a fool.

Master Efthim swallowed the true lies hook line and sinker.

125) Master Efthim's Reasons are completely based on the true lies, for example;

- a) At his paragraph 51 *"The plaintiffs submit The critical document from the black folder which led Mr. Thompson to reach his conclusion was the copy of the complete plans....."*
- b) At his paragraph 53 *"It is clear from Mr. Thompson's first affidavit that critical documents from the black folder which led to this matter being further litigated are the complete versions of the plans of the industrial allotments..... I note that Michelle Elizabeth Dixon ... has sworn the complete plans were discovered by the First Defendant....."* (my emphasis)

126) As detailed above Justice Osborn was not fooled by all of this, in knowledge of the deceit he deceitfully relied upon these things and transcribed Master Efthim's paragraph 53 to his paragraph 126.

The euphemisms, keeping the strategy secret.

127) Despite having mounted strike out proceedings on the express assertion that the cause of action in the proceeding offended either or all of the Limitation of Actions Act, res judicata or Anshun; Dixon et al simply do not say what things constitute the cause of action complained of

128) The strategy depended upon having me and my lawyers think that they were referring to the true "cause of action" whenever they referred to the "cause of action" by use of phrases such as "*the claims sought to be advanced*".

129) Each time they used such a phrase they knew they were referring to the things constituting the pseudo "causes of action"..

130) Whenever it was necessary to refer to the cause of action Delany and Ahern used phrases such the following in their First Outline⁵³;

- a) paragraph 66 "*the claims sought to be advanced*"
- b) paragraph 36 "*fresh allegations*"
- c) paragraph 43 "*the claims made by the plaintiffs*"
- d) paragraph 52 " ... *the cause of action*..."
- e) paragraph 54 " ... *the allegations in the omitted paragraphs* ... "
- f) paragraph 55 " ... *the events* ... "
- g) paragraph 68 "... *the claims he now seeks to advance* ... "
- h) paragraph 70 "... *the matters pleaded in the omitted paragraphs*

131) In their minds however, these phrases were euphemisms for the pseudo "cause of action". They knew that they understood one thing while intending and knowing that I and my lawyers understand another.

132) Dixon didn't even use euphemisms; she just completely avoided any statement which would necessitate uttering or defining the things constituting the "cause of action" even in her affidavit which purports to support the strike out application.

133) Of particular note, Dixon's Affidavit in purported support of the Summons set out a table showing the claims "common" to the previous proceedings and the 2005, proceeding, even this ensured no mention of the matters and things comprising the "new" claim because to set out the differences would

⁵³ Appeal Book page A-76

have disclosed the things comprising the true “cause of action” and the fact that the true “cause of action” had not been previously pleaded.

Garde and Burchell deceptively introduce the “Book of Pleadings”

134) As well as using euphemisms to avoid disclosing their true intent the Dixon et al also avoided all contentious mention of the "Book of Pleadings" so as to conceal their intention to deceive the Court.

135) The entire basis of the scheme was the misrepresentations intended to be made in relation to the "Book of Pleadings"

136) No one except Greg Garde and Sharon Burchell referred to the "Book of Pleadings"

137) Garde and Burchell's reference was misleading and deceptive and also concealed the true intent of the lawyers.

i) At paragraph 49 of their Outline of Submissions dated 8th November 2005⁵⁴ Garde and Burchell refer to the "Book of Pleadings" and say;

(1) "... *the handwritten notes contained in that document traverse the same subject matter as what the plaintiffs are seeking to agitate in the current proceeding ...*"; and

(2) "*The handwritten notes reflect what the first plaintiff has deposed to in his affidavit*". (my emphasis)

138) So in other words Garde and Burchell also use the euphemism "*what the plaintiffs are seeking to agitate*" and they specifically assert that the notes in the Book of Pleadings "*reflect*", or in other words are consistent with, what was in my affidavit.

139) On my understanding of the euphemism they specifically represented to me that the "Book of Pleadings" was consistent with my affidavit and the true "cause of action"

140) In the premise that their understanding of the euphemism was **that pseudo** "cause of action" then their paragraph 49 was deliberately deceptive and dishonest.

141) On the evidence there was no other purpose for them introducing the "Book of Pleadings" other than to facilitate the misrepresentations in respect to **that pseudo** "cause of action". They certainly did not introduce it to demonstrate what they said to me at their paragraph 49 which was that the "Book of Pleadings" was consistent with the true "cause of action" and consistent with my affidavit.

142) Garde and Burchell's paragraph 49 was an essential part of what appears to be a very carefully orchestrated strategy. Garde and Burchell had to introduce the "Book of Pleadings" while concurrently not disclosing the intended use of the "Book of Pleadings". Had they disclosed what Dixon, Delany and

⁵⁴ Appeal Book page A-59

Ahern intended to and subsequently did represent in relation to the "Book of Pleadings" then their strategy would have been at an end.

143) The Outline of Garde and Burchell did not disclose any reliance on the "Book of Pleadings" or give any indication of their planned deception.

The Courtroom strategy

144) **Delany's initial submissions.**

145) On day one of the hearing Delany introduces the "true lies", gives clue and omits reference to section 97 of the Transfer of Land Act.

146) At the hearing Delany led off, he made submissions in accord with the "true lies" but continued to use euphemisms as had been done in his outline. See transcript of 14/11/05

147) However Delany began to give a clue as to where he was heading but said nothing of substance in relation to these clues;

- a) At page 40 of the transcript of 14th November 2005 Mr. Delany misrepresented the provisions of section 9 of the Sale of Land Act (or his understanding) where he asserted that he understood Section 9 of the Sale of Land Act to mean that if a developer is intending to subdivide into three or more allotments the plans have to show all of the roads and streets whereas if a developer was only dividing into two allotments then the plans did not have to show the roads.
- b) Again at page 40 of the transcript of 14th November 2005 Mr. Delany expressed his "understanding" of the "cause of action" set out in the 2005 Amended Statement of Claim to be related to 2-lot plans of subdivision. He said, "*..... the complaint as I understand it*" and then he represented that "*There were further plans lodged and it's said this was for the purpose of getting around s.9 of the Sale of Land Act*". This is the very first time that any one of the lawyers for the Council or Water Authority even alludes to what they had planned to misrepresent the "cause of action" as being.
- c) At page 45 of the transcript of the same day Mr. Delany said " *.....a whole series of little plans to get around the Sale of Land Act provisions*".

148) In the context of what eventually occurred these are most revealing submissions.

149) Firstly Delany sets out a patently absurd understanding of the operation of section 9 of the Sale of Land Act 1962. He has manifestly read the act and manifestly what he said simply cannot be understood from that act.

150) Secondly he sets out that he said he understands the "cause of action" to be the "*... .. further plans lodged for the purpose of getting around section 9.. ..*"

151) Thirdly he asserts to the effect that the 2-lot plans, "*little plans*" facilitate avoidance of section 9.

- 152) Delany knew where he was heading at this time, but he kept his powder dry, so to speak. Delany finished his submission without mentioning the "Book of Pleadings" or putting his case related to the pseudo "cause of action"
- 153) Delany made no reference to section 97.
- 154) **The submissions of Greg Garde QC to surreptitiously introduce the "Book of Pleadings".**
- 155) Greg Garde knew full well the intended purpose of the "Book of Pleadings"
- 156) **Garde validates the false affidavits and introduced the "Book of Pleadings" but said nothing, zero, zip, zilch.**
- 157) Garde followed Delany on day one, for the balance of that day he said absolutely nothing of consequence at all.
- 158) On the morning of day two Garde within the first two minutes Garde introduced the "Book of Pleadings" but said nothing of substance in relation to it. . He simply and briefly described a very little of what was in it, he made no comment, no allegations, no comparisons with anything at all and certainly said nothing of relevance to the strike out proceeding he was purportedly pursuing.
- 159) The only things of note that he did say of the "Book of Pleadings" was to the effect that I had "*comprehensive knowledge*" about Tylden Rd. But he does not say of what in particular or of what relevance his submissions are.
- 160) On the submission of Garde there was simply no point to the "Book of Pleadings". His submission was essentially in accord with paragraph 49 of his and Burchell's First Outline⁵⁵ which was equally as deceptive.
- 161) The in the final couple of minutes of his submissions Garde drew the courts attention to the disparity between my affidavits and the affidavits of Edward which I have referred to above and inferred that I was fibbing⁵⁶. At his paragraphs 38 to 42 Master Efthim accepted Garde's submissions and Edward's affidavits over mine.
- 162) There was nothing to even intimate the submission which Garde knew that Delany proposed to make.
- 163) This was the Council and Water Authorities strike out application yet both Delany and Garde had completed their submissions without making a substantive submission.
- 164) They were astonishingly reticent to put their case.
- 165) **Middleton's Submission.**

⁵⁵ Appeal Book page A-59

⁵⁶ See transcript 15/11/05 pages 16 to 19

- 166) I have previously, adequately detailed Middleton's submission.
- 167) **Delany replies and deceives the Court on behalf of himself and the rest of Dixon et al.**
- 168) In reply to Middleton, under instruction from Ms. Michelle Elizabeth Dixon of Maddocks Mr. J. Delany S.C. squarely misrepresented, the law, my affidavit, the "Book of Pleadings" and just about everything else to Master Eftim and omitted reference to section 97 of the Transfer of Land Act..
- 169) At pages 87 to 92 of the Transcript of 15th November 2005 Mr. Delany misrepresented the content of the document entitled "Book of Pleadings". At these pages Mr. Delany overtly represents that the "Book of Pleadings" discloses that I was aware that 2-lot plans of subdivision facilitate avoidance of section 9 of the Sale of Land Act 1962 and that this was one and the same as the "cause of action" set out in the 2005 Amended Statement of Claim and that I claimed to have discovered this in 2000.
- 170) Mr. J Delany SC for the Council read selected extracts from pages 2 to 10 of the "Book of Pleadings" including my handwritten comment "*Although Buchanan thought that he had exploited a loophole in the law, he had in fact broken the law*", then at page 88 of the transcript, in the face of the facts and the law before him, Delany read from page 5 of the "Book of Pleadings" and said:
- a) "*In order to avoid the provisions of s.9 of the Sale of Land Act Buchanan then lodged - what did he do? He lodged seven separate plans which were contrived, written in the plaintiff's own hand, to create several subdivisions of two lots each*"; AND
 - b) "*This is the critical piece of information you're being told that this poor man didn't find out until 2000*" (my emphasis)
- 171) Delany omitted all reference to section 97.
- 172) By these representations and omissions, for and on behalf of all of Dixon et al, Delany squarely misrepresented;
- i) what constituted the "cause of action" in relation to Tylden Rd.
 - ii) the law
 - iii) my affidavit
 - iv) the "Book of Pleadings"
- 173) These plans did not and could not form any part of the "cause of action" and in any event at its paragraph 51 my affidavit squarely stated that I learned about these plans when my lawyer Danny Ginsburgh told me about them. Danny Ginsburgh was my solicitor in 1983.

Mr. Ian Lonie misled the Minister

- 174) The matter of the "Water Supply Agreement" was raised in Parliament⁵⁷. The Water Authority then specifically recorded in its minutes that the "Water Supply Agreement" should have been with the Body Corporate but was not, and sought advice from solicitors Maddock Lonie and Chisholm on this specific point. [see item 4 on Water Authority Minutes at GlennAT2 Tab 13]
- 175) Mr. Ian Lonie of Maddock Lonie and Chisholm (now Maddocks) attended at a Water Authority meeting on 10th April 1986 to advise the Authority on the "Water Supply Agreement". Immediately after getting advice from Mr. Ian Lonie, the Water Authority resolved to instruct Maddocks to write to my solicitor saying that "*the Board believes it has **complied with its obligations under the agreement***"⁵⁸ (my emphasis) Subsequently, by letter⁵⁹ dated 7th October 1986, Mr. Ian Lonie advised the Minister for Water in identical terms as those set out in the Authority's Minutes of 10th April 1986, and specifically said that the Authority had complied with the terms of the "Water Supply Agreement".
- 176) This "Water Supply Agreement" was simply an unlawful agreement; it was not capable of being lawfully complied with or performed at all. From the foregoing, it is clear that Mr. Lonie and the Water Authority were entirely aware of all of the relevant facts, and Mr. Ian Lonie and the Water Authority **misled the Minister**, apparently on the specific advice of Ian Lonie.
- 177) At the time of getting the advice of Mr. Ian Lonie and of Mr. Lonie writing the letter to the Minister the Water Authority was fixed with knowledge that the Water Agreement should have been with the Body Corporate but was not and it was fixed with the facts of the proviso and the things done by it to enforce or give effect to the proviso. The Water Authority and surely Mr Lonie were also fixed with knowledge that the Agreement was not authorised by the Water Act or any other Act. Section 307AA(2) of the Water Act 1958 restricted such agreements to supply of water to lands "owned" by the consumer and in this case not only were the lands not owned the specific purpose and known effect was for the purpose of enforcing the proviso by depriving the "owner" of some of the lands of that supply⁶⁰. Mr Lonie also wrote a cunningly worded letter⁶¹ to my solicitor where he said the Board had completed **whatever obligations** it may have had and he denied that the Water Authority had acted wrongfully. Due to the failure of Mr. Ian Lonie and the Water Authority to properly advise the Minister it appears that the Minister understood that the Water Supply Agreement was with the Body Corporate⁶². Had Mr. Lonie properly advised the Minister we would not be here today and Maddocks would be many hundreds of thousands of dollars the poorer.

⁵⁷ See newspaper clipping at GlennAT2 Tab 12

⁵⁸ See Water Authority's Minutes of 10th April 1986 at GlennAT Tab 14

⁵⁹ Letter at GlennAT Tab15

⁶⁰ See also Amended Statement of Claim at paragraphs W21 and W22 at Appeal Book page A-1

⁶¹ Letter at GlennAT2 Tab 18

⁶² See Letter Minister to Max McDonald at GlennAT2 Tab20.

The various Judgments relied upon in the present application.

178) Master Efthim.

- a) Master Efthim was overtly misled by lawyers who asserted that 2-lot plans facilitated avoidance of section 9 of the Sale of Land Act and that this constituted the cause of action upon which he was required to adjudicate. This is absolute transparent garbage. Master Efthim initially estimated a couple of weeks to prepare judgment but it took six or seven months until he handed down his Judgment. I know he was troubled because shortly after Judgment I had a private conversation with him and he told me he worked all of Easter in 2006 trying to work it out. He said he was the only person in the entire building during this period. He also wished me well at appeal.
- b) If he read and understood section 9 and related legislation then he would have and must have known that he was fed garbage and deceit. If he did not either or both of read and understand section 9 then he was seriously remiss.
- c) His Reasons for Decision are remarkable in that he simply does not say what he adjudicated upon. He uses the broad statement that nothing was concealed from me. Why was he not a little more precise. Why did he not say that the unlawful plans were not concealed or whatever it was he adjudicated upon. In the end, as set out above, he essentially cut and pasted the deceitful outline of Dixon, Delany and Ahern almost word for word.
- d) I suspect that he was totally confused by the deceit that was put to him and he made a broadly worded essentially non specific judgment.
- e) **No one can rely upon the judgment of Master Efthim. It is the product of deceit and neglect.**

179) Justice Osborn.

- a) I have dealt with the Judgment of Justice Osborn. It is a fabrication from top to bottom.
- b) **No one can rely on the judgment of Justice Osborn it is the product of deceit.**

180) The subsequent Judgments of Justices Buchanan and Redlich and Justice Neave and Mandie and orders of Master Lansdowne are as condemning of this court as the Judgment of Justice Osborn. In the face of the facts and my allegations before them they each serve to ignore, deny, conceal and/or otherwise make wrong the fact of the deception of Dixon et al and the conduct of Justice Osborn.

a) Justices Buchanan and Redlich.

- i) I appealed to this Court of Appeal, my present allegations as against Dixon et al, Middleton and Justice Osborn comprised the grounds for appeal.
- ii) Dixon et al applied for security for costs and in full knowledge of their deceit made submissions to the effect that the previous judgments had been properly obtained and made.

iii) Justice Buchanan said “*The appellants now allege that they were denied natural justice and that the orders made by the trial judge were fabricated. In my view there is nothing in these contentions*”.(my emphasis).

(1) Justice Buchanan and Redlich then went on to order that I provide security for costs.

(2) The facts are otherwise, Dixon et al did mislead the court and Justice Osborn’s Reasons manifestly fly in the face of the facts and the law, this is denial of natural justice,

(3) Justice Buchanan’s “view” was apparently borne of prejudice in favour of his brother judge and professional brethren.

(4) Justice Buchanan had not considered the facts, he had no possible ground other than prejudice for his “view”.

(5) Justice Buchanan’s “view” wasn’t an opinion based upon facts, it was a personal “view” in the face of and essentially denial of the allegations and evidence provided by me. Coming from him it was the prejudiced “view” of the Court of Appeal and he expressed that “view” on that day, “*nothing in these contentions*” is a strong expression of fact according to Justice Buchanan and delivered without trial.

(6) Justice Buchanan effectively delivered appeal judgment before trial and without trial. Justice Redlich concurred. Having regard to the conduct of Justice Osborn and Justices Buchanan and Redlich. The writing was on the wall as to the probable result of my appeal. Everyone knows that this court can do whatever it has a mind to and the mind of the court was clear.

b) Justices Neave and Mandie.

i) After I abandoned my appeal. Edward, Garde and Burchell applied to this court for an award of indemnity costs. The Grounds for that application were that I had vilified officers of this court including Justice Osborn. Further grounds were that my allegations of fraud as against the Council and Water Authority were unfounded.

ii) In defence of this application I provided substantial argument and evidence that the so called vilification was in fact factual comment and that the allegations of fraud were in fact well founded.

iii) The application came on before Justices Neave and Mandie. The mindset of the court became apparent when Justice Mandie said to Greg Garde QC that he could have made the application on the ground that the appeal was hopeless. As with Justice Buchanan, the writing was on the wall.

iv) In his Reasons for Judgment Justice Mandie said “*The Appellants having abandoned their appeal from his Judgment are not entitled to agitate issues either of fact or law that were determined by*

the Judge” and he said “Once the appeal has been abandoned it is inappropriate for the Court of Appeal to investigate the validity of matters that were raised by the Appellants in their appeal.”

- v) Having declined to adjudicate on the grounds of the application Justice Mandie then went on to award indemnity costs on the ground raised by him, namely that the appeal was hopeless and for this purpose he relied upon the Reasons of Justice Osborn which he was on notice flew in the face of the facts and the law. Justice Neave concurred.

vi) I say;

- (1) The reasons of Justice Neave and Mandie may well be true in the case of an ordinary case where mere questions of errors of fact or law were involved but this was not the case here. My specific allegations and the facts before Justice Neave and Mandie was that the applicants had deceived the court and that Justice Osborn had fabricated his reasons. These are questions as to the conduct of the court and I was and remain entitled to raise these things with any authority at any time including with the Police, the Attorney General, the body politic and particularly with this court in defence of an application for costs where the beneficiaries are the conspirators which deceived the court.
- (2) While errors of fact and law may only be remedied at appeal the dishonest conduct of a Judge is a matter which this court must concern itself with whenever it become aware of evidence and/or allegation as to such conduct and in this case I say that Justices Neave and Mandie were squarely faced with such evidence and allegations and they chose to avert their eyes and provided specious reason to provide verisimilitude to that decision.
- (3) My allegations and the facts which were before Justices Neave and Mandie preclude the notion of “*determined by the judge*” as asserted by them.
- (4) Justices Neave and Mandie’s reasons are at best specious. The certainty is that like Justice Osborn and Justices Buchanan and Redlich before them their reasons serve to ignore, deny, conceal the facts known to or ascertainable by them that Dixon et al misled the court and Justice Osborn fabricated his reasons.
- (5) If they had a mind to Justices Neave and Mandie could have considered the matters before them. They chose not to and awarded indemnity costs to people whom they were on notice had deceived the court. The decision also protected Dixon et al from the consequences of their deceit.
- (6) Their Judgment relies upon a supposed Judgment which they were on notice was fabricated and this includes notice of fabrication of the specific aspect they relied upon, As detailed above and in my submissions to Justices Neave and Mandie, Justice Osborn absolutely misrepresented the gravamen of both previous proceedings.

c) **Master Lansdowne.**

- i) Before Osborn handed down his orders I made a submission⁶³ pointing out that by practice note 2 of 1995 Dixon et al would be required to make a summary of facts and that those facts would necessarily be at odds with Osborn's reasons. (because I would have made damn sure they set out the facts).
- ii) Before settling the now monstrous Appeal Book containing in the main part the superfluous documents intended to conceal the "Book of Pleadings" I submitted to Master Lansdowne that the facts as to what constituted the causes of action had been misrepresented and that Dixon et al should be required to comply with the practice note. Ahern and Burchell submitted that they could not agree with me as to those facts. Plainly it was not that they could not agree, it was that they would be forced to expose their own deception which was their problem.
- iii) Master Lansdowne accepted the submissions of Ahern and Burchell and her orders⁶⁴ dispensed with practice note 2 of 1995. A marvelous opportunity to force the facts was lost by the court again accepting the deceit of the lawyers.

181) On the facts set out above neither this court nor anyone can rely upon any one of the previous judgments. That of Master Efthim is a product of deceit and neglect, that of Osborn was blatantly fabricated, that of Justices Buchanan and Redlich patently prejudiced and that of Justice Neave and Mandie deficient by ignore of the facts before them as to the conduct of this court and its officers.

182) That Maddocks and Ahern make this present application in full knowledge of what they and Osborn did is a reflection on this court. They must be confident that this court will again protect them in the same manner as each previous court. The application depends upon implicit denial, or the courts acceptance, of the things known to them and to the court.

183) On the conduct to date this court is not an honest place, the lawyers must feel secure while misleading this court. This presently constituted court has an opportunity to send a message that deceit in this court will not be tolerated.



Glenn Thompson.

⁶³ Plaintiffs' costs submissions at Appeal Book page G-185

⁶⁴ Orders at Tab-11 of exhibit GlennAT2.