

**IN THE SUPREME COURT OF VICTORIA AT MELBOURNE  
COMMON LAW DIVISION**

No. 6321 of 2005

**BETWEEN**

**GLENN ALEXANDER THOMPSON and CHERYL MAREE THOMPSON**

**Plaintiffs**

**and**

**MACEDON RANGES SHIRE COUNCIL**

**First Defendant**

**and**

**THE COLIBAN REGION WATER AUTHORITY**

**Second Defendant**

**SECOND FURTHER AFFIDAVIT OF MICHELLE ELIZABETH DIXON**

Date sworn: 10 November 2005  
Filed on behalf of: The first defendant  
Prepared by:  
Maddocks  
Lawyers  
140 William Street  
Melbourne VIC 3000

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Ref: MED: 764595  
Attention: Michelle Dixon

I, Michelle Elizabeth Dixon, of 140 William Street, Melbourne in the State of Victoria, Solicitor, make oath and say as follows:

1. I am a partner of the firm of Maddocks, the First Defendant's solicitors in this proceeding. I have the care and conduct of this proceeding on behalf of the First Defendant. Except where otherwise stated, I make this affidavit from my own knowledge.
2. After being served with Mr Thompson's Affidavit sworn 18 October 2005, Maddocks sent a facsimile to the Plaintiffs' solicitors, Baldock Stacy & Niven, dated 27 October 2005, which stated in part:

"We have considered the affidavit of Mr Thompson sworn 18 October 2005 in relation to the question of security for costs. We put you on notice that we object to the hearsay evidence as to the alleged value of the industrial land. Our client relies

[764595: 4368777v1]



upon the statutory valuation carried out in accordance with the *Valuation of Land Act*. If your clients wish to contend that the value of the land in question exceeds \$67,000, then you will need to file an affidavit from an appropriately qualified valuer to that effect."

Maddocks' facsimile also requested that the Plaintiffs provide a copy of the indemnity agreement between the Plaintiffs. Now produced and shown to me and marked "MED-15" is a copy of Maddocks' facsimile dated 27 October 2005.

3. Baldock Stacy & Niven responded to Maddocks' facsimile dated 27 October 2005 by facsimile dated 31 October 2005, a copy of which is now produced and shown to me and marked "MED-16". That facsimile stated in part that Maddocks' "objections in relation to [their] client's valuation evidence is noted". The facsimile did not respond to Maddocks' request that they provide a copy of the indemnity agreement between the Plaintiffs.

4. On 31 October 2005, Maddocks sent a further facsimile to Baldock Stacy & Niven, a copy of which is now produced and shown to me and marked "MED-17". That facsimile stated in part:

"Whether any amount is secured by the mortgage is clearly relevant to our client's security for costs application, particularly given that our title search investigations reveal that the land, the subject of the mortgage, is the *only* parcel of land in Victoria in respect of which the plaintiffs are the registered proprietors.

We consider that both our client and the Court are entitled to know what the position of Westpac would be in respect of the amount secured by the mortgage were it to be called upon to provide a discharge of such mortgage.

Accordingly, we request that your client's obtain written confirmation from Westpac (with a copy to be provided to us prior to the security for costs application) as to what the pay out figure would be under the mortgage were Westpac to be called upon to provide a discharge of the mortgage.

Alternatively, your clients could sign the attached letter to Westpac authorising the bank to advise us in writing of the pay out figure required by the bank in order to obtain a discharge of the mortgage.

Given the assertions made by Mr Thompson in paragraph 5(a) of his affidavit in respect of the mortgage, we would expect that your clients would have no objection to either obtaining a confirmatory letter themselves (with a copy to us) from



Westpac as requested or alternatively having Westpac advise us directly of the pay out figure under the mortgage.

Please note however that if your clients are not willing or prepared to act upon either of these two alternatives then we will be submitting to the Court at the hearing of our client's security for costs application that it ought proceed on the basis that the parcel of land, the subject of the mortgage, is totally encumbered".

5. Maddocks sent a further facsimile to Baldock Stacy & Niven dated 4 November 2005 which again requested that they provide us with a copy of the indemnity agreement. A copy of Maddocks' facsimile is now produced and shown to me and marked "MED-18".
6. As at the date of swearing this Affidavit, Maddocks has not received a copy of the indemnity agreement that it requested by its facsimiles dated 27 October and 4 November 2005. Nor has it received a response from Baldock Stacy & Niven to its facsimile dated 31 October 2005 requesting further details of the amount secured by the Westpac mortgage.
7. I refer to my Affidavit sworn 23 September 2005 in support of the First Defendant's application for summary judgment. Paragraph 34 of that Affidavit contains a typographical error. The year "2005" in the second line should be a reference to the year "1995".

SWORN at Melbourne in the State of  
Victoria this 10<sup>th</sup> day of November 2005

Before me:



**SIOBHAN ANNE SHEPPARD**  
140 William St Melbourne 3000  
Being a legal practitioner holding  
a current practising certificate  
under the Legal Practice Act 1996.