

(12)

IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMON LAW DIVISION

Court Number: 6321 of 2005

BETWEEN:

GLENN ALEXANDER THOMPSON
& CHERYL MAREE THOMPSON

Plaintiffs

- and -

MACEDON RANGES SHIRE COUNCIL

First Defendant

- and -

THE COLIBAN REGION WATER AUTHORITY

Second Defendant

**AFFIDAVIT OF GLENN THOMPSON IN RESPONSE TO THE FIRST DEFENDANTS
APPLICATION FOR SECURITY FOR COSTS**

Date of Document: 18 - 10 - 2005

Filed on behalf of: The Plaintiffs

Prepared by:

Baldock, Stacy & Niven

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ORANGE NSW 2800

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I, Glenn Alexander Thompson, of 68 Summer St Orange New South Wales make oath and say:-

1. I am responsible for the carriage of these proceedings. The second Plaintiff is my ex wife Cheryl Maree Thompson of Unit 8/32 Warrendine St Orange New South Wales. ("Maree"). Maree is a joint tenant in the land referred to in paragraph 7 of this affidavit and was a joint tenant in all of the allotments purchased from Buchanan being the subject of these proceedings. However at no time has Maree had any dealings directly with any of the events the subject of these proceedings or with the Defendants excepting as my silent partner. For the purpose of bringing these proceedings I have provided Maree with an indemnity as to costs
2. I refer to my affidavit dated 17 October 2005 in response to the affidavits of the first and second defendants ("The first Thompson affidavit"). I rely upon the matters deposed to in the first Thompson affidavit in contending that the First Defendants security for costs application should be refused.
3. I refer to the affidavit of Michelle Elizabeth Dixon sworn on 23 September 2005 filed in these proceedings on behalf of the First Defendants in support of an application for security



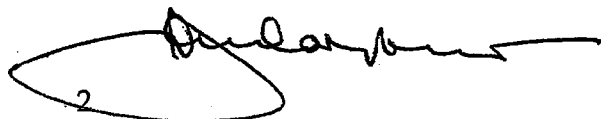
for costs ("the Dixon security for costs affidavit"). I say in response to paragraph 5 of that affidavit that I refute the assertion therein that the Plaintiffs' claim has poor prospects of success. I say that such an assertion is predicated on a fundamental misunderstanding of the nature of the current proceedings and a misunderstanding of the difference between any previous proceedings and the current proceedings. I rely in that regard on the matters deposed to in the first Thompson affidavit and in particular to paragraphs 42 to 56 inclusive of that affidavit.

4. I refer to paragraph 6 of the Dixon security for costs affidavit and the Exhibit marked "MED-1" being the letter from Hausler & Associates. I say that the estimate of costs contained therein is excessive. I say further that the correspondence from Hausler & Associates incorrectly states that the Plaintiffs claim is "essentially one of vicarious liability for misfeasance in public office". I deny that this is an accurate summary of the proceedings. The acts of misfeasance alleged are in each instance alleged to have been committed by the Council and are pleaded only in the alternative as to vicarious liability where an individual senior Council officer has been involved in the act complained of.

The cost estimate also allows for at least three interlocutory applications without giving details of why or how these applications would be necessary nor why Junior Counsel would be required to attend what are essentially directions hearings. There is no certainty that mediation will be ordered or may even be appropriate. The cost estimate seeks to predict too prematurely in the proceedings the total estimated costs of the proceedings and generally seeks to predict stages in the process which may not even eventuate.

5. I refer to paragraph 9 of the Dixon security for costs affidavit and say in response:-

- a) As to the registered mortgage exhibited by Michelle Elizabeth Dixon and marked MED-3 I say that this mortgage was initially to the Commercial Bank of Australia Limited ("CBA"), now Westpac. I first fell into default on this mortgage in about 1984 because of financial pressure which was as a direct result of the misfeasance of the defendants. Subsequently I became aware of certain irregularities in relation to the dealings of the CBA and its finance arm General Credits Limited (General Credits Limited subsequently became Australian Guarantee Corporation the finance arm of Westpac). In about 1985 I referred those irregularities to the chief legal officer of the Westpac bank. I told him that I did not intend to repay any monies to the bank and did not consider myself legally bound by the banks mortgage. Since then I have not acknowledged the debt. Since that time the Westpac bank has made no demands upon me in relation to this mortgage. I am advised that any claim by



Westpac is now statute barred and I am further advised that I may apply to the Court to have the Mortgage discharged and removed from the title.

- b) As to the caveat exhibited by Michelle Elizabeth Dixon and marked MED-4 I say that it was lodged by Buchanan in the following circumstances. The land purportedly encumbered by the said caveat is the parent industrial allotment as referred to in paragraph T1 of the present Statement of Claim. At the time of purchasing the parent industrial allotment I had undertaken to purchase the balance of the residential allotments now referred to in T2 of the present Statement of Claim. Buchanan required that I enter an unregistered mortgage agreement with him, essentially to guarantee that I would, in fact, proceed to purchase the 15 residential allotments. The mortgage was only intended to remain in place pending completion of the purchase of the residential allotments. Concurrent with signing the mortgage Buchanan gave me a letter wherein he undertook to lift the mortgage without charge upon completion of the purchase of the residential allotments. Annexed hereto and marked with the letter "A" is a copy of Buchanan's letter dated 10 October 1980. I did subsequently, in about November/December 1980 purchase the residential allotments and the mortgage was therefore discharged. I refer to paragraph 51 of the first Thompson affidavit wherein I state that I formed a view of Buchanan as a dishonest person. In 1982-83 I became aware of dishonest dealings by Buchanan in respect of the Woodleigh Heights land and I reported the matter to the police (Epping C.I.B.). Only after I had advised Buchanan of my intention to report the matter to the police did he lodge, on 2 May 1983 a Caveat purportedly in support of a mortgage which had been discharged in December 1980. Some years ago when Buchanan was bankrupted, neither the caveat nor the unregistered mortgage to which it purports to relate was claimed as an asset. I deny that I owe any money to Buchanan, his estate, or his wife Yvonne Rae Buchanan by way of equitable mortgage or at all.

6. (i) I refer to paragraph 10 of the Dixon security for costs affidavit as to the value of the land shown in Exhibit "MED-2". This is the Tylden Road parent industrial allotment as referred to in paragraph T1 of the Statement of Claim. I say that such valuation based on site value and capital improvement value for rating purposes is not an appropriate method of assessing the current value of the land. I have recently made enquiries of Kevin Sheppard real estate agent of LJ Hooker, Kyneton whom I have known for 25 years as to the current market value of the land. He has informed me and I verily believe that the property has a current market value of approximately

\$180,000.00. I have requested Mr Sheppard to confirm his estimate by letter but at the time of swearing of this affidavit that letter has not been received by me and I crave leave to produce and serve it prior to the hearing.

- (ii) Even the value of \$180,000.00 is less than the market value ought to be due to the fact that the land has no valid planning permit and its zoning status is therefore questionable. The absence of a planning permit is a direct result of the misfeasance of the Council in these proceedings. The misfeasance of the Council has also frustrated the subdivision of this parent title into the six industrial lots which I originally contracted to buy. If those six allotments had been lawfully processed I would be in the possession today of land having a far higher value than the parent industrial allotment.
- (iii) To the extent that the value of the land may be insufficient to satisfy a security for costs application, the very acts of misfeasance alleged against the defendant are the reasons for the depreciated value of the land and its lack of development potential.

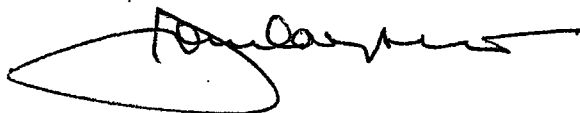
7. I refer to paragraph 12 and 13 of the Dixon security for costs affidavit and say in response that I have suffered financial hardship since 1984 as a result of the acts and misfeasance of both defendants including but not limited to the following:

- a) Council and the Water Board calling up bank guarantees and pursuing me for the overrun of costs where they had no legal entitlement to do so (paragraphs 21-24 of the first Thompson affidavit).
- b) Council and the Water Board representing that the Woodleigh Heights lands had no entitlement to water thereby preventing me or my mortgagee from selling the land (paragraph 27 of the first Thompson affidavit).

My current limited financial resources are the result of the misfeasance of the defendants and their continuing course of conduct towards me as referred to in the Statement of Claim.

8. I refer to paragraphs 14 and 15 of the Dixon security of costs affidavit and deny the allegations of fact deposed to in those paragraphs and in reply thereto I repeat paragraphs 34-41 of the first Thompson affidavit.

9. Should the first Defendant be successful in obtaining a security of costs against me, except to the extent of the Tylden Road parent industrial allotment (as described in annexure MED-2), I would be unable to continue to prosecute the present proceedings. My current financial resources are fully committed to providing for myself, my ex-wife and co Plaintiff Maree and our 14 year old daughter.



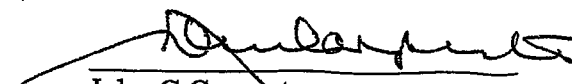
SWORN at Orange in the State of

New South Wales this 18th day

of October 2005

}
}
}
Glenn Thompson

Before me:


John C Carpenter

John Charles Carpenter
Solicitor
68 Summer St
Orange NSW 2800

"A"

(7)

1 YEA RD.
HUMEVALE
3757

10th October, 1980.

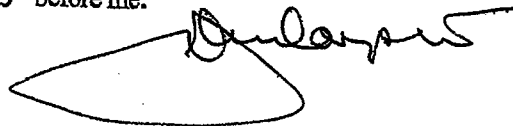
Re Mortgage G.A. & C.M. Thompson

Mortgage held by Palmer Stevens & Rennick, Solicitors of Kyneton for Lot 1 Tylden Road, Kyneton, i.e. the land zoned industrial will be lifted without charge when new contracts are drawn and signed for the balance of the land i.e. Lot 2 18 x 3 acre allotments.

Ken Buchanan
R. Buchanan

This, and the following... pages
is the annexure marked... to

the Affidavit of
Glenn Alexander Thompson
sworn on the 18th day of October
2005 before me:



John Charles Carpenter
Solicitor
68 Summer St
Orange NSW 2800