

**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

SECOND AFFIDAVIT OF GLENN THOMPSON

Date of Document: 7th November 2005

Filed on behalf of: The Plaintiffs

Prepared by:

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

- 1) I have read the Further Affidavit of Michelle Elizabeth Dixon dated 28th October 2005 ("the Further Dixon Affidavit") which has been filed and served in this matter. In the Further Dixon Affidavit Ms Dixon refers to my previous affidavit in this matter as the "Thompson Affidavit" and for the purpose of this affidavit I adopt the same reference. I respond to the Further Dixon Affidavit in part "A" of this affidavit.
- 2) I have also read the Further Affidavit of Steven Mark Edward dated 3rd November 2005 ("the Further Edward Affidavit") which has been filed and served in this matter. In the Further Edward Affidavit Mr Edward also refers to the Thompson Affidavit. I respond to the Further Edward Affidavit in part "B" of this affidavit.

PART A.

- 3) Part of my learning process, as described in paragraph 53 of the Thompson Affidavit, involved reviewing documents admitted into evidence in the 1987 Magistrates Court proceeding and subsequent Supreme Court proceedings immediately followed by a review of documents contained in



the black folder and in particular "complete" versions as compared with "clipped" versions of the Industrial Series of plans both versions of which were contained in the said black folder followed by the realisation that the versions of the Residential Series of plans which were admitted into evidence in the Magistrates Court and the Supreme Court and discovered by the Council in the 1988 County Court proceedings were in fact also "clipped" versions, clipped in such a manner as to remove or omit the identifying number from each of the "clipped" plans. (The "complete" version of the Industrial Series of Plans, the "clipped" versions of the Industrial Series of Plans and the "clipped" versions of the Residential Series of Plans are exhibit to paragraph 53 of the Thompson Affidavit in exhibits GAT-7, GAT-8 and GAT-9 respectively.).

- 4) Ms Dixon's "understanding" in paragraph 4 of the Further Dixon Affidavit that the first time I had viewed any complete plans was the time that I was first given the black folder is incorrect. I say:-
 - a) At the time of settlement of the 1988 County Court proceeding, at which time I was given the black folder, I thought that the Tylden Road matter was closed and I archived the documents. It was not until August 2000 that I had cause to review the documents in the black folder together with numerous other documents in my possession that I formed the opinions now set out in paragraphs 53(h), 53(i) and 54 of the Thompson Affidavit
- 5) To the extent that paragraph 5 of the Dixon Affidavit alleges or implies that "complete" versions of any of the said plans were discovered by the Council in the 1988 County Court proceeding I deny that implication or allegation. In addition I say that there is no basis at all for the belief claimed by Ms Dixon in paragraph 5 of the Further Dixon Affidavit.
- 6) Exhibited to the Further Dixon Affidavit is an exhibit MED-11 being a document entitled "Consolidated List of Documents" ("the Consolidated List"). To the best of my knowledge this document is not a Court document and this is the first time that I have sighted it. In the Thompson Affidavit and in this affidavit I make reference to a black folder. The documents in this black folder are marked with numbers in red ink. These numbers were always meaningless to me but I now see that the red ink numbers correspond to the numbers in the Consolidated List.
- 7) The 1987 Magistrates Court proceeding and the subsequent Supreme Court Appeal and the subsequent 1988 County Court proceeding all related to monies had and received or receivable purportedly pursuant to a s569E Notice of Requirement which related to residential portion only of the Tylden Rd Subdivision. The industrial portion of the subdivision and the plans of subdivision relating to the industrial portion were entirely irrelevant. The only relevant plans were the plans of subdivision relating to the residential portion.
- 8) In addition to the fact that that only the residential plans were relevant the further fact is that of the numerous copies or versions of the residential plans which do exist the only relevant copies of the



residential plans are those which were sealed by the Council on 21st May 1980 because it is these particular copies or versions of the residential plans and only these particular copies or versions of the residential plans which relate to or in respect of which the s569E Notices of requirement were in fact purportedly issued. Any other versions or copy of the residential plans and all copies of the industrial plans no matter which version were and remain entirely irrelevant to the Magistrates Court proceeding, the subsequent Supreme Court Appeal and the 1988 County Court proceeding.

- 9) In purported pursuance of item 13 of the Defendants Affidavit of Discovery sworn 5th April 1989 the defendants discovered what I now know to be "clipped" versions of each of the sealed plans comprising the Industrial Series of plans and the Residential Series of plans.
 - a) This discovery is now numbered as item 13. 13. in the Consolidated List. Copies of each of these plans is contained in the black folder and numbered 13-13 in red ink.
 - b) In the affidavit of discovery and in the Consolidated List this item of discovery is described as "Copy plan of subdivision of part Crown Portion 129 and 132, Parish of Lauriston, County of Dalhousie, sealed the 21st May 1980. LP 135: 199, 200, 201, 202, 203, 204, 205, 206, 207, 208."
- 10) Copies of these "clipped" plans were exhibited to paragraph 53 of the Thompson Affidavit in exhibits GAT-8 and GAT-9 containing the "clipped" industrial plans and the "clipped" residential plans respectively. Although copied in black and white the number "13-13" is visible on each plan. Copies of the "clipped" versions of both sets of plans are also exhibited to the Further Dixon Affidavit in exhibit MED-13 and Ms Dixon confirms at paragraph 9 of the Further Dixon Affidavit that it is these "clipped" copies which are also numbered 13-13.
- 11) There was no other discovery of any further plans of subdivision whatsoever, relevant or not, and the descriptions of discovered documents contained in the Defendants four Affidavits of Discovery and the Consolidated List exhibited by Ms Dixon in MED-7, MED-8, MED-9, MED-10 and MED-11 attest to this fact.
- 12) Ms Dixon then states at paragraph 9 of the Further Dixon Affidavit that the "complete" plans which I have exhibited in GAT-7 were discovered as document number 4 in the Supplementary Affidavit of Documents sworn 23rd May 1989 (Document 53. 4. Consolidated List). I deny that and say in response:-
 - a) Item 4 of the said Supplementary Affidavit of Documents is described as "Copy inward correspondence referred to in Water Trust Minutes dated 7th May 1980 and referring to Plans of Subdivision 79305/B, 79305/C and 79305/D."
 - b) The documents which were in fact discovered were in accord with the description of the said item 4 excepting that one only letter dated 2nd April 1980 of the required three documents was discovered by the Council and it was marked 79305 B, C, & D all identical to this notice. No plan



was attached. A copy of the letter dated 2nd April 1980 is now shown to me and marked with the letters "GAT-22

- 13) The "complete" industrial plans alleged by Ms Dixon to have been discovered were not discovered as such but were attachments to documents which formed part of discovered item 1 of the said Supplementary Affidavit of Documents and I refer to paragraphs 57(7) to 57(12) inclusive of the Thompson Affidavit in relation to concealment and I repeat the contents thereof. I also say further:-
- a) the defendants were required to discover the required Notices to the effect of the Thirtieth Schedule.
 - b) A Notice which purports to be to the Effect of the Thirtieth Schedule is not such a notice unless the plan to which it relates is attached and forms part of that Notice..
 - c) The proceeding related to monies had and received in purported pursuance of a s569E Notice of Requirement which related to the residential allotments only.
 - d) The proceeding related only to the residential land and therefore only the residential plans were relevant. The industrial portion and the Industrial Plans were entirely irrelevant to the proceedings.
 - e) The Council discovered 5 only out of what I now know to be at least 13 relevant Notices to the effect of the Thirtieth Schedule.
 - f) As I now know, no relevant plan was attached to any of the 5 Notices discovered and I said so at paragraph 57(8)(c) of the Thompson Affidavit..
 - g) Attached to and forming part of three of the 5 Notices to the Effect of the Thirtieth Schedule was a "complete" copy of one of the series of Industrial Plans. These three plans were irrelevant to the proceedings and were not discovered as plans of subdivision but were discovered as described in the said Affidavit of Documents, namely as constituting a component part of a Thirtieth Schedule Notice and as such could not be confused with or seen to be interchangeable with or in substitution for the "clipped" plans in fact discovered by the defendants.
 - h) At this time of attaching the irrelevant plans to three of the said Notices the Council had the opportunity of attaching residential plans, namely the plans comprising the residential series of plans but failed to do so but even if this had occurred any such plan would remain part of the Notice and could not be construed as having been provided or discovered in substitution for or interchangeable with the "clipped" versions actually discovered.
 - i) In relation to the certificate identifying exhibit MED-12 which states "Copy of 'complete' plans discovered by Council" I say that exhibit MED-12 does not exhibit copies of complete plans discovered by the Council, I say the correct position is that the plans exhibited by Ms Dixon in Med-12 and by me in GAT-7 were not required to be discovered nor were they discovered. What was required to be discovered (pursuant to Items 1 and 4 of the Schedule to the Notice under



order 16 rule 24 referred to in paragraph 57(6) of the Thompson Affidavit and exhibited as GAT-17) was:-

- i) copy of all relevant Notices to the effect of the Thirtieth Schedule and in particular those relevant to the plans considered by the Council on 20th February 1980.
- ii) Copy of inward correspondence referred to in Water Trust Minutes dated 7th May 1980

In response to these request the Council discovered 5 Notices to the effect of the Thirtieth Schedule. Four of these Notices were dated 4th March 1980, the three plans now exhibited to MED-12 and GAT-7 were attachments to three of these while the fourth dated 4th March 1980 had a plan showing all 18 allotments attached and a handwritten note saying "Note:- Plan Submitted in 5 sections 30th Schedules all identical to this." (refer paragraph 57(8)(b) of Thompson Affidavit and exhibit GAT-14) Instead of discovering the document exhibited at GAT-14 proper discovery required the Council to discover all 7 of the Notices to the effect of the Thirtieth Schedule relevant to the residential land together with copies of each of the 7 plans comprising the series of residential plans however the Council failed to do so. This item of discover was therefore also incomplete and misleading.

PART B.

14) The Further Affidavit of Mr. Edward asserts:-

- a) That Mr Edward attended at the plaintiffs' solicitors premises.
- b) That Mr. Edward inspected documents discovered by the Plaintiffs' in the 1995 Supreme Court proceeding.
- c) That Mr. Edward photocopied documents then produced. (by the plaintiffs')
- d) That my statement to the effect that Mr. Nevile had no knowledge of the case "cannot be true"

I deny each of (a) to (d) above..

15) In response I say:-

- a) In my attempts to learn of the true cause of my loss and damages, during the period 1984 until about 2000 I have accumulated thousands of documents. These documents have been accumulated from a large number of sources including government departments, the titles office, the Council, the Water Board, the State Library, discovery in proceedings and from Buchanan and by exchanging documents with solicitors involved in various aspects.
- b) In the Course of the 1995 proceeding I made affidavits of discovery which were limited to those documents which were relevant to the matters in question however I made it known that I had thousands of other documents which I considered irrelevant. In circumstances which I cannot now recall Mr. Edward obtained my permission to attend at my home to view and copy any document which he found to be relevant to the 1995 Supreme Court proceedings.



- c) Mr. Edward did not attend at my solicitors, he attended at my domestic premises and set up his photocopier in my kitchen area adjacent to my bedroom.
- d) Mr Edward did not inspect documents discovered or produced. He had free range of all documents in my possession whether discovered, discoverable, relevant or not and was free to copy any document which he wished to copy but was required as a matter of principle to limit that copying to documents related to the matters in question in the 1995 Supreme Court proceeding.
- e) Mr Edward appeared to me to wish to copy everything, relevant or not. Mr. Edward hired a high speed automatic feed copier and he spent two or three days copying documents and took a number of heavy boxes of documents with him when he left. Mr Edward appeared not to inspect any documents during this period as he had expressed a desire to return home and obtaining copies of all documents in my possession appeared to me to be the prime consideration at that time. The volume of documents copied precluded any meaningful inspection if at all.
- f) During this period Mr. Edward was often left alone in my domestic premises and had unfettered opportunity to look at anything he wished including my personal domain, property and documents.
- g) I believe that Mr. Edward copied numerous documents that both he and I are aware he was not entitled to copy including confidential communications between myself and my solicitors or between my legal representatives from time to time. I had no opportunity to object because as I was working I had to leave Mr. Edward alone in my premises and I did not have time to vet anything which he was doing. (One example of such privileged communication is now exhibited by Mr Edward at SME5.) Mr Edward States at paragraph 15 of the Further Edward affidavit that this letter was obtained from the plaintiffs during the course of his acting for the defendants however I believe the more correct circumstances to be that he copied documents to which he was not entitled, including this document, while he was at my premises.
- h) Insofar as Mr. Edwards claims or implies that he inspected and copied documents discovered and produced I deny that claim or implication. He appeared to copy everything without regard to its relevance or his entitlement to take copies.

16) I further say:-

- a) Mr. Neville did act for me during the period about 1983 to 1992 or 1993 and was familiar with the problems which I experienced and as understood at that time and was familiar with my knowledge and understanding of matters during that time.
- b) In 1993 I moved to Orange in New South Wales and Mr. Neville did no further work for me since that time.



- c) Mr. Nevile took no part in and had no knowledge of the 1995 Supreme Court "case" proceedings. Mr. Nevile did however act as Melbourne agent from time to time but solely for the purpose of service etc.
- d) Mr. Nevile did attend at the mediation as my friend. At that time Mr. Nevile explained to all people present including Mr. Edward. that he had no knowledge of the proceeding and was not there to advise me.
- e) Insofar as Mr. Edwards says or implies that Mr. Nevile was familiar with the "case" proceeding I deny that statement or implication.

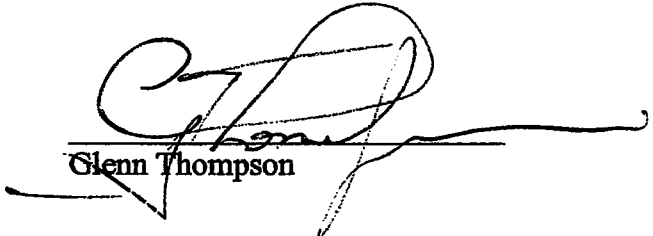
SWORN at Orange in the State of

New South Wales this 7th day
of November 2005

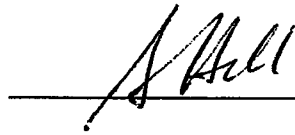
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Glenn Thompson

Before me:



SHARON ROBIN HILL
Justice of the Peace
Reg. No 106246