

IN THE SUPREME COURT
OF VICTORIA
AT MELBOURNE

1987 Q/R 235

In The Matter of the
Magistrates Court Act 1971

- and -

In The Matter of the Local
Government Act 1958

B E T W E E N:

GLEN THOMPSON

Applicant

-and-

THE PRESIDENT, COUNCILLORS &
RATEPAYERS OF THE SHIRE OF
KYNETON

Respondent

Affidavit on Behalf of the Respondent

I, Graeme James Wilson of Murphys Road Kyneton in the State
of Victoria Municipal Engineer make oath and say as follows:-

1. That I am a municipal engineer employed by the respondent
herein.
2. That on the 2nd day of December, 1987 I was present in the
Magistrates Court at Bendigo throughout the hearing of
Complaint numbered D 1419 of 1987 wherein the abovenamed
respondent sought to recover from the abovenamed applicant
the sum of \$3,708.00.
3. That the said complaint initially sought payment of the
said amount as being "Rates and Interest Due." At the
commencement of the hearing, by consent, the cause of
action was amended to "Balance Due for Work & Labour Done
& Material Supplied between the 17th October, 1982 and the
30th September, 1984."

That I verily believe that no transcript of the hearing was made or taken.

That the applicant was represented by Mr. Barry Fox of Counsel and the respondent was represented by Mr. Barry Phillips of Counsel.

That on behalf of the respondent evidence was given by myself and a number of exhibits were tendered. Those exhibits included plans of subdivision of the land concerned, extracts from the Minutes of the proceedings of the respondent relevant to the matters in issue between the parties, Notices issued by the respondent, the respondent's ledger cards relating to the subject-matter of the dispute and correspondence between the applicant and the respondent.

That on behalf of the applicant evidence was given by the applicant himself, by Mr. Ross Nicholls and Mr. Lance Nicholls.

I refer to an affidavit sworn herein by the applicant on the 22nd day of December 1987 and in answer to the allegations contained therein say as follows:

- (a) ✓ I admit the allegations contained in paragraphs 1, 2 and 3 thereof;
- (b) ✓ Save and except to say that I have not seen the bundle of documents referred to as Exhibit "A" I otherwise admit the allegations contained in paragraph 4 thereof;

- (c) ✓ I admit the allegations contained in paragraphs 5 & 6 thereof;
- (d) ✓ I admit the allegations contained in sub-paragraphs (a) and (b) of paragraph 7 thereof;
- (e) I cannot recall evidence being given as alleged in sub-paragraph (c) of paragraph 7 thereof;
- (f) As to the allegations contained in sub-paragraph (e) of paragraph 7 thereof I say that the evidence was that the representations from Mr. Buchanan were contained in a letter of the 7th March, 1980, a copy of which was produced and tendered; I say further that the evidence was that the Council resolved to accept a Bank Guarantee pursuant to Section 569 E (1) (b) of the Local Government Act 1958 and that otherwise I agree with the allegations contained therein;

HEARD

FALSE

- (K) (a) I admit the allegations contained in sub-paragraph (f) of paragraph 7 thereof but say there was also evidence that the plans were sealed with the road-making requirement endorsed thereon on the 21st May, 1980 and that evidence was given by me of the purpose for doing this namely that the investigations and examination of the plans by the Office of Titles could be carried out contemporaneously with the making of the roads thereby saving considerable time by the sub-divider;

569 E(1)(c)

569 E(3)(a)

FALSE

1/2 (?)

Enclosed with the said letters was a Bank
Guarantee: *For 12.000*

I admit the allegations contained in sub-para (i) of paragraph 7 and say further that the relevant Notices of Disposition of Interest in land dated the 24th December, 1980 were tendered as an exhibit which Notices showed that the land was purchased by the applicant and one Cheryl Marie Thompson:

(k) I say that evidence was given that by letter dated the 12th May, 1982 and the 4th November, 1982 addressed to the applicant wife they were asked to advise the respondent of their intentions in respect of complying with the requirements endorsed on the plans of subdivision.

NOT ENDORSED AT ALL

- (1) I say that evidence was then given that on the 17th November, 1982 the Council of the respondent resolved pursuant to the provisions of section 569 E (4) of the said Act to carry out the said works;
- (m) I admit the allegations contained in paragraphs (j) and (k) of paragraph 7 thereof;
- (n) As to the allegations contained in sub-para (1) of paragraph 7 I say that after referring to the respondent's ledger sheets I gave evidence to the effect that the work commenced in the week ending the 18th February, 1983 and was completed in March 1984 although suppliers of material and contractors were paid after that date;
- (o) I admit the allegations contained in sub-paras (m) and (n) of paragraph 7 and say further that the quantum of the respondent's claim was not in dispute;
- (p) I admit the allegations contained in paragraph 8 thereof but say that the respondent gave further evidence to the effect that he engaged solicitors to act for him in relation to the purchase of the land, that he did not personally make any enquiries of the respondent pursuant to section

600C of the said Act and that he did not know whether or not his solicitors had made such enquiries;

(q) I admit the allegations contained in paragraph 9 thereof;

(r) As to the allegations contained in paragraphs 10 and 11 I say:

- (i) that the submission set forth in para 11 were made on behalf of the applicant prior to the submissions made on behalf of the respondent;
- (ii) that on behalf of the respondent submissions were also made to the effect that the provisions of section 569 E (4) and (5) do not bar recovery even if the works were completed outside a period of three years and that the provisions of section 569 E (3) allowed the respondent to lift the requirements endorsed on the plans of subdivision once a guarantee has been given.

(s) I admit the allegations contained in para 12 thereof.

3. That the reason of the foregoing I respectfully seek that the Order Nisi herein be discharged.

worn by the said Graeme

James Wilson at *KYNETON*

his *17th* day of *JUNE* 1988.

G. Wilson

Before Me:

A. Pirie

A SOLICITOR OF THE SUPREME
COURT OF VICTORIA HOLDING A
CURRENT PRACTISING CERTIFICATE UNDER
THE LEGAL PROFESSION PRACTICE ACT, 1986

This Affidavit is filed by Messrs. Piries of 13 Doveton Street
North, Ballarat, 3350 Solicitors for the Respondent.