



Your Ref.

Our Ref.

DC:JH:9102.58

Telephone Enquiries

Mr Coleman

Direct Dial No.

607 9425

CONFIDENTIAL

13 February, 1991

Mr. Glenn Thompson
4 James Street
WHITTLESEA VIC 3757

Dear Mr. Thompson,

COMPLAINT AGAINST GAIR & BRAHE

I refer to my letter of the 31st January last and now enclose copy of a letter dated 29th January received from Gair & Brahe in reply to my enquiries.

I note my previous comment that there was no solicitor/client relationship between Gair & Brahe solicitors and yourself and that consequently the solicitors owe no duty to you which flows from such a solicitor/client relationship. The only remaining areas therefore that I could have jurisdiction in this matter is in relation to a standards breach or misconduct by the solicitor. In respect to your allegation that John Price knowingly or carelessly or recklessly swore a false affidavit I refer you to the comments made by the solicitors in paragraph A of the enclosed copy letter. In view of the differing versions stated by yourself and the solicitors as to the service of the writ I must advise you that I cannot make a binding determination of fact as for example a court can do. Furthermore I note that there was an opportunity for you at the time to obtain legal advice with respect to your concerns and if appropriate to make the relevant application in the court. Accordingly I am not prepared to take this aspect any further.

With respect to your allegations of conflict of interest I advise that there can be no conflict of interest by the solicitors where you are not in a solicitor/client relationship with them.

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Accordingly I am now closing my file. I **enclose** for your information a statement giving details of the role of the Lay Observer under the Legal Profession Practice Act 1958.

Yours faithfully,



DAMIEN COLEMAN

A Delegate of the Secretary of
the Law Institute of Victoria

Enc



GAIR & BRAHE
SOLICITORS

INCORPORATING VAIL & McBAIN

RECEIVED 30 JAN 1991

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Andrew Keith Sutherland
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Our Ref. WDB:MC

Mr. Damien Coleman
Law Institute of Victoria
470 Bourke Street
MELBOURNE VIC 3000

29 January 1991

Dear Mr. Coleman,

Glenn Thompson

Further to my letter to you of the 22nd January 1991, I have now had the opportunity of considering the file in this matter and have as well asked Mr. Price to prepare a report which is enclosed - the report has annexed to it documentation which Mr. Price thought may assist in understanding the matter.

As you observed in your letter of the 15th January 1991, Mr. Thompson makes allegations, it seems, in relation to two matters so far as Gair & Brahe is concerned in relation to which the following appears to be the position -

- (a) Affidavit of Service - in this regard I think the following observations can be made -
- (i) the Writ was, according to Mr. Price, posted on the 9th December 1987 and Mr. Price's Affidavit of Service reflects this. As well, I note that on the copy of the letter on file there is a handwritten note by Mr. Price stating "posted on 9/12/87 at 5pm".
 - (ii) Copy of the franking machine endorsement does indeed show the 11th December 1987. Mr. Price's explanation for this is that the letter went out late in the day (after normal postings) and he can only conclude that the receptionist, having readjusted the date for the following day, readjusted again but incorrectly.

- (iii) In any event the matter was taken up with Solicitors for Mr. Thompson who must have been satisfied with the position because nothing further was ever done.
 - (iv) We were never given a copy of the receipt stamp which we assume would have been placed on the incoming correspondence so far as the company was concerned.
 - (v) We note that Mr. Thompson confirms that the company had changed its location. Service so far as we were concerned was the result of searches carried out immediately beforehand and I assume therefore that the company officers never filed Returns showing the change of address.
 - (vi) Mr. Price says that Mr. Thompson knew of the fact that judgment had been entered on the 28th December 1987 (see page 5 of Mr. Price's report).
- (b) Conflict of interest - Mr. Thompson seems to assert that there was a conflict of interest in our acting on behalf of Mercantile Credits on the one hand and Woodleigh Heights Resort Developments Pty. Ltd. on the other. I think that Mr. Price's report makes the position clear but in relation to the suggestion I make the following observations :-
- (i) Both Mercantile Credits and Woodleigh Heights Resort Developments confirmed that we could act on behalf of the latter in relation to the planning appeal to the Administrative Appeals Tribunal.
 - (ii) I would not have thought that it was a matter for comment by Mr. Thompson as to whether or not there may have been a conflict of interest as between Mercantile Credits and Woodleigh Heights Resorts.
 - (iii) The suggestions that Mr. Garde of Counsel misled the Tribunal or that any other person misled the Tribunal are rejected.
 - (iv) At all times Mr. Thompson was advised by his Solicitors.
 - (v) Mr. Thompson's Solicitors never made any suggestions of the kind subsequently made by Mr. Thompson.

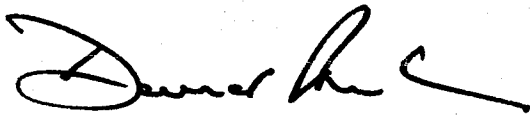
I must say that I find it curious that Mr. Thompson should be complaining some four years after the event in circumstances

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where at all relevant times he was represented by and advised by his own Solicitors.

I trust that this letter and the enclosures explain the position to your satisfaction - if there is any further information you require or if you would like to look at the file, please let me know.

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'David Brahe', with a stylized flourish at the end.

.....
David Brahe