

Rule 9.01(2)

Form 9A

**IN THE MAGISTRATES COURT OF VICTORIA
AT BROADMEADOWS**Court Number: **N 01349311****Between****Macedon Ranges Shire Council****Plaintiff****AND****Glenn A. and Cheryl M. Thompson****Defendants****FINAL DEFENCE**

Date of Document: - 21st September 2009
Filed on behalf of: The Defendants
Prepared by: The Defendants.

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This further amended defence replaces all previous defences.

- 1) In 1979 and 1980 the Macedon Ranges Shire Council and Coliban Water conspired with one another and a property developer, Kenneth Raymond Buchanan, to avoid the provisions and the effect of section 9 of the Sale of Land Act 1962, the facts giving rise to these allegations were admitted by the Council and Water Authority in their applications for summary judgment in relation to the recent 2005 Supreme Court proceeding.

Particulars.

- a) In relation to the land known as Tylden Rd the Council omitted to serve the Notices of Requirement referred to in the Council's Minutes of 20th February 1980 and in relation to the land known as Woodleigh Heights the Council sealed the plans of subdivision in full knowledge or without caring that the provisions of condition 8 of Planning Permit had not been complied with in that the private water supply and reticulation system defined in the plans and submissions had not been completed.

- b) These things comprised the causes of action defined in the Amended Statement of Claim in the 2005 proceeding.
 - c) These things facilitated avoidance of the effect of section 9 of the Sale of Land Act 1962.
 - d) The Council and Water Authority mounted an application for Summary Judgment which alleged that the causes of action were barred by one or more of limitations, Anshun and/or Issue Estoppel. The Council and Water Authority further said that they had openly disclosed the matters and things comprising the causes of action.
 - e) Implicit in the grounds of the application for summary judgment and their assertion of open disclosure is an admission as to the matters and things comprising the causes of action in the 2005 proceeding.
- 2) The Council is estopped from denying the matters and things constituting the cause of action in the 2005 proceeding.
 - 3) The causes of action pleaded in the 2005 proceeding gave rise to the damages claimed in the Amended Statement of Claim in the 2005 proceeding.
 - 4) In their applications for summary judgment the Council and Water Authority did not deny the damages arising from the causes of action set out in the 2005 proceeding.
 - 5) The Council is now estopped from denying the fact of the damages claimed in the 2005 proceeding.
 - 6) The quantum of the damages set out in the 2005 proceeding far exceeds the present claim.
 - 7) Notwithstanding the Defendants may now be estopped from mounting an action to enforce recovery of the damages caused;
 - a) neither limitations, Anshun, Issue Estoppel or any other principal of law or statute extinguishes the fact of those damages
 - b) The defendants are entitled to equitable setoff against those damages.

- 8) The Defendants have not released either the Council or the Water Authority as to the causes of action set out in the 2005 Amended Statement of Claim and have not released them from equitable liability as to the damages caused by those causes of action.

Particulars

- a) The release in relation to the previous Tylden Rd proceeding;
- i) In the Magistrates Court the Council gave evidence that it had served the Notice of Requirement referred to in its Minutes of 20th February 1980 and that the Notice provided for the acceptance of Bank Guarantees. The Magistrate accepted this evidence and found for the Council.
 - ii) At subsequent Supreme Court appeal the Council repeated its evidence but Justice Kay found that the Notice of Requirement provided for the construction of roads and not the acceptance of Bank Guarantees.
 - iii) Relying on the representations of the Council that the Notice of Requirement had been served and upon the judgment of Justice Kay the defendants instituted the previous Tylden Rd proceeding. That proceeding was for recovery of monies had and received under mistake of law and the cause of action was that while the Council had issued a Notice of Requirement in relation to the construction of roads there was no or no lawful requirement empowering the Council to either hold or call upon Bank Guarantees. These things were squarely respectively pleaded at paragraphs 7 and 20 of the Amended Statement of Claim in the previous Tylden Rd proceeding.
 - iv) The Council and Water Authority each admitted to paragraph 7 of the previous Amended Statement of Claim on four occasions each for a total of eight admissions.
 - v) The defendants subsequently discovered and the fact is that the Notice of Requirement referred to in Council's minutes of 20th February 1980 in relation to the construction of roads was never either issued or served.

- vi) The 2005 proceeding squarely pleaded that the Council had omitted to serve the Notice of Requirement for the construction of roads and this constituted the cause of action.
 - vii) In its application for summary judgment of the 2005 proceeding the Council admitted to the cause of action in the 2005 proceeding
 - viii) By admitting to the cause of action in the 2005 proceeding the Council admitted to the fact of its false evidence before the Magistrate and Justice Kay and also the falsity of the eight admissions in the previous Tylden Rd proceeding.
 - ix) The release in the previous Tylden Rd proceeding only released the Council from the cause of action in that proceeding and that cause of action was in fact predicted on the now implicitly admitted fraudulent false evidence and false admissions of the Council and in any event the cause of action in the 2005 proceeding was the absolute antithesis of the earlier cause of action and could not be precluded by the earlier release.
 - x) A release cannot include that which was expressly denied and concealed by the Council at the time of executing the release nor can it include the antithesis of that which it releases.
- b) The release in relation to the earlier Woodleigh Heights proceeding.
- i) In 1979, the Council sealed the Woodleigh Heights plans. At the time of sealing the plans clause 8 of the Planning Permit had not been complied with in that the private water supply and reticulation system defined in the plans and submissions had not been completed.
 - ii) In 1980 the Council issued a planning permit on the secret and unlawful "proviso" that all of the land in the subdivision be owned by the timeshare company Woodleigh Heights Resort Developments P/L "WHRD".
 - iii) In 1981 the Water Authority entered into an unlawful water supply agreement between itself and WHRD and thereafter the Council fraudulently represented that my land did not have entitlement to water and that such water was a prerequisite to building permits and

the Water Authority fraudulently represented that WHRD owned and operated the water supply and reticulation system within the cluster subdivision.

- iv) The fraudulent representations of the Council and Water Authority depended upon concealing the facts of the private water supply. They did so by concealing the plans and submissions referred to in clause 8 of the first planning permit. By concealing these plans and submissions the Council and Water Authority also concealed that fact that the private water supply had never been completed.
- v) In 1995 I obtained copies of the plans and submissions. Upon obtaining the plans and submissions the fact of the sealing of the plans included a representation by the Council that the private water supply defined in the plans and submissions had been completed and that I/my land at all times had entitlement to that private water supply.
- vi) In 1995 I issued the previous Woodleigh Heights proceeding and the cause of action squarely pleaded was that the private water supply existed and that my land had entitlement to that water supply and that entitlement had been concealed by the Council and Water Authority.
- vii) The matter went to mediation. The mediator held a pre mediation conference with the barristers for the Council and Water Authority but not with myself..
- viii) At mediation the mediator advised me that I would fail and be bankrupted by the costs and that the Council and Water Authority were prepared to offer me a small sum to walk away. On the recommendation of the mediator I agreed to settle and terms of settlement were signed.
- ix) I was subsequently advised that I ought not have settled and the Council and Water Authority both defaulted on the terms of settlement in that they did not pay the settlement sum by the due date. I considered them in default and therefore issued notice of trial.

- x) The Council and Water Authority issued a summons seeking specific performance of the Terms of Settlement. At the hearing, during a recess while the Judge prepared his reasons the lawyers for the Council and Water Authority showed me a reticulation plan which clearly showed that the reticulation system had not been installed until 1982 and not 1979 as alleged by me. They asked to the effect "how do you explain this?"
- xi) The Council and Water Authority had not discovered this reticulation plan during the proceeding and had thereby concealed the fact that the reticulation system had not been installed.
- xii) Justice Beach found that time was not of the essence and ordered specific performance of the terms of settlement.
- xiii) The Terms of Settlement in the previous Woodleigh Heights proceeding released the Council from the cause of action in that proceeding which was that the private water supply had been completed and that the Council and Water Authority had concealed both the facts of that private water supply and my entitlement to it.
- xiv) The cause of action in the 2005 was based upon what the reticulation plan disclosed and which had been concealed since 1979 which was that the Council had sealed the plans in full knowledge or with careless disregard for the fact that the private reticulated water supply had not been completed.
- xv) In their application for summary judgment in relation to the 2005 proceeding the Council and Water Authority admitted to the fact of the reticulation plan and they admitted to the cause of action in the 2005 proceeding.
- xvi) The release in the earlier Woodleigh Heights proceeding did not and could not release the Council from what had in fact been concealed at the time of the earlier proceeding and in addition the cause of action in the 2005 proceeding was in fact the antithesis of the cause of action pleaded in the earlier Woodleigh Heights proceeding.

c) Justice Osborn's Reasons fly in the face of the facts and the law and cannot be relied upon by this court or anyone at all.

i) In his Reasons for Judgment Justice Osborn asserted that the releases executed in the earlier county court proceeding and the earlier Supreme Court proceeding extend to include the causes of action in the 2005 proceeding.

ii) The lawyers for the Council and Water Authority had carefully cooperated with one another to deceive the court of Master Eftim. At appeal Justice Osborn was aware of this fact and Justice Osborn authored Reasons for Judgment which fly in the face of the law and the facts. The effect of his reasons was to ignore, deny, conceal and/or otherwise make wrong the fact known to him that the lawyers for the Council and Water Authority had misled the court.

Particulars

See particulars to next paragraph

9) The fact that the lawyers for the Council and Water Authority carefully cooperated with one another to deceive the Court is now an issue in a pending Judgment of the Court of Appeal and which Judgment is set down to be delivered at 10.00AM on Thursday 24th September 2009.

Particulars.

a) In purported reliance on the Judgment of Justice Osborn the Council applied for an award of indemnity costs against the defendants.

b) In defence of that application the defendants prepared an outline of submissions dated 24th June 2009 and Written Submission and Addendum each dated 27th August 2009.

c) The said outline, written submission and addendum detail the conduct of the lawyers and that Justice Osborn's Reasons fly in the face of the facts and the law in an apparently carefully coordinated manner.

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- d) Copies of the said outline, written submission and addendum will be provided to the court at the hearing of this matter.
- e) Based, inter alia, on the matters and things contained in the said outline, written submission and addendum, on 6th May 2009 the defendants laid an information against each of the lawyers and Justice Osborn directly with the Chief Commissioner of Police alleging conspiracy and perverting the course of justice. Those allegations remains on foot with the Police, at Chief Commissioner level, at the date of this defence.
- 10) As a consequence of the fact that the causes of action in the 2005 proceeding were concealed by the Council and the causes of action in the 2005 proceeding are the antithesis of that which was pleaded earlier proceedings and as a consequence of the facts and circumstances surrounding the Reasons for Judgment of Justice Osborn I deny that the causes of action pleaded in the 2005 proceeding are the subject of releases.
- 11) As a consequence of the matters set out above the Defendants claim equitable setoff against the damages caused by the matters and things comprising the causes of action set out in the 2005 proceeding.
- 12) Neither limitations. Anshun, Issue Estoppel or any other principle of law or any other statute operate to extinguish a right to equitable setoff
- 13) A further setoff.
- 14) During the period 1980 until about 1989 the Defendants were rated on a number of allotments within cluster subdivision CS1134 known as Woodleigh Heights. The defendants refused to pay these rates during the period about 1983 until 1989. These rates plus interest were paid in full upon the sale of land in 1990
- 15) The land was rated at a value which represented useable land having access and entitlement to a reticulated water supply.

- 16) In its application for summary judgment in the 2005 proceeding the Council admitted to the causes of action in that proceeding.
- 17) The cause of action in the 2005 proceeding in relation to Woodleigh Heights was that the plans were sealed in full knowledge or with careless disregard to the fact that the private were supply defined in the plans and submissions referred to in clause 8 of planning permit 2191 had not been completed.
- 18) The subsequent water supply purportedly provided by the Water Authority in 1982 was unlawful.
- 19) During the period 1984 until 1990 the Water Authority falsely represented that pursuant to the 1982 Water Supply Agreement between the Water Authority and WHRD the water supply and reticulation system within CS1134 was owned and operated by WHRD and that the Defendants allotments did not have entitlement to that water and during that same period the Council represented that building permits were not available to the defendants land because it did not have access to a reticulated water supply.
- 20) The Council is estopped from saying that the land did have access to a reticulated water supply.
- 21) The land was fraudulently rated by the Council at a value that represented that the land did have access and entitlement to a lawful water supply whereas the fact known to and now admitted by the Council was that no such water supply existed.
- 22) The Defendants could not and did not challenge the rates at time that they were levied because notwithstanding the representations of the Council the Defendants believed that the land did in fact have a right to a water supply and the fact of the rates struck served to additionally and fraudulently conceal the fact that it did not have such right.
- 23) The Defendants now claim equitable setoff as against the monies had and received by the Council as rates purportedly levied on the Woodleigh Heights land as a consequence of its fraud.
- 24) Limitations.

- 25) The sum claimed by the Council includes rates and interest.
- 26) The Defendants say that the Council is prevented by section 5 of the Limitations of Actions Act 1958 from instituting a proceeding to recover that part of the interest which arose more than six years prior to the institution of the present proceeding and is further precluded from claiming compound interest on that interest.
- 27) The Defendants say that the Council is prevented by section 5 of the Limitation of Actions Act 1958 from instituting proceedings to recover those rates which may be lawfully due but which preceded the present proceeding by more than six years.
- 28) **An alternative and/or additionally equitable setoff.**
- 29) In the alternative and/or additional to the setoffs pleaded above and in the circumstances where the right to equitable setoff is extinguished by fluxion of time the Defendants say that the rates and interest lawfully due up to and including about 1997 have already been setoff.
- 30) In its application for summary judgment in the 2005 proceeding the Council alleged that the Defendants became aware of the cause of action in relation to the Tylden Rd land in 1991.
- 31) On the representations of the Council time within which the Defendants could begin an action to recover the damages resulting from that cause of action was at any time up until about 1997.
- 32) The Defendants first refused to pay rates in about 1984 as a consequence of the things being done by the Council and Water Authority and particularly the fraudulent representation that WHRD owned and operated the water supply and reticulation system to the Woodleigh Heights Land.
- 33) The defendants have at all times claimed setoff as against the damages done and the defendants say that each rate lawfully levied and due up to about 1997 was in fact equitably setoff as and from the time each rate was levied.
- 34) **This Court does not have jurisdiction to determine this matter in favour of the Council.**

- a) If the Court accepts any one or more of my other grounds for defence then the question of the legitimacy of the rates purportedly levied does not necessarily arise however if the Court does not accept any one of my other grounds for defence then the defendants say that this Court does not have jurisdiction to determine as to whether or not the Council was empowered to levy at least part of the purported rates now claimed.
- b) The purported rates presently claimed includes rates which were purportedly levied during the period about 1983 until 1991 on land described by the Council as Lot 1 LP 135199, Lot 2 LP 135200 and lots 3 to 6 LP 135201 and during the period 1992 until the present on Lot 1 LP 134684
- c) The land purportedly rated during the period 1983 until 1991 never existed except as allotments on unlawful plans of subdivision which were contrived by the developer and unlawfully sealed by the Council for the purpose of avoiding the provisions of section 9 of the Sale of Land Act 1962.
- d) The Council is estopped from denying that the said plans were contrived and sealed for the purpose of avoiding section 9 of the Sale of Land Act 1962.

Particulars.

- i) In its application for summary judgment of the 2005 proceeding the Council asserted that the plans were contrived for the purpose of avoiding section 9 of the Sale of Land Act 1962.
- e) Each of the contrived plans was endorsed to the effect that a requirement pursuant to s569E of the Local Government Act 1958 had been made and even if lawful the Registrar of Titles was prevented from approving the plans.
- f) Each of the contrived plans was also in breach of section 97 of the Transfer of Land Act in that none of the plans showed all of the allotments into which it was intended to subdivide the parent title.

- g) The Lodged Plans 135199, 135200 and 135201 were never approved by the Registrar of Titles and the land being the allotments set out on them never existed lawfully or at all.
- h) The defendants say and allege that the Council did not and could not validly rate those allotments which were set out on the contrived plans and which land never existed as allotments on plans capable of being approved by the Registrar of Titles.
- i) The defendants further say that the rates purportedly levied in relation to the allotments set out on the unlawful were levied for fraudulent purpose, namely to provide verisimilitude to the conspiracy to avoid section 9 of the Sale of Land Act 1962.
- j) The Local Government Acts of 1989 and 1958 only empowered the Council to rate land, not allotments set out on unlawful plans contrived to avoid the law and which plans could not be lawfully processed so as to create or define a parcel of land capable of being separately owned, used or rated.
- k) The defendants say that section 183 and 184 of the Local Government Act only apply in relation to rates levied on actual land and not to allotments set out on unlawful plans which could not be lawfully processed so as to create actual ratable land capable of being either owned, occupied or rated.
- l) The Council has previously issued two proceedings in relation to these purported rates and in the case of proceeding D32 of 1988 in the Magistrates Court at Kyneton the Council refused to comply with discovery and then withdrew once orders for discovery were made. In the case of the proceeding 212 of 1991 in the Magistrates Court at Kyneton the Council again withdrew and from then on ceased purporting to rate the allotments set out on the unlawful plans and instead began to rate the parent title.
- m) The defendants say that this Court is precluded by s.100(2) of the Magistrates Court Act 1989 from determining as to whether or not these non existent lands were validly rated or, not fraudulently rated, or rated at all.

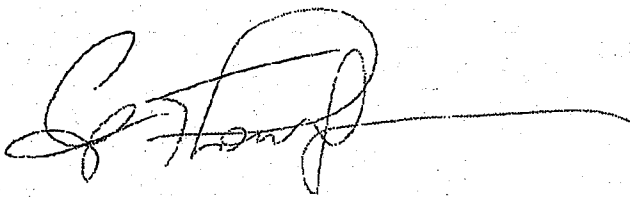
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n) The Defendants say that the Supreme Court is the only valid jurisdiction to determine as to whether or not the allotments set out on the unlawful plans constituted ratable land capable of being owned, occupied, lawfully transferred and rated at all.

o) As this court cannot assert that the allotments on the unlawful plans constituted ratable land or land at all then it cannot determine this proceeding in favour of the Council.

35) If this Court determines that it does have jurisdiction the defendants allege those things set out in subparagraphs (a) to (h) above and say that this court should find that the land purportedly rated during the period about 1984 to 1991 did not exist and the rates on the said allotments were not validly levied or levied at all.

Filed 22nd September 2009



Signed by Glenn A. Thompson (First Defendant).

The address of the Defendants is

14 Coutts Street Bulimba QLD 4171 and 1/42 March Street Orange NSW 2800

The address for service of the defendants is as above.