

IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMON LAW DIVISION

No. 6321 of 2005

BETWEEN

GLENN ALEXANDER THOMPSON and CHERYL MAREE THOMPSON
Plaintiffs

and

MACEDON RANGES SHIRE COUNCIL
First Defendant

and

THE COLIBAN REGION WATER AUTHORITY
Second Defendant

SUBMISSIONS ON BEHALF OF THE FIRST DEFENDANT

Date of document: 30 October 2006

Filed on behalf of: The First Defendant

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A. THE APPLICATIONS AND THE PLAINTIFFS' APPEAL

1. The proceeding was issued on 31 May 2005.
2. By summons filed 23 and 20 September 2005, each of the Defendants applied for summary judgment. The summary judgment application was heard over two days on 14 and 15 November 2005. The Plaintiffs were represented by Mr Middleton QC and Mr Adams of Counsel. The Master reserved his decision.

94. However, what Mr Thompson fails to mention and what the objective documentary evidence establishes in relation to the issue of timing of the reticulated water supply, is that he was aware and had been aware, at least from August 1987, that the "reticulated water supply" had been laid in 1982 and not 1979.
95. Mr Thompson's own correspondence, establishes that he was aware from at least 1987 that the reticulated water supply had been laid in 1982. By a letter dated 24 August 1987, Mr Thompson advised the Council concerning the "reticulated water supply" on the Woodleigh Heights subdivision:
- "25. Sometime in 1980 or 1981 the timing of which is irrelevant the Kyneton Council approved the resubdivision of the Woodleigh Heights Subdivision into 131 allotments.
- ...
27. By minute dated 6 November 1980 the Kyneton Water Board resolved to advise the Kyneton Development Committee that it could supply 1,000,000 gallons annually in any reticulated area and that any anticipated consumption in excess of that figure would be subjected to negotiation.
28. By letter dated 5th March 1981 Kenneth Buchanan requested a water supply of 1,000,000 gallons annually to service the Woodleigh Heights subdivision.
- ...
30. Kyneton Water Board did subsequently enter into a water supply agreement between itself and Woodleigh Heights Resort Developments Pty Ltd for the supply of water to the whole of the Woodleigh Heights Subdivision.
- ...
33. Subsequent to the making of the above agreement trenches were dug and pipes laid along a considerable length of Edgecombe Road **in order to facilitate the supply of water to the Woodleigh Heights Subdivision.**
- ...
112. The Board under cover of letter dated 12 September 1985 made a copy of the agreement available [being the agreement referred to in paragraph 30 of the August 1987 letter] after my solicitor threatened to take legal action to force the Board to make a copy available.

the Commonwealth and the relevant States in respect of the disclosure of those documents. Accordingly the Court held that the time for limitation began to run from the date of service of the affidavit and not from the later date asserted by the plaintiff as being the date that he became aware of the cause of action.

The present case is no different.

108. For the reasons set out here and for the reasons given by the Master, the appeal must be dismissed.

Dated: 30 October 2006

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