

IN THE SUPREME COURT OF VICTORIA AT MELBOURNE

No. 1995

BETWEEN:

GLENN ALEXANDER THOMPSON and CHERYL MAREE THOMPSON Plaintiff

and

THE MACEDON RANGES SHIRE COUNCIL

Firstnamed Defendant

and

THE COLIBAN REGIONAL WATER AUTHORITY

Secondnamed Defendant

and

DAVID PARKINSON

Thirddnamed Defendant

and

GRAEME WILSON

Fourthnamed Defendant

INDORSEMENT OF CLAIM PURSUANT TO RULE 5.04(2)(b) OF THE RULES

1. As at 1984 the Plaintiffs were the beneficial owners of certain land within the "Woodleigh Heights Estate" Edgecombe Road, Kyneton in the State of Victoria.

PARTICULARS

The land consisted, inter alia, of lots 1, 2, 7, 10, 12 and 27 on Plan of Cluster Subdivision No. 1134 and being all of the land more particularly described in Certificates of Title Volume 9171 Folios 687, 688, 693, 696, 698 and 713 respectively ("the land").

2. The Firstnamed Defendant:

- (a) is a body corporate duly incorporated pursuant to the provisions of the Local Government Act 1989 (and more particularly pursuant to Order of

the Governor in Council published in the Government Gazette 19.1.95);

- (b) is the successor of the former Council called the "Kyneton Shire Council" ("the KSC");
- (c) is liable for all liabilities of the KSC.

3. The Secondnamed Defendant:

- (a) is a body corporate duly incorporated pursuant to the provisions of the Water Act 1989 (and more particularly pursuant to Order of the Minister for Water Resources published in the Government Gazette 25.3.92);
- (b) as and from 30.3.92 took over the whole of the property, rights, liabilities, obligations, powers and functions of the "Kyneton Water Board" ("the KWB"). The KWB was itself constituted on 1.10.83 by Order of the Governor in Council, published in the Government Gazette 21.9.83. The predecessor of the KWB was the "Kyneton Shire Water Works Trust". As and from 1.10.83, all of the liabilities of the Trust were transferred to the KWB.

4. The Plaintiffs' claims against each of the Defendants is based upon fraudulent misrepresentations and/or negligent misstatements made by the Defendants (and in the case of the First and Secondnamed Defendants, by their predecessors the KSC and the KWB), to the Plaintiffs, during the period 1984 and 1992. The Plaintiffs' said rights of action were concealed from the Plaintiffs by the fraud of the Defendants until on or about 8.8.95. The Plaintiffs did not discover the fraud until on or about 8.8.95.

5. The claims in fraud and/or negligent misstatement made against the Defendants are constituted by the following:

- (a) as at 1984 the land was mortgaged to the Australian Guarantee Corporation ("AGC"). The Plaintiffs were in default under the mortgage and AGC arranged for a mortgagee sale of the land by public auction. The proposed sale of the land had to be cancelled by the mortgagee. The sole reason for the cancellation of the sale was because of fraudulent or negligent misrepresentations made by the Defendants to the Plaintiffs and to AGC, to the effect that the land did not have, and never had, a right of access to an approved reticulated water supply;
- (b) in 1985 the Plaintiffs attempted to sell the land at public auction. The sale was cancelled by the Plaintiffs. The sole reason for the cancellation of the sale was because of fraudulent or negligent misrepresentations made by the Defendants to the Plaintiffs to the effect that the land did not have, and never had, a right of access to an approved reticulated water supply ("the representations").

PARTICULARS

The representations were made orally and in writing by the Defendants including, representations made by the Thirdnamed Defendant in his capacity as Secretary of both the KSC and the KWB, and also representations made orally by the Fourthnamed Defendant in his capacity as Shire Engineer and Chief Executive Officer of the KSC, to the Firstnamed Plaintiff on 11.11.85 and on various occasions thereafter.