

(bb) Notably, every single person appearing before the Planning Appeals Tribunal on that day was thoroughly aware that the Water Supply Agreement was unlawful. Messrs Parkinson, Wilson, Murphy and Lonie were all aware yet they remained silent while the Lieutenant Colonel misled the Tribunal.

(cc) Little wonder the Tribunal ignored the lone voice of truth.

(dd) It is reprehensible, but consistent behaviour, that the Lieutenant Colonel misled the Planning Tribunal.

**vii) Brigadier Garde's role in the mediation of the previous Woodleigh Heights proceeding and the circumstances surrounding the purported Terms of Settlement. Why I was induced to accept \$25,000 instead of a likely \$1,000,000 or greater sum.**

(1) At the hearing before the Master at page 7 of the day two transcript Major General Garde represented that I had refused to comply with the purported Terms of Settlement in respect to the previous Woodleigh Heights proceeding. This section of my submission is necessary to a complete reply to that allegation however it also builds upon the picture of Major General Garde's behaviour and credibility so I include it in this section and will refer back to it when I specifically address issues of the purported Terms of Settlement.

(a) In the previous Woodleigh Heights proceeding I was most confident of success.

(b) A summary of the nub of the then claim is:-

(i) In 1982 the Second Defendant entered into an unlawful Water Supply Agreement between itself and Woodleigh Heights Resort Developments Pty. Ltd.

(ii) During the period 1984 until the land was sold in 1989 the Defendants represented that the Plaintiffs and/or their land did not have access to an approved Reticulated Water Supply

(iii) In August 1995 I discovered the submission dated 3/11/78 which is now referred to in paragraph W2 of the present Amended Statement of Claim and was also referred to in paragraph 7 of the Statements of Claim in the previous Woodleigh Heights proceeding.

(iv) The sealing of the plans of cluster subdivision was a representation that subdivision had been completed according to law. Accordingly when in August 1995 when I became aware of the submission dated 3/11/78 the sealing of the plans included a representation that the private water supply and reticulation system was present in 1979 and that it constituted an approved Reticulated Water Supply which was common property and was at all times available to the Plaintiffs and/or their land.

(v) Upon discovering the said submission it was obvious and beyond any possible dispute that the representations of the Defendants made during the period 1984 until the land was sold in 1989 were false and fraudulent and had caused the loss and damage then claimed.

(c) Mediation was ordered.

(d) Position Statements were provided to the Mediator. At the time, a then seemingly innocuous part of the position of the Second Defendant was that the Secretary to the Defendants had at all times acted in accord with the policy of the Second Defendant.<sup>5</sup>

(e) The Mediator held a pre-mediation conference with the Defendants. The Mediator then advised me that he had sufficient information and did not need a pre-mediation conference with myself.

(f) Purported mediation occurred on 29<sup>th</sup> July 1999. Present were myself, Mr. George Golvan QC. Mr. John Langmead of Counsel and his instructing solicitor Mr David Puma for the First Defendant, Brigadier Garde QC and Mr. Steven Edward for the Second Defendant and Mr. Graeme Wilson the then Shire Engineer and Mr. David Parkinson the joint secretary of the First and Second Defendants. Also present was a friend of mine, Mr. Peter Nevile. Mr. Nevile advised all present that he was present as a friend and was not acting or advising.

(g) Notably, essentially the same persons who were present when the then Lieutenant Colonel misled the Planning Appeals tribunal were again present at the purported mediation.

(h) The circumstances of the mediation are now set out in exhibit “GAT-3” to my Affidavit of 31<sup>st</sup> August 1999,<sup>6</sup> in relevant summary:-

- (i) I was asked to set out my position but was interrupted by the Mediator.
- (ii) Each of Parkinson and Wilson were then asked to set out their positions and before each was finished the Mediator interrupted and inquired of each as to whether or not they were acting according to policy of the Defendants.
- (iii) Each of Parkinson and Wilson advised that they were acting according to policy of the First and Second Defendants.
- (iv) There was no further discussion on any other topic or aspect.

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<sup>5</sup> See GAT-6 Paragraph 4.

<sup>6</sup> See SME 2 Volume 4 at Tab 94.

- (i) Once Parkinson and Wilson had declared that they had acted according to policy Brigadier Garde QC initiated legal discussion to the effect that success of the proceeding was most improbable because the things done were done as a matter of policy of Statutory Authorities.
- (j) Each and every one Garde QC, Golvan QC, Langmead of Counsel but whom I thought to be a QC and Mr. David Punpa and Mr. Steven Edward took part in this discussion at the purported mediation table, they raised points of law, referred to precedent proceedings and then all agreed that my proceeding had little or no chance of success. Mr. Peter Nevile did not take part.
- (k) Mr. Golvan then split the parties up. There was no mediation. Mr. Golvan advised me to the effect that success was unlikely, that costs would probably be awarded against me and that the Defendants were prepared to pay me a small sum to go away and avoid further costs.
- (l) Relying upon the collective opinion of what I thought to be three Q's C. With great reluctance and with almost overwhelming despair I agreed to abandon the proceeding and accept the settlement offered.
- (m) Mr. Golvan Q.C. insisted upon immediate signatures by saying to the affect that it was his policy to have the Terms of Settlement signed on the day. The purported Terms of Settlement were then signed. Distraught, I then drove for eight hours through the night to get home.
- (n) The following day I was reliably advised by my friend Mr. Francis Tiernan of Counsel to the effect that I was tricked, he said, "fraud is fraud"
- (o) I determined to apply to have the Terms of Settlement set aside. Before I could do so the Defendants defaulted on the terms of the purported Terms of Settlement in that they did not pay by the due date.
- (p) When I received the cheques from the Defendants after the due date I returned their cheques and advised them of what had been my intent to apply to have the purported Terms of Settlement set aside and that because they had defaulted I would issue Notice of Trial.
- (q) I issued Notice of Trial.
- (r) The Defendants then issued summonses seeking specific performance of the purported Terms of Settlement.
- (s) I defended the summonses on the basis of the circumstances of the mediation and that the Defendants had defaulted.

(t) Mr. Justice Beach refused to consider the circumstances of the mediation and found that time was not of the essence and ordered against me.

(u) By letter dated 20<sup>th</sup> September 1999 I advised the Defendants that in the circumstances I would not appeal the judgement of Justice Beach however I would be pursuing aspects of the fraud.<sup>7</sup> That I would not appeal and that I would be pursuing aspects of the fraud resulted from the new information derived from the Reticulation Plan which was shown to me in the Practice Court. Having understood the new information from my discoveries of August 2000 I am now pursuing the aspects of the fraud as I said I would.

**(2) The facts therefore are not as represented by Major General Garde, I did not refuse to comply with or renege on the purported Terms of Settlement. In my view the purported Terms of Settlement were obtained dishonestly and in addition as a matter of fact the Defendants did default on the specific terms.**

**(3) That the Plaintiffs settled for a mere \$25,000 instead of the expected excess of \$1,000,000 provides prima facie evidence enough that at mediation the Plaintiffs were led to believe that the proceeding must fail and that the settlement otherwise would be unconscionable and surely not a product of fair mediation on the issues.**

**(4) While the previous Woodleigh Heights proceeding remained on foot the Defendants were at very real risk of having the facts as now known discovered. The Defendants had a more than usual vested interest in securing an end to that proceeding and it is possible that this was the principle motivating factor behind securing what I say to be a dishonestly, perhaps fraudulently, obtained settlement.**

viii) **I submit it is Major General Garde AM. RFD. QC who is not to be believed, prima facie he habitually misleads Courts and other people including myself.**

ix) **The Major General's submissions on s.9.**

(1) To impugn me and what was his mistaken view of the law and my case the Major General drew the Master's attention to page 8 of the Book of Pleadings where I refer to what was my then understanding of s.9. At page 2 of the transcript of the second day the Major General Said:-

*“The next page, which is 7, you have the notice of requirements under s.569E with commentary. At p.8 you have photocopied extracts from the Local Government Act and relevant provisions. At p.9 you have extracts from Sale of Land Act with commentary”.*

(2) In doing this the Major General in fact exposed his own ignorance

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<sup>7</sup> Refer SME2 Volume 4 Tab 99.