

61. Even if there has been a concealment which has not been proved, it is my view that there is nothing before me that would lead to a conclusion that there has been a fraudulent concealment. There is nothing in the circumstances which demonstrate the consciousness of what is being done is wrong. All the documents and information which was relied upon were given to Mr. Thompson. There is no evidence of any wrongdoing on behalf of the Defendants in the provision of the information to Mr. Thompson.

62. The observations and circumstances referred to lead to a conclusion that the limitation period should not be postponed. In my view of the situation is clear cut and it would be inevitable for a Court to decide that limitation period should not be postponed by virtue of Section 27(b) of the *Limitations Act*.

A Comparison of the Pleadings

The Tylden Road Proceedings

63. I have been given three tables comparing the 1988 Tylden Road Proceedings with the current proceedings. The First Defendant's solicitor, Ms. Dixon, in her first affidavit has provided a table of arising differences between the two proceedings.

64. Mr. Edward, solicitor for the Second Defendant, in his first affidavit swears that in both the proceedings the claims for damages involve identical parties and have been subject to prior legal proceedings and cover the same matters.

65. The Plaintiffs submit that in the amended statement of claim before the Court a pleading has been made for the first time that the Council unlawfully sealed the Tylden Road plans of subdivision without services. The prospective purchaser without services on the subdivision therefore would not have any recourse to any legal means of compelling a developer or any other person to provide those services.

66. I note that in paragraph 20 of the County Court Statement of Claim, it was pleaded that the First Defendant was not entitled to retain and/or call up the first bank guarantee as the

First Defendant failed to properly comply with all provision of Section 569E of the *Local Government Act*. Paragraph 20 pleads:

- The plans of subdivision contravene Section 569A(1)(a) and Section 569A(1)(c) of the *Local Government Act*.
- The First Defendant did not serve on the subdivider proper or sufficient requirements within the meaning of Section 569E(3)(b).
- The First Defendant did not retain copies of any or all of the purported requirements.
- The purported requirements had been withdrawn by the First Defendant within the meaning of Section 569E(3)(cc).
- In contravention of Section 569E(3)(d), the First Defendant caused to be lodged with the Office of Titles a statement to the effect that the purported requirement or requirements had been complied with by the owner and such a requirement or requirements had not been complied with and the First Defendant knew that such requirement or requirements had not been complied with.
- There is no valid or enforceable basis ground upon which the First Defendant could retain or call up the first guarantee.

67. On a analysis of the two proceedings, it is clear to me that there are some differences in the way they are pleaded. The County Court pleadings related only to residential land whereas here before me, the pleadings relate both to residential land and industrial land. In addition, the cause of action in relation to the present proceedings relates to misfeasance in public office whereas the pleadings before the County Court relied on a breach of duty or false representations.

68. The First Defendant submits that the misfeasance in public office is another aspect of wrongful behaviour but does not amount to a new case before the Court.

69. Even though I do not have to consider this question, as it is clear that the claims are statute barred, I am of the view that the current pleadings relate to the same facts. It is interesting to note that as against the First Defendant the Plaintiffs claimed in prior proceedings the sum of \$25,000.00, interest, and consequential losses sustained by the