IN THE SUPREME COURT OF VICTORIA AT MELBOURNE

No. 7966 of 1995

BETWEEN:

GLENN ALEXANDER THOMPSON and CHERYL MAREE THOMPSON Plaintiffs

and:

THE MACEDON RANGES SHIRE COUNCIL and OTHERS (as set out in the Schedule attached hereto) Defendants

Plaintiffs' Affidavit

Date of Document: 31st August 1999
Filed on behalf of: The Plaintiffs

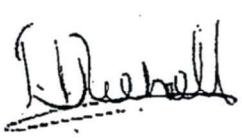
Prepared by the Plaintiffs
Cheryl Maree Thompson and
Glenn Alexander Thompson
345 Lords Place St
ORANGE NSW 2800 Tel: 063,622022

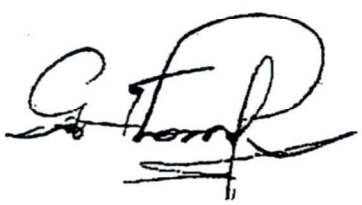
I Glenn Alexander Thompson Computer Programmer of 345 Lords Place Orange in the State of New South Wales make oath and say:-

1) I am the First Plaintiff in these proceedings.

2) Due to the reasons set out herein I do not consider the Settlement Agreement dated 29th July 1999 to be a binding agreement and/or if the said agreement is binding then for the reasons set out herein the said agreement should be set aside.

3) By consent Master Bruce ordered mediation on these proceedings. I was advised by Mr. Francis Tiernan of Counsel that Mr. George Golvan, Q.C., had a settlement rate at mediation far greater than any other mediator. I therefore tentatively booked Mr.





Golvan and then confirmed that appointment once having obtained the agreement of the other parties.

4) Mr. Golvan arranged a preliminary conference for 4.30 p.m. on 21st July. As I reside at Orange New South Wales, I was to be involved by means of a telephone conference call to be initiated by Mr. Golvan.

5) Mr. Golvan called me about half an hour after the appointed time. I then learned that a conference had been held in my absence and that Mr. Edwards and Mr. Pumpa, the solicitors for the Defendants, were both present. I was advised by Mr. Golvan that it had been decided that two Judgements which had been handed down by Mr. Justice Ashley were adequate pre-reading for Mr. Golvan and that the Solicitor for the First Third & Fourth Defendants would provide a copy of the said Judgements. I was free to submit further documents if I thought it necessary. Mr. Golvan also directed that each party provide written Position Statements. The telephone call lasted only a few minutes.

6) Mr. Golvan did not hold a preliminary conference with myself and did not address any issues with myself at all. I have no knowledge of what issues were discussed between the Defendants' Solicitors and Mr. Golvan.

7) Upon re-reading the Judgements of Mr. Justice Ashley it was clear that the said Judgements do not and could not address the issues set out in the Further Amended Statement of Claim, the Defences and the Plaintiffs' Reply to the Defences.

8) As Mr. Golvan had a duty to familiarise himself with the issues, I formed the opinion that the Defendants' Solicitors had somehow led Mr. Golvan into a position where he was prepared to ignore the current pleadings and the issues set out therein. I therefore

wrote to Mr. Golvan advising that I would provide him with a copy of all current pleadings by DX. Now shown to me and marked with the letters "GAT1" is a copy of a letter dated 22nd July 1999 from myself to Mr. Golvan.

9) Exchange of written Position Statements between the parties took place on 26th July 1999.

10) Upon reading the Position Statements of the Defendants I decided to make a written response detailing my very firm, strong and confident position. I forwarded a copy of the response to Solicitors for the Defendants and also to Mr. Golvan. Now shown to me and marked with the letters "GAT2" is a copy of my letter 27th July 1999.

11) Included in paragraph 4 of the Position Statement of the Secondnamed Defendant were two apparently innocuous statements which I now know were of critical importance. These statements were:-

a) "Parkinson was acting in the course of his normal duties"

and;

b) "was responsible for the implementation of the policy of the Board."

12) These two statements appeared to me to be merely statements of fact and essentially irrelevant and as a result I did not refer to them in my comprehensive response referred to in paragraph 10 above. These matters had not been raised in any pleading and did not appear to constitute the basis of or part of any defence.

13) The Mediation Conference was set down for 10 a.m. on Thursday 29th July. My position had not changed from that set out in my letter of 27th July and I was resolute in that in the absence of a fair and reasonable mediation and or settlement then I would go to trial.

14) The Mediation Conference finally got underway sometime after midday on 29th July 1999. Between that time and the time that the Settlement Agreement dated 29th July 1999 was signed, the matters and things now set out in a letter dated 16th August 1999 from myself to Mr. George Golvan occurred.

15) Now shown to me and marked with the letters "GAT3" is a copy of my letter dated 16th August 1999 from myself to Mr. George Golvan. This letter was written by myself prior to the present application by the Defendants and at a time when I thought it most unlikely that the matters set out therein would become relevant to any proceedings of this Honourable Court.

16) I now refer to and repeat the content of my letter dated 16th August 1999 being Exhibit "GAT3" hereto.

17) Mr. Golvan responded by letter dated 20th August 1999 and I then sent two further letters to Mr. Golvan dated 21st August 1999 and 23rd August 1999 respectively. Now shown to me and marked with the letters "GAT4", "GAT5" and "GAT6" respectively are copies of the letters referred to in this paragraph.

18) At the time of making the agreement and at the time of signing the Settlement Agreement the Defendants were aware that I had changed from the position set out in my letter dated 27th July 1999 being exhibit "GAT2" hereto to that where I agreed to the settlement on terms most unfavourable to myself. The Defendants were also aware that I had changed my position solely due to the matters hinted at in paragraph 4 of the Position Statement of the Second Defendant as set out in paragraph 11 hereof and subsequently expanded upon in the manner set out in my letter of 16th August 1999 being Exhibit "GAT3".

19) At trial the Plaintiffs had the reasonable expectation of obtaining a judgement in a sum exceeding $1,000,000 details of which have been provided to the Defendants. Except in the context set out in paragraphs marked "a)" on the final page of my letter dated 16th August 1999 it is impossible to describe the settlement reached as either fair or reasonable. (Bearing in mind that the letter was addressed to Mr. Golvan) This paragraph states:-

> "In the context that my action would in all likelihood fail due to the new issue as set out above the settlement obtained by you or facilitated by you could be seen as being fair and being the best obtainable for myself and my wife and I held the opinion that although it may not have been fair it was the best obtainable until the following day when I learned of the complete and obvious fallacy of the purported legal point which you treated and represented as an issue which would lead to my failure it I proceeded rather than settle."

20) The only alternative context is the one set out in the paragraph marked "b)" on the final page of my letter dated 16th August 1999. (also bearing in mind the addressee) This paragraph states:-

> "In the alternative context that my action may succeed on the true issues the settlement obtained and facilitated by you was patently unfair and could well be described as unconscionable"

21) The Defendants are unable to point to any possible legitimate grounds upon which the settlement reached is either fair, reasonable or conscionable.

22) Due to the matters set out herein and with particular reference to Exhibit "GAT3" as included herein the actions of the Defendants were unconscionable, and there were elements of undue influence, coercion and duress in the manner in which the agreement was obtained or extracted from myself. The supposed legal principle that led to my capitulation, namely that my action would not succeed because the

defendants had merely being carrying out the policy of public authorities I had subsequently learned simply did not exist. When this supposed legal principle was first raised by senior counsel at the mediation conference and subsequently supported by Mr. Golvan it had taken me completely by surprise as the possibility that the fraud alleged had occurred as a matter of policy had never been considered by myself or by my Barrister Mr. Francis Tiernan. At the time I was faced with essentially a room full of Q.C's all of whom were in apparent agreement upon this supposed legal principle. My capitulation was almost assured. The gravity and pressure of the situation was increased with what were essentially threats of assured bankruptcy and the need to make the decision to capitulate there and then. In the circumstances and as set out in exhibit "GAT3" I did capitulate.

23) The day after mediation, Friday 30th July 1999 I was more reliably informed that "Fraud is Fraud" with the result that I telephoned Mr. George Golvan as set out in the first paragraph to exhibit "GAT3" and after receiving reliable advice on 11th August 1999 I have adopted the position now set out in this Affidavit.

24) Due to the matters set out above I do not consider the Settlement Agreement dated 29th July 1999 to be a binding agreement and if it is binding then for the reasons set out above it should be set aside.

25) I now refer to the Affidavit of Mr. Steven Edward dated 23rd August 1999 and the Affidavit of Mr. David Leslie Pumpa dated 30th August 1999 and say:-

a) Each Affidavit states that Mr. Nevile of Nevile & Co attended the Mediation Conference on behalf of the Plaintiffs whereas the facts are as set out in numbered paragraph 4 of Exhibit "GAT3" and paragraph 6 of Exhibit

"GATS" hereto. Mr Nevile had never acted in any way whatsoever in respect to the present proceedings and has no knowledge of any of the issues. As a result Mr. Nevile who is my friend and sometime business partner, for obvious reasons related to liability, was at pains to specifically point out to each person as he was introduced that he had no knowledge of the proceedings and would not and could not advise me. Some seven and more years before the present cause of action became known to the Plaintiffs Mr. Nevile had conducted some related correspondence. At the time of making his position clear to Mr. Edward in particular Mr. Edward referred to this earlier correspondence by saying to the effect "I have seen your name on some letters" Mr. Nevile was introduced to everyone in my presence and I heard him clearly advise each person or group of his standing which could more properly be said to be lack of standing.

ob, ect

b) The Plaintiffs were not legally represented at the Mediation Conference and all parties were specifically advised of the circumstances of the attendance of Mr. Nevile. Neither Mr. Pumpa nor Mr. Edwards has any basis for their claim that Mr. Nevile attended on behalf of the Plaintiffs.

ob, ect

c) The Australia Post published table of delivery times indicates a period of 4 business days for the delivery of an ordinary letter from Bendigo being Country Victoria to Orange NSW. Mr. Edwards' letter enclosing the cheque purporting to be his client's half share was dated 11th August 1999 and mailed on the 11th August 1999. In addition, the cheque representing the half share of Mr. Pumpa's clients was forwarded by DX on the 13th August 1999. Under the

terms of the Settlement Agreement the money due was to be paid on or before the 13th August 1999. Consequently, there is no possible basis for the belief expressed by both Mr. Pumpa and Mr. Edwards that the Defendants' obligations under the agreement had been carried out. In addition, as each of the cheques was a personal cheque, it was not possible for the funds to be available to the Plaintiffs for some further period required for presentation of the cheques upon the drawee. Both Mr. Pumpa and Mr. Edwards were aware that they had in fact defaulted upon the agreement and being solicitors regularly engaged in settlements and the management of trust funds they must be fully aware that payment does not occur until such time as the drawee honours the cheque and debits the account of the drawer and the account of the payee is credited with cleared funds. Both Mr. Pumpa and Mr. Edwards must have been aware that there was no possibility of them complying with the terms of the Settlement Agreement.

d) A copy of the Settlement Agreement has been exhibited to the Affidavit of Mr. David Pumpa marked "DLP1". Provision 1 of the Settlement Agreement provided that the Defendants pay the sum of $25,000 on or before the 13th August 1999. Provision 5 of the Settlement Agreement provided that the Plaintiffs file a Notice of Discontinuance upon the payment of the sum of $25,000. The Defendants did not pay the sum of $25,000 or any sum whatsoever by the due date with the result that the Plaintiffs did not file a Notice of Discontinuance and the proceedings remain on foot within the terms of the Settlement Agreement. There is no other default provision to the

Settlement agreement. The only possible effect of the default of the Defendants was the continuance of the proceedings.

e) Master Kings did say and do the things set out in the Affidavits of each of Mr. Pumpa and Mr. Edwards however she also said to the effect "You are fighting over $30,000, this is the Supreme Court". Master Kings was not aware that the action really involved substantial sums and serious allegations properly involving the Supreme Court, neither was she aware of any of the matters now set out herein in relation to the circumstances of the agreement. No inferences should be drawn from the proceedings of the Directions Hearing referred to in the said affidavits.

Hearsay, object

26) Under cover of letters dated 23rd August 1999 I returned the cheques which had been sent by the Defendants to their respective solicitors.

27) In addition to the matters set out above and if the Settlement Agreement was valid and enforceable then I also say:-

a) The Defendants clearly breached the terms thereof in that they clearly did not pay the moneys due on or before the 13th August 1999.

b) As a result of the breach of the Settlement Agreement by the Defendants the Plaintiffs were not obliged to file a notice of discontinuance and the proceedings remain properly on foot under the terms of the agreement.

c) The plaintiffs properly served Notices of Trial and asked the Listing Court to set the matter down for trial.

28) In view of the foregoing the Plaintiffs respectfully submit that this Honourable Court should dismiss the present application of the Defendants and find either:-

a) That the Defendants have breached the terms of the Settlement Agreement and that the proceedings remain on foot and should now proceed to trial.

b) That the Settlement Agreement is not a binding agreement.

or

c) That the Settlement Agreement should be set aside.

29) The Plaintiffs also request this Honourable Court to order that the Defendants pay the costs of and incidental to the present application and of the directions hearing of 17th August 1999.

AFFIRMED by the said
GLENN ALEXANDER THOMPSON
At Orange in the State of New South
Wales this 31st day of August, 1999,
Before me:

DEBBIE L. NICHOLS
A JUSTICE OF THE PEACE
REGISTRATION NO. 8800255

SCHEDULE OF PARTIES

GLENN ALEXANDER THOMPSON	**First Plaintiff**
and	
CHERYL MAREE THOMPSON	**Second Plaintiff**
and	
THE MACEDON RANGES SHIRE COUNCIL	**Firstnamed Defendant**
and	
THE COLIBAN REGIONAL WATER AUTHORITY	**Secondnamed Defendant**
and	
DAVID PARKINSON	**Thirdnamed Defendant**
and	
GRAEME WILSON	**Fourthnamed Defendant**

IN THE SUPREME COURT OF VICTORIA AT MELBOURNE

No. 7966 of 1995

BETWEEN:

GLENN ALEXANDER THOMPSON and CHERYL MAREE THOMPSON **Plaintiffs**

and:

THE MACEDON RANGES SHIRE COUNCIL and OTHERS (as set out in the Schedule attached hereto) **Defendants**

CERTIFICATE IDENTIFYING EXHIBIT

Date of document: 31st August, 1999
Filed on behalf of: The Plaintiffs

Prepared by the Plaintiffs,
Cheryl Marec Thompson and
Glenn Alexander Thompson,
345 Lords Placc,
ORANGE. N.S.W. 2800

Tel (02) 6362 2022

This is the exhibit marked "GAT1"produced and shown to GLENN ALEXANDER THOMPSON at the time of swearing his Affifdavit this 31st day of August, 1999.

Before me:

S Duckett 8800255
A Justice of the Peace

Glenn A Thompson
P.O. Box 1070 Orange NSW 2800
Tel 02,63,622022 (02,63,621807 direct) Facsimile 02,63,631760

22nd July 1999

Mr. George Golvan Q.C.

By Facsimile 0396088928

Dear Mr. Golvan

Mediation.
G.A. & C.M. Thompson v Macedon Ranges Shire Council & Others.

I refer to our conference of yesterday afternoon and in particular the material which you should read prior to the Mediation Conference.

I have now had an opportunity to re-read the judgements of Mr. Justice Ashley which Solicitors for the defendants have suggested as sufficient.

I am of the opinion that these documents are a waste of time for the present proceedings. These judgements arose as a result of strike out applications by the defendants and are as a natural consequence a critique of the original statements of claim and do not and were not intended to set out in any meaningful form the general issues. In addition they heavily refer to the original statements of claim and are meaningless unless read with reference to the original statements of claim. In addition the present statement of claim, defences and replies are substantially different from the original in both form and issues raised.

As it is the present pleadings and issues which must be addressed I shall forward to you by DX a copy of the Further Amended Statement of Claim, defences and replies in order that you may refer to them when considering my Position Statement which I shall forward by facsimile on Monday next.

I confirm that I shall forward a copy of this letter to Solicitors for the defendants.

Yours Faithfully

Glenn Thompson.

"GAT 1"

IN THE SUPREME COURT OF VICTORIA AT MELBOURNE

No. 7966 of 1995

BETWEEN:

GLENN ALEXANDER THOMPSON and CHERYL MAREE THOMPSON **Plaintiffs**

and:

THE MACEDON RANGES SHIRE COUNCIL and OTHERS (as set out in the Schedule attached hereto) **Defendants**

CERTIFICATE IDENTIFYING EXHIBIT

Date of document: 31st August, 1999
Filed on behalf of: The Plaintiffs

Prepared by the Plaintiffs
Cheryl Maree Thompson and
Glenn Alexander Thompson,
345 Lords Place,
ORANGE. N.S.W. 2800

Tel (02) 6362 2022

This is the exhibit marked "GAT2"produced and shown to GLENN ALEXANDER THOMPSON at the time of swearing his Affifdavit this 31st day of August, 1999

Before me:

A Duthell 8800255
A Justice of the Peace

"GAT2"

Glenn A Thompson
P.O. Box 1070 Orange NSW 2800
Tel 02,63,622022 (02,63,621807 direct) Facsimile 02,63,631760

27th July 1999

Mr. George Golvan Q.C.

By Facsimile 0396088928

Dear Mr. Golvan

Without Prejudice
Mediation.
G.A. & C.M. Thompson v Macedon Ranges Shire Council & Others.

I have now had the opportunity to review the position statements of each of the defendants and provide herewith notes on the same for your preliminary information.

As set out below I consider most of the content of the Position Statements of each of the Defendants to be demonstrable nonsense and providing argument against them on Thursday will utterly waste valuable time.

Unless the Defendants provide meaningful and accurate positions based upon fact rather than conjecture and concoction then I am concerned that Thursday will be a futile waste of your time and mine and also my money.

I have pursued the facts in this matter for some 15 years now, another few months until trial is neither here nor there to me. It is best that we ascertain as to whether or not the Defendants are approaching Thursday in the correct frame of mind or not as early as possible. I would much prefer to return to begin returning to Orange at 10.30AM on Thursday than to waste time on material such as that submitted at this point.

I advise that I am faxing a copy of this letter to the solicitors for each defendant in the hope that they will provide reasonably based position statements by Thursday Morning.

Position Statement of D1,D3 & D4.

1. The Plaintiffs have pleaded a chain of matters and things which culminate in the Deed of Assignment now referred to paragraph 20I(c) of the Amended Further Statement of Claim.

2. In addition to assigning the relevant contracts the said deed of assignment also specifically and explicitly assigns all of the right, title interest, benefit, property, advantage, claim and demand in and to the land to the Plaintiffs.

3. The Plaintiffs did properly serve a written notice of assignment on the purchasers named in the said contracts.

4. Subsequently in Supreme Court Proceeding 2360/84 the Plaintiffs, in their own name sued the purchasers for specific performance of the said contracts and the purchaser/defendants did not challenge the validity of the deed and nor did they challenge the Plaintiffs right to the benefit of the contracts and/or land.

5. The said Supreme Court action was settled by agreement in favour of the Plaintiffs and orders were made.

6. In view of the foregoing and of the relevant law paragraphs 3, 4 & 5 of the position statement are absurd. Unless the Defendants can show that the assignment of the contracts and land was either flawed or unlawful then the assertion that the Plaintiffs had no interest in the land is plainly baseless and absurd The Defendants make no such allegation.

7. Paragraph 6 is also absurd. Woodleigh Heights Marketing had assigned the said contacts to the Plaintiffs and was therefore incapable of rescinding the contracts. As set out in paragraph 31B of the Amended Further Statement of Claim WHRD advised the Plaintiffs that WHRD would prevent the land from having access to water if the Plaintiffs rescinded the assigned contracts.

8. In respect to paragraph 7 I say that the matters set out in paragraph 57A of the Amended Further Statement of Claim as being false, fraudulent and negligent were patently so and were so obviously so that it is impossible for the defendants to have thought them otherwise. – I say let the defendants explain a grain of basis of truth or show one wit of evidence upon which the matters could reasonably be based – They cannot.

9. Paragraph 8 - Many of the pertinent records of the defendants refer to the Plaintiffs specifically by name as either ""owner" or "beneficial owner" and where a mortgagee is specifically named in lieu of the Plaintiffs the defendants were nevertheless aware of the Plaintiffs interest. – The duty arises at law.

10. Paragraph 9 is a disjointed nonsense. – In paragraph 37 of the Amended Further Statement of Claim:
    a. Reliance by Woodleigh Heights Marketing is neither pleaded nor implied.
    b. The Plaintiffs plead that they wished to realise upon the land.
    b. The Plaintiffs plead that, upon certain conditions, they agreed with and co-operated with AGC's desire to sell
    b. The Plaintiffs do not plead that they cancelled the Mortgagees auction.

11. Paragraph 10 is a nonsense. – It is not a difficult concept which is set out in subparagraph c) of the particulars to paragraph 37 of the Amended Further Statement of Claim. – Put simply if AGC could get a proper price for the land the Plaintiffs would not hinder the sale. AGC thought that it could and the Plaintiffs therefore co-operated. Police records of the time show the Plaintiffs actively participated in the object of a successful sale. – In the event due to the representations of the Defendants it became obvious to AGC and to the Plaintiffs that a proper price could not be obtained and the auction was cancelled.

12. Paragraph 11 is a nonsense. –
    a. There was no Mortgagees Auction planned, proposed, discussed, alleged or pleaded in any way for 22 November 1985 or any other date in 1985.

b. It follows that the Plaintiffs do not plead that a mortgagees auction was cancelled in 1985.

c. As precisely and unambiguously pleaded in paragraph 50 of the Amended Further Statement of Claim the Plaintiffs and the Plaintiffs alone attempted to conduct an orderly sale by auction of the land on 23rd November 1985.

d. As specifically and unambiguously pleaded in Paragraph 55A of the Amended Further Statement of Claim the Plaintiffs alone cancelled the auction set down for 23rd November 1985

e. As set out in paragraph 55A of the Amended Further Statement of Claim the reason why the Plaintiffs cancelled the said auction was the representations made by the Defendants to the Plaintiffs directly.

13. Paragraph 12 is a nonsense. –
Paragraph 20J of the Amended Further Statement of Claim clearly set out that the loans collaterally secured by the said mortgages were advanced to the Plaintiffs – It was the Plaintiffs alone who bore responsibility to repay the loans. It was the Plaintiffs who defaulted – Upon the default of the Plaintiffs the mortgagees exercised their rights. At no time was any monies advanced to Woodleigh Heights Marketing or any other person or entity.
Upon the default of the Plaintiffs it was the Plaintiffs and the Plaintiffs alone who would lose upon the exercise of the mortgage as the land had been assigned to the plaintiffs and the mortgagees were aware of that assignment.

14. Paragraph 13 is a concocted nonsense – Refer paragraphs 56A g), 65d), 65e) and 65f) of the Amended Further Statement of Claim.

a. Before selling the land Mercantile Credits Limited had G. D. Sutherland Pty. Ltd. Sworn Valuers and estate agents provide a written market appraisal of the land. G. D. Sutherland then provided Mercantile Credits Limited with a market appraisal dated 12th October 1988 which states in part "You will appreciate that the problems associated with the provision of services is extensive and at this stage possibly unsolvable. This will obviously have an effect on value"

b. The market appraisal letter dated 12th October 1988 placed a realisable value of $5000 to $6000 per lot on land.

c. Subsequently Mercantile Credits Limited sold the land by private contract to interests associated with the timeshare development for the sum of $135.000 which sum exceeded the market appraisal valuation.

d. The Plaintiffs subsequently had discussion with G.D. Sutherland Pty Ltd. who advised that the advice in respect to the provision of services and in particular water was obtained directly from an officer of the Kyneton Water Board thought to be the secretary.

e. Subsequently after Mercantile Credits Limited was taken over by Esanda Finance the Plaintiffs prevailed upon Esanda to obtain a retrospective valuation setting out the basis of and referring to the market appraisal of 12th October 1988

f. G.D. Sutherland then prepared a sworn valuation which specifically refers to and addresses the market appraisal dated 12th October 1988.

g. The Sworn Valuation is dated 17th March 1992 and places a valuation on the land of $117,000

h. The Sworn Valuation sets out absolutely false and misleading particulars with respect to the water supply to the land and:

i. specifically states "Please note that the above conclusions have been reached from discussion with the Kyneton Water Board, and we have relied on their advice in making our assessment."

j. The causation is clear precise and explicit. The false and misleading advice provided by the Kyneton water Board was directly and specifically relied upon by the mortgagee.

15. Paragraph 14. Obviously correct.

16. Paragraph 15. Absurd.

17. As set out in the Amended Further Statement of Claim and the Writ the Plaintiffs first became aware of the Fraud on 8th August 1995.

Position Statement D2.

18. Paragraph 2. – Absurd – Who Cares whether Colliban accepts the matters set out in the Amended Further Statement of Claim or not. The Plaintiffs did pay for the land however that is plainly irrelevant. Whether they paid or not is absolutely beside the point. The only matter of relevance is whether or not the assignment was valid and lawful. If Coliban can show a flaw or defect in the assignment of the contracts and of the land then let them do it.

19. Paragraph 3. Correct.

20. Paragraph 4. Whether or not Parkinson or anyone else was paid or voluntary is entirely irrelevant. The fact is that the representations made by Parkinson and the Board were as the Plaintiffs say,. If not then let them show the truthfulness or with specific reference to paragraph 57A of the Amended Further Statement of Claim show where the specific details set out are incorrect. – The Plaintiffs also refer to paragraph 20 to 26 of their Position Statement.

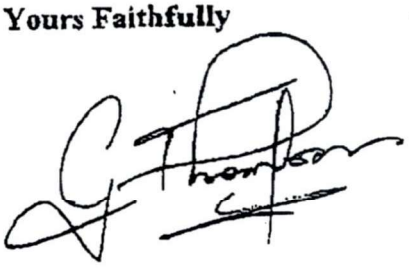
21. Paragraph 5. Absurd and concocted.
It is true that the Plaintiffs learned over an extended period of time that almost everything that the Defendants did in their dealings with the Plaintiffs was either demonstrably unlawful or dishonest or fraudulent and the Plaintiffs refer to paragraph 57 of the Amended Further Statement of Claim. Unfortunately however none of the matters and things which the Plaintiffs were aware of gave the Plaintiffs any basis upon which to claim a lawful right to an approved reticulated water supply. It was clear from s.307AA(2) of the Water Act 1958 that the Board could supply whomever it wished at its whim. It was also clear that the introduction of the boards water into the common property water mains was unlawful however because the fact of the approval of the Private water supply and water reticulation system was completely unknown to the Plaintiffs the Plaintiffs had no knowledge that this action had deprived them of what was in fact an approved reticulated water supply. The department of Water Resources in a written report somewhat patronisingly advised the Plaintiffs "as laypersons" that it was the Water Board that held responsibility for water supply within the shire and not Kyneton Council. This equated exactly with the Plaintiffs thorough reading of the legislation and also with the advice of the third defendant as set out in the subparagraph b)v) of the particulars to paragraph 54A of the Amended Further Statement of Claim. In addition a thorough reading of the

Minutes of the Water Board indicated that at no time did the Board or its predecessor approve a water supply of any description to which the Plaintiffs could lay claim.
The fraud in this instance of each of the defendants was the keeping secret of the fact of the approval by the First Defendant of the Private Water Supply and reticulation system as set out in paragraphs 7, 8, 9, 10 and 11 of the Amended Further Statement of Claim..
In addition far from taking their own counsel the Plaintiffs obtained written opinions from several barristers during the period in or about January 1986 when Mr. David Sharp provided written advice and 27th June 1988 when Mr. Peter Power provided written advice. – Based upon all of the matters then known the best each of these could advise upon was the obvious illegality of the Water Supply Agreement however that did not give the plaintiffs any claim to an approved reticulated water supply. The best advice available from Counsel on all the known information was tenuous at best. Mr. Power advised to the effect "Just connect to the common property water main and take the water" The Plaintiffs rejected this advice as being pointless as any attempt to sell or represent that the land had access to water would be thwarted by the Water Board and or The Council writing to the Agents and advising the agent that the land did not have water. The Board had done exactly this when AGC attempted to sell in 1984 and when the Plaintiffs attempted to sell in 1985. In other words it was pointless in the Plaintiffs asserting that they had water when the local Authority advised that they did not. Mr. David Sharps best advice was to approach the ombudsman however the Ministerial Inquiries overtook that tenuous option.
The Ministerial Inquiries by both the Department of Local Government and the Department of Water Resources also remained totally ignorant of the matters discovered by the Plaintiffs on 8th August 1995 and as a result could not offer the Plaintiffs a solution.

22. Paragraph 6. Absurd concocted nonsense – The Plaintiffs refer to paragraph 14 herein.

23. Paragraph 7. – The Plaintiffs refer to paragraph 17 herein.

Yours Faithfully



Glenn Thompson.

CC Phillips Fox. Attention Mr. David Pumpa
CC Beck, Sheahan, Quinn & Kirkham. Atteention Mr. Steven Edward.
(Both by facsimile)

IN THE SUPREME COURT OF VICTORIA AT MELBOURNE

No. 7966 of 1995

BETWEEN:

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and:

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CERTIFICATE IDENTIFYING EXHIBIT

Date of document: 31st August, 1999
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Glenn Alexander Thompson
345 Lords Place,
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This is the exhibit marked "GAT3" produced and shown to GLENN ALEXANDER THOMPSON at the time of swearing his Affidavit this 31st day of August, 1999

Before me:

A Justice of the Peace

Glenn A Thompson
P.O. Box 1070 Orange NSW 2800
Tel 02,63,622022 (02,63,621807 direct) Facsimile 02,63,631760

"GAT3"

16th August 1999

Mr. George Golvan Q.C.

By Facsimile 0396088928

Dear Mr. Golvan

Purported Mediation.
G.A. & C.M. Thompson v Macedon Ranges Shire Council & Others.

I refer to our telephone conversation of the evening of 30th July 1999 wherein I informed you that I had been advised that the basis upon which I agreed to settle the above matter was wrong at law. I refer specifically to the position of the Defendants as supported by you that an action in fraud would not succeed where the defendants had been acting pursuant to the policy of the public authorities. I note that your response in that telephone conversation was:- (a) the law is a grey area, (b) because it is a grey area wherever there is two barristers you will have a difference of opinion, (c) this is why we have so many court proceedings, (d) that I should remember the story of the Melbourne Solicitor, (e) that I should accept what happened and get on with my life.

I have now received advice on the proceedings of 29th July 1999 and amongst other things I say:-

a) Mediation did not occur
b) You were in clear breach of your duty.
c) The agreement reached was unconscionable

I had intended to initiate proceedings to have the agreement set aside and / or take action against yourself however events have now overtaken and perhaps negated the need for this course.

The advice which I sought was received by myself late on Wednesday 11th August and was considered by myself on 12th & 13th August. Co-incidentally the agreement which was signed in this matter was due for completion on 13th August 1999 and much to my surprise the defendants defaulted upon the agreement and did not pay any monies at all and have not communicated to explain or request a delay.

The terms of the agreement of 29th July included (a) The Defendants will pay to the Plaintiffs the sum of $25,000 on or before 13th August 1999 (b) Upon payment of the sum of $25,000 the Plaintiffs will file a notice of discontinuance. In simpler terms the agreement appear to me to provided that the proceedings remained on foot until the monies were paid within the terms of the agreement and remained on foot if not so paid.

However the terms of the agreement prepared by you appear to be seriously lacking in not providing clear default provisions.

As the defendants did not pay the proceedings do remain on foot. I now intend to immediately file a Notice of Trial and attend the directions hearing which remains set down for 17th August 1999 for the purpose of setting hearing dates.

Due to the fact that the proceedings can now continue it appears possible that the only loss and damge suffered by my Wife and I from the proceedings of 29th of July are the costs charged by you and other related expenses.

Pursuant to the orders of Master Bruce dated 26th April 1999 the Plaintiffs are required to report to the Court as to whether mediation has concluded. I delayed so advising the Court until receipt of the advice referred to above and I will now advise the Court of the present circumstances and I will forward a copy of that letter for your information.

I shall now attend to the circumstances of the failed mediation. (Omitting irrelevant parts)

First of all I note that it was I that suggested that you be retained as mediator and this was due to the fact (I am informed) that you have a settlement rate which is far greater than anyone else and you are a Q.C. Before putting your name to the other side I personally contacted your office and when you returned my call I told you had that I had selected you as you had been highly recommended and I also said that I would not settle for anyone other than you in view of your reputation. I also advised you that except for Court attendance I handled the matter myself. You thanked me and asked me to call you George.

1/ Pre Mediation Conference and your responsibility to acquaint yourself with the issues.

a) The pre-mediation conference with myself was conducted via telephone for a few minutes and consisted of myself being advised by you that you had met with solicitors for the other side who had advised you that the only necessary preliminary information was the two judgements that had been handed down by Mr. Justice Ashley. I was invited to submit further material if I thought it necessary. – At the time of the telephone call I advised you that I was in my own office and not being advised.

b) There was no conference at all or discussion of any of the issues.

c) Upon re-reading the said judgements I formed the opinion that the judgments were not adequate and I advised you that the only documents which set out the current issues were the current pleadings and I forwarded to you the complete set of current pleadings for your information

d) There was no conference at all on the current issues.

2/ Each party provided documents entitled "Position Statements"

3/ By facsimile of 28th July I provided you and the Defendants with a letter dated 27th July 1999 and which was essentially a commentary upon or answer to the position statements of the defendants and which also set out my firm position and strong frame of mind in relation to the issues and proceedings.

4/ At the conference of 29th July I was accompanied by Mr. Peter Nevile who is known to you as you and he went to university together. Mr. Nevile advised you that he was accompanying me as a friend and also advised that as he has no knowledge of the matter he cannot and will not be advising me. Upon being introduced to the other parties Mr. Nevile also informed each of them of his standing.

5/ The conference then started quite late with you giving a quite long introduction. I was then asked to explain my position using a map of the subdivision as an aid. I was stopped by you after I had explained a very minor part of the circumstances but which

included the representations of the third and fourth defendants in the Amended Further Statement of Claim,

6/ You then asked the defendant Mr. David Parkinson to set out his position, he repeated essentially word for word what I had said of him and in particular those matters set out in paragraph 54A of the statement of claim. Mr. Parkinson also added that it was the intention of the board to deal only with the timeshare resort. At this point you came in and had discussion with Mr. Parkinson wherein Mr Parkinson agreed and stated that his actions were carrying out the policy of the board.

7/ At this time I wrote on my notepad the words "They are sunk", pointed the note out to Peter Nevile and made an aside to Peter Nevile that I was amazed that it (the fraud) was official policy of the Board and that I had never thought that it could have been. I was delighted at that time.

8/ You then had Mr. Graeme Wilson explain his position and he also agreed essentially word for word with what I had said of him and in particular those matters now set out in paragraph 52A of the Amended Further Statement of Claim. He also said that it was the intention of Council to have a timeshare development only on the land. Discussion was then held between yourself and Wilson as to the reasons for this policy of the Council which included, increased employment, tourism etc. You also discussed with Mr. Wilson and Mr. Wilson agreed that he also was merely acting upon and carrying out the official Policy of the Council.

9/ Mr. Garde Q.C. Then raised the legal point that an action against the defendants would be unlikely to succeed when they were merely carrying out the policy of public authorities. Mr. Garde then went on to make further comments which included that as the defendants were acting pursuant to policy the real action is against the Mortgagee, he then went on to say that the Mortgagee did not make reasonable endeavor to procure water.

10/ Upon Mr. Garde making the abovementioned comments I opened the valuation which had been prepared by the Mortgagees Valuers and pointed out to yourself that the Mortgagee had acted upon the false representations of the Second Defendant. You appeared entirely disinterested in this fact and commented to me that the Defendants were acting according to policy and that it would be hard to get a judgement of fraud in those circumstances. At some point someone, I think Mr. Garde, made a statement to the effect that no action had ever succeeded where public officers were carrying out official policy and there was discussion on that point which included yourself.

11/ It appeared to me that you concurred with Mr. Garde and you partook in the discussion at the table upon the legal point that an action would be most unlikely to succeed where the defendants were acting according to the policy of public authorities. It was quite clear from the discussion that all of the defendants legal representatives and yourself concurred, there was no dissention only agreement.

12/ Once having obtained from each of Parkinson and Wilson their agreement and statement that they had been acting pursuant to the policy of the Water Board and Council respectively you made no further effort at all to ascertain or draw from any party any further matters related to any further issue or fact whatsoever.

13/ With the benefit of hindsight I now see that the entire proceedings from that point on entirely centered upon the issue or point at which you stopped both Wilson and Parkinson from presenting further material. You had obtained the material upon which the conference subsequently proceeded notwithstanding the fact that in the case of each of myself, Parkinson and Wilson perhaps 5% of the matters which had passed between us over the years had been mentioned. You then split the parties up.

14/ After the parties were split up into separate rooms and after it appeared that you had discussion with the defendants you came to me to inquire as to what I would settle the matter for.

15/ I began by explaining that I would settle for a sum which represented a substantial savings to the defendants and began by pointing out that I was entitled to interest and also entitled to an indemnity for taxation and I explained the reasons for that indemnity to you. I also pointed out that the established loss on the sale of the land was almost $300,000. Before arriving at an acceptable figure you cut me off and said to me, to the effect, that the other side are sure of winning on the point that an action against people carrying out official policy is almost certain to fail and you additionally told me that their advisers had advised their clients to that effect.

16/ You told me that I had no hope of getting the type of figures I was talking. When I asked of you "what sort of figure are we talking" you advised me/informed me/offered your opinion to the effect that as my action would almost certainly fail the only way of getting anything was to show them that they would save money by getting rid of me.

17/ I was not familiar with this type of approach but understood it. I had not ever considered such a position and was entirely unprepared when it was suggested by you. I had no idea as to how to arrive at a figure however Peter Nevile understood and discussion was then held wherein yourself and Peter Nevile did a calculation of the likely cost to the defendants of running the matter and then being saddled with the costs because I would be unable to pay.

18/ I expressed surprise and shock at this turn of events and told you that Neither I nor Francis Tiernan had considered the position or possibility that the fraud had been carried out as a matter of official policy.

19/ You and Peter Nevile calculated a figure of likely costs and while I cannot now recollect what it was it resulted in a figure being put to the other side, I also cannot now recollect the sum decided upon however I think that it was in the order of $50,000.

20/ You came back to me and said that the other side are not prepared to pay anything at all however they were prepared to walk away with each party bearing their own costs to that point. You also informed me that if I did not agree and proceeded that the other side would bankrupt me if I lost.

21/ You told me:-

a) that you had 15 years experience as a mediator
b) that you rapidly get a feel for proceedings
c) that you had read all of the material sent down by myself
d) that my action was one of the most complex that you had seen
e) that the defendants had acted pursuant to policy
f) that there were many other problems with my action
g) there was a problem with limitations
h) that the action could be against the mortgagee
i) You advised or informed me or expressed your opinion to the effect I would not get up with it where "will not get up" were the exact words used by you and the reason why I would not get up was that the defendants were acting pursuant to policy when they did the matters alleged.
j) that the decision (to proceed or abandon the action on the terms set out by you) was mine
k) that it was clear from the material that I had sent you that I was an intelligent person

l) that I should take this opportunity to get on with my life
m) that you liked me and that is why you were telling me this.

22/ I informed you that their threat was hollow and I told you that there are two positions of strength. The first is when you are wealthy and the second is when you are broke and have nothing further to lose. I told you I was in the latter position and also advised that I was likely to be bankrupt within a short while in any event.

23/ You then advised me that the defendants had incurred over $80,000 in costs to date and that if it went to court and ran for any time cost could quickly reach $300,000 and that they would bankrupt myself and my wife and that being bankrupted for that amount would have a disastrous effect on myself and my wife and family.

24/ You then told me that you would see if you could get a little bit of cash

25/ You then came back and said that they would give me $10,000.

26/ Again I said that even with $10,000 I would in all likelihood be bankrupted within weeks and it was decided with yourself that they might entertain $20,000

27/ At that time both yourself and Peter Nevile spoke with the other side and they agreed to pay $25,000 and for each party to bear their own costs to that time.

28/ I was distraught at the prospect of settling the matter on these terms and you were completely aware of my distress and were aware that the decision to settle on the terms suggested by you was made entirely upon the basis of your advice, information, opinion (however it may be described).

29/ Between the times referred to in paragraphs 15 & 16 above and the time referred to in paragraph 24 above I had telephoned my wife to obtain her agreement to essentially abandon the action for the reasons put forward by you and on the terms put forward by you. My wife was party to your selection and was aware of your reputation and of the fact that you are a Q.C. My wife although manifestly distraught at the prospect agreed that in the circumstances we had no choice other than to abandon the action.

30/ As a result of the degree of distress of my wife I telephoned several more times during the period mentioned to check upon her wellbeing I advised you of the distress of my wife and I told you that I was worried that I may not still have her by the time that I arrived back in Orange.

31/ It is true that concurrent with giving your information/advice/opinion you said that the choice was mine however as one can plainly see the situation was entirely akin to being advised by a chemist that a glass contained poison while he also said that we are free to drink of it or not.

32/ I agreed to abandon my action and settle the matter on the terms put forward by you.

****

After the settlement document was signed, although satisfied that in the circumstances I had taken the wisest option I was too distressed to meet with friends and family and decided to drive straight back to Orange without stopping to sleep as had been arranged with family en-route. Upon arriving at Orange the following morning I went to my office and was troubled by the prospect of having to discuss the circumstances with my trusted friend and adviser Francis Tiernan with the result that I did not call him.. That afternoon I discussed the circumstances with a solicitor friend who advised me that the position adopted by you was plainly wrong at law. I subsequently spoke with another friend who also said that your position was demonstrably wrong, as he succinctly put it "fraud is fraud" if it was the policy

of the council and water board then the policy was fraudulent and if at the time of giving their information the officers were aware of the falsity of their representation (as they demonstrably were) or were careless etc then they also were guilty of fraud.

By the evening of Friday 20th July I firmly believed that your information, advice, opinion as given to me at the conference was so demonstrably wrong that there is no possible basis of law upon which you and Mr. Garde and the others who agreeed could possibly base the proposition that was put forward as a matter of legal principle at the time, namely that where the matters complained of were done as a matter of policy of the public authorities then an action would almost certainly fail and further that no such action had succeeded in the past.

I now say to you that there is no basis either in law or logic for the information, advice, opinion provided by you and upon which I acted as a result of my trust and faith in yourself both as a learned Q.C. and the best available mediator. I also say that you must have been aware of that fact.

As referred to above, after learning certain matters I telephoned you for the purpose of asking you to justify your representations. The details of that conversation are set out above and I now take this opportunity to comment upon your narrative about the Melbourne Solicitor. The object of that story was to class as a fool a person who persists in a dead cause. The analogy is of course obviously entirely irrelevant to mediation as in the instance set out by you the individual persisted after having been given the opportunity to fully present his case in Court and having it found wanting. In this instance no such opportunity was available and judgment was effectively passed by you on what I now know to be a patently incorrect legal point.

From the above it is quite clear that no mediation whatsoever took place. You adopted the position of the defendants and adopted an interventionist role with myself and influenced the outcome to the detriment of myself and my wife..

At no time did you either seek from me or put to the other side any arguments or reasons as to why the defendants should settle the matter on terms which reflected even the remote possibility that my action had merit or possibility of success.

It appears to me that you had a duty to both sides:-

a) to familiarise yourself with the issues
b) to hold a meaningful pre-mediation conference on the issues.
c) to mediate upon the issues
d) to make an effort to obtain a fair settlement
e) to prevent one side or the other taking advantage of misleading facts
f) to prevent one side or the other from making factual error
g) to prevent one side or the other from acting in an unconscionable manner.

In respect to your duty to familiarise yourself with the issues and your duty to hold a meaningful pre-mediation conference on the issues I say:-

a) that at the time that you telephoned me for the telephone conference referred to above I was advised by you that the solicitors for the other side were with you at the time. It would appear that in all likelihood you had far more than a couple of minutes discussing the matter and the issues with them, one of them having traveled from Bendigo for the purpose. You were also prepared to rely entirely upon the matters contained within the judgements handed down by Mr. Justice Ashley notwithstanding the fact that these documents clearly preceded the current statement of claim and other pleadings and therefore could not contain the issues which were on foot.

b) The entire extent of the conference with myself was to ascertain whether or not I would accept the judgments of Mr. Ashley as being adequate pre-conference reading for yourself as had been suggested by the other side.

c) You did not raise or explore any issue whatsoever with myself and consequently there was no pre-mediation conference with myself.

d) The issue upon which the matter was eventually settled, namely that the defendants had been acting pursuant to policy had never at any time been raised by any party as an issue and was not referred to, implied, or otherwise indicated in any pleadings.

e) For reasons best known to yourself you seized upon the policy issue as set out in paragraphs 6 to 13 above notwithstanding the fact that you were aware that the point had never been raised as an issue and that I had no prior warning or knowledge of the matter as an issue.

f) The first time the issue was alluded to in any way shape or form was in the context of a statement of fact rather than issue when the position statement of the second defendant said in paragraph 4 "Parkinson was acting in the course of his normal duties and was responsible for the implementation of the policy of the Board"

g) You were aware that I did not consider the statement of fact to be an issue as I had provided you with a comprehensive written commentary on the position statements and I did not refer to the statement of fact at all as being a point of or at issue.

h) as a result of the foregoing you failed to familiarise yourself with the issues and failed to hold a pre mediation conference with myself.

In respect to your duty to mediate upon the issues I say:

a) As set out above the question as to whether or not the defendants had been acting pursuant to policy was not an issue never having been raised or alluded to in any pleadings whatsoever.

b) You took myself by surprise by firstly drawing the policy issue from both Wilson and Parkinson and then discussing it with them and then appearing to agree with Mr. Garde and others at the table that my action would most likely fail upon this point and then treating this point as an issue in the proceedings.

c) You had the power and the ability to influence and effect the outcome of the mediation and therefore the power and ability to influence and effect the gain or loss to myself an my wife by electing, as you did, and perhaps even planning to seize upon this point to secure a settlement to the matter.

d) You did not mediate at all upon the issues in the pleadings, you took myself by surprise by introducing a new and as I now know spurious issue and you intervened rather than mediated with this issue as the point critical to my likely success or failure and represented it as leading to likely failure if I exercised my free will to proceed rather than settle upon the terms suggested by yourself.

e) You did not mediate at all, let alone on the issues.

Upon your duty to make an effort to achieve a fair settlement I say:

a) In the context that my action would in all likelihood fail due to the new issue as set out above the settlement obtained by you or facilitated by you could be seen as being fair and being the best obtainable for myself and my wife and I held the opinion that although it may not have been fair it was the best obtainable until the following day when I learned of the complete and obvious fallacy of the purported legal point which you treated and represented as an issue which would lead to my failure it I proceeded rather than settle.

b) In the alternative context that my action may succeed on the true issues the settlement obtained and facilitated by you was patently unfair and could well be described as unconscionable.

c) You absolutely failed in your duty to attempt to achieve a fair and /or reasonable settlement.

In respect to the remaining duties set out above I say that it is self evident that you entirely failed and it is unnecessary for me to labour the points here.

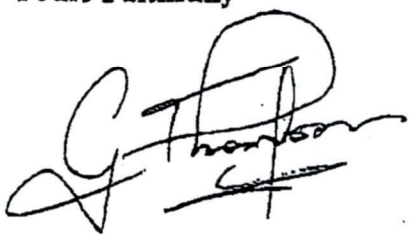
With the enormous benefit of hindsight I note that the sequence of events and facts extracted from the Wilson and Parkinson and which inevitably led to the settlement obtained occurred with an almost choreographed smoothness where no time whatsoever was wasted upon any issue which was in fact raised in the pleadings.

Trusting, I am, a fool I am not. It appears to me that you have exploited my expressed trust and faith in you and momentarily made a fool of me. Perhaps my Wife and I (and other litigants) are merely notches which add to the fame upon which you trade. You certainly took no care whatsoever and had no regard to the effect of your actions when you dealt with the welfare of my Wife and I as set out above.

You have caused myself and my wife loss and damage, if for any reason whatsoever related to the settlement obtained by you I cannot proceed with the initial action I shall look to you for compensation and damages. In the meantime I require you to fully refund the fees and room charges paid by me.

In the event that I do look to you I reserve the right to add to the matters and allegations set out here, this letter is merely to advise you of and give a broad outline of my present position and intentions. I expect to receive further advice today.

Yours Faithfully



Glenn Thompson.

IN THE SUPREME COURT OF VICTORIA AT MELBOURNE

No. 7966 of 1995

BETWEEN:

GLENN ALEXANDER THOMPSON and CHERYL MAREE THOMPSON Plaintiffs

and:

THE MACEDON RANGES SHIRE COUNCIL and OTHERS (as set out in the Schedule attached hereto) Defendants

CERTIFICATE IDENTIFYING EXHIBIT

Date of document: 31st August, 1999
Filed on behalf of: The Plaintiffs

Prepared by the Plaintiffs
Cheryl Maree Thompson and
Glenn Alexander Thompson,
345 Lords Place,
ORANGE. N.S.W. 2800

Tel (02) 6362 2022

This is the exhibit marked "GAT4" produced and shown to GLENN ALEXANDER THOMPSON at the time of swearing his Affidavit this 31st day of August, 1999.

Before me:

A Justice of the Peace 8800255

"GAT 46

George H. Golvan Q.C.

Owen Dixon Chambers West
205 William Street
Melbourne 3000
Telephone: (03) 9608 7703
Facsimile: (03) 9608 8928

20 August, 1999

Mr Glenn Thompson
PO Box 1070
Orange
NEW SOUTH WALES 2800

By Facsimile: 02 63 631760

Dear Mr Thompson

Re: **Supreme Court Mediation**
G A & C M Thompson v Macedon Ranges Shire Council & Others

I am in receipt of your facsimile transmission dated 16 August, 1999, relating to the Mediation Conference which I conducted on 29 July, 1999.

It is not my intention to enter into a debate with you about private and confidential conversations which took place at the Mediation Conference, resulting in preparation of Terms of Settlement executed on behalf of each of the parties. However, I wish to place on record that I totally reject your version of the events.

In particular, the offer to settle the dispute for $25,000.00, inclusive of costs, did not occur after Peter Nevile and I spoke to the Defendants, and they agreed to pay the $25,000.00, and for each party to bear their own costs, as you have incorrectly asserted. The proposal to settle for the sum of $25,000.00, inclusive of costs, was a proposal which came from you, via your legal adviser, and I was requested to put the proposal to each of the Defendants. The proposal came after you had spent a lengthy period of time speaking to your legal adviser in private, and making a number of telephone calls. As requested, I conveyed the proposal made on your behalf to each of the Defendants, and advised them that you would not accept any less than the figure put forward. After lengthy consideration each of the Defendants agreed to accept your proposal as a commercial way of resolving this dispute, and not incurring additional legal costs, notwithstanding the Defendants continued to maintain that they both had strong defences to your claims, and had previously only offered a total of $10,000.00, inclusive of costs.

It is of considerable concern to me that allegations and imputations which you make in your letter are of a defamatory nature and constitute an unjustified and deliberate attack upon my integrity and reputation as a Mediator appointed by the Supreme Court to

mediate this dispute. I wish to advise you that I intend to take all necessary steps to protect my reputation and my status as a Court appointed Mediator against personal and unwarranted attack. I further wish to point out to you that under Section 27A of the *Supreme Court Act* 1986, a Mediator appointed by the Supreme Court has the same protection and immunity as a Judge of the Supreme Court in the performance of his duties as a Judge. I consider that that protection includes not having to endure insulting and denigrating accusations from a party to a Mediation.

It is not my intention to refund the mediation fees or the room hire, as you now seek.

Yours faithfully

GEORGE H GOLVAN QC
Mediator

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IN THE SUPREME COURT OF VICTORIA AT MELBOURNE

No. 7966 of 1995

BETWEEN:

GLENN ALEXANDER THOMPSON and CHERYL MAREE THOMPSON **Plaintiffs**

and:

THE MACEDON RANGES SHIRE COUNCIL and OTHERS (as set out in the Schedule attached hereto) **Defendants**

CERTIFICATE IDENTIFYING EXHIBIT

Date of document: 31st August, 1999
Filed on behalf of: The Plaintiffs

Prepared by the Plaintiffs
Cheryl Maree Thompson and
Glenn Alexander Thompson,
68 Summer Street,
ORANGE. N.S.W. 2800 Tel (02) 6362 2022

This is the exhibit marked "GAT5" produced and shown to GLENN ALEXANDER THOMPSON at the time of swearing his Affidavit this 31st day of August, 1999

Before me:

A Dwhall 8800255
A Justice of the Peace

"GAT 5"

Glenn A Thompson
P.O. Box 1070 Orange NSW 2800
Tel 02,63,622022 (02,63,621807 direct) Facsimile 02,63,631760

21st August 1999

Mr. George Golvan Q.C.

By Facsimile 0396088928

Dear Mr. Golvan

Purported Mediation.
G.A. & C.M. Thompson v Macedon Ranges Shire Council & Others.

Thank you for your letter of 20th August 1999.

In reference to the text thereof I say:

1/ The order for Mediation was made by a Master and could therefore only be made with the consent of the parties.

2/ Mediation, by consent was ordered. The Order specifically required the parties to appoint the mediator, not the Court

3/ You were not appointed by the Supreme Court. You were appointed by myself with the consent of the other parties.

4/ s27A of the Supreme Court Act, where it applies, only applies to matters and things done in the performance of the duties of a mediator.

5/ You both failed in the duties of a mediator and also acted outside those duties and adopted an interventionist role, mediation did not occur, therefore you are not immunised by s27A.

6/ Peter Nevile was not my legal advisor as he has absolutely no knowledge of the present proceedings, he is my friend and sometime business partner and you were made thoroughly aware of these facts before the conference began. Having regard to this knowledge at the time of doing the calculations referred to in paragraph 19 of my letter of 16th August 1999, they were calculated upon the trial taking longer than normal as I am a Plaintiff in person. You made reference to the effect that the Judge would have to accommodate me.

7/ The matters referred to in my letter of 16th August are of a factual nature and are made directly to yourself and cannot defame you.

8/ With reference to paragraph three of your letter of 20/8 I say:-

a/ The telephone conversations you speak of are the telephone conversations referred to in the paragraphs numbered 29 & 30 of my letter of 16th August

b/ The $25,000 final settlement cannot be described as a proposal from myself. To ascribe that status to it is indeed a distortion of the facts which are well known to yourself. As you well know my wife and I were devastated by the prospect of almost assured loss if we proceeded. The assured loss being due to those matters now set out in my letter of 16th August 1999 and being the legal principle that we would fail in an action where the fraud alleged was done pursuant to the policy of a public authority as raised by Mr. Garde and then presented by you, during the conference, as being a part of the defendants defence where they were confident of getting judgement. The proposal, as you describe it, was, as you are aware, a scramble for peanuts in the dust and grime of defeat. The circumstances were:-

i) that I had accepted your advice, information, opinion that I would not get judgement:-

ii) you had suggested that perhaps you could get a little bit of cash (paras 24 & 25 letter of 16/8),

iii) I was distraught and crushed because the defendants were effectively walking away from the fact that they had deliberately lied and consequently economically destroyed my family and I said to you "The things set out in this statement of claim all happened and my documentation is thorough and beyond dispute" --- The Statement of Claim was out on the table because while you were away talking to them about the $10,000 I went through it with a view to seeing if we could argue some alternative which might get up where the defendants were acting pursuant to policy however the statement of claim and writ were both precise, the claim was for fraud. This fact combined with the information which you had extracted from the two individuals that they had been acting pursuant to policy and the apparently solid defence upon that point secured my capitulation and it had become a case of seeing if we could get anything at all.

iv) It was decided then to see if the defendants would entertain a further $10,000

v) Peter Nevile & yourself left the room to speak with the other side and returned with the $25,000 figure rather then $20,000 as I was expecting. Peter Nevile said that they had been told that I would not settle for anything less than $25,000 and they had agreed.

vi) I was told at that time, by you, that there was simply no possibility of any further cash as none of the defendants were insured and that being public authorities their books were open to public scrutiny. They could not spend money on settling court actions as it would be a green light to every would be litigant whereas they could justify spending whatever amount was necessary to defend the good name of themselves and their employees. (The obvious implication being that they would

spend $300,000 if necessary to obtain judgement, and then bankrupt my wife and I for that sum if we proceeded)

vii) In the circumstances, although distraught, I was pleased with the peanuts which had been gleaned from the dust and grime of defeat.

c) To say that the $25,000 resulted from a settlement proposal originating with myself is preposterous assertion which flies in the face of all of the circumstances of the proceedings, the conference, and my consistent position and effort during the period 1984 until the present. Your assertion that settlement arose from my offer is palpably, and transparently incorrect, it is simply ridiculous.

d/ I refer you to my letter to you dated 27th July 1999 and which sets out my very strong position including a thorough response to each defence raised by the defendants with the notable exception of the new policy issue which was first raised at the conference. You claim that you read the material that I sent to you and were aware that there was no strong defence to my claims other than this new and purportedly almost certain defence. This policy defence, to which I had no answer, was concentrated upon and supported by you as constituting a valid and legitimate defence , the remaining defences were merely complications to which I had excellent reply.

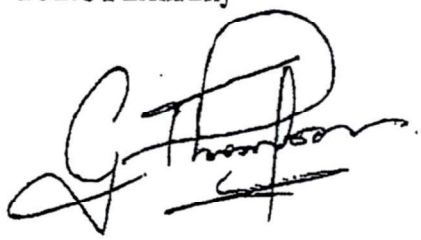
For the reasons set out herein and in my letter of 16th August 1999 you are not immunised by s27A and like anyone who breaches their duties or acts outside of their duties you are both responsible and liable. I shall if necessary look to you to recover damages. In the meantime I require you to refund your fees and the room charges as the consideration for both absolutely failed.

Now that I am aware that the policy defence which was put up by the defendants and supported by you was nothing more than a sham I am attempting to keep my proceedings on foot, my consistent wish and desire has been to rectify the fraud which did occur and I have no desire at all to cross swords with you. My present efforts are directed at maintaining the proceedings and thereby negating and minimising the damage caused by you.

Having regard to our system of justice I am not surprised by your rejection of the facts. Denial however is futile, the documented facts and circumstances generally overwhelmingly support the facts set out herein and in my letter of 16th August 1999.

I look forward to receiving your cheque at your earliest convenience.

Yours Faithfully



Glenn Thompson.

IN THE SUPREME COURT OF VICTORIA AT MELBOURNE

No. 7966 of 1995

BETWEEN:

GLENN ALEXANDER THOMPSON and CHERYL MAREE THOMPSON **Plaintiffs**

and:

THE MACEDON RANGES SHIRE COUNCIL and OTHERS (as set out in the Schedule attached hereto) **Defendants**

CERTIFICATE IDENTIFYING EXHIBIT

Date of document: 31st August, 1999
Filed for: The Plaintiffs

Prepared by the Plaintiffs
Cheryl Maree Thompson and
Glenn Alexander Thompson,
345 Lords Place,
ORANGE. N.S.W. 2800

Tel (02) 6362 2022

This is the exhibit marked "GAT6" produced and shown to GLENN ALEXANDER THOMPSON at the time of swearing his Affidavit this 31st day of August, 1999

Before me:

A Justice of the Peace 8800255

Glenn A Thompson
P.O. Box 1070 Orange NSW 2800
Tel 02,63,622022 (02,63,621807 direct) Facsimile 02,63,631760

4776

23rd August 1999

Mr. George Golvan Q.C.

By Facsimile 0396088928

Dear Mr. Golvan

Purported Mediation.
G.A. & C.M. Thompson v Macedon Ranges Shire Council & Others.

Upon reflection I wish to place two further thing relating to the conference of 29th July on record and to make a further comment in respect to your letter of 20th August 1999.

In relation to the conference one further aspect of your conduct of the meeting which at the time caught me by surprise now upon reflection appears to me to be inconsistent with your duty to be impartial and to mediate upon the issues but consistent with the general conduct of proceedings as set out in my letter of 16th August 1999. This aspect is:-

a) At the time referred to in paragraph numbered 8 of my letter to you of 16th August 1999 Mr. Wilson said that building permits were unavailable to my land because water was not available.

b) At this time:-
   i) You said to me "Did you apply for a building building permit?"
   ii) to my answer "No" you said "Why not?"
   iii) to my answer "water as a pre-requisite to building permits, not building permits was the issue" you said, to the effect, "If you had and they had refused you could have won on appeal and got water that way"

c) I was shocked by your intervention in this manner and was caught entirely unprepared as this aspect or question had never been raised in any pleadings and was not an issue. You then continued your discussion with Mr. Wilson on the point that he had been acting pursuant to policy when he did the matters set out in the Statement of Claim.

d) The inescapable consequence of your intervention on this point and at that time was that you had raised or created an issue yourself which if valid (which it was not) and left unanswered, (as it was by your conduct of the proceedings and my unpreparedness) may have, and probably did have the effect of strengthening the position of the defendants.

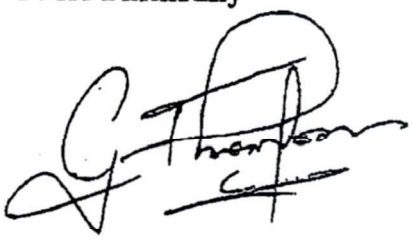
Another aspect of your conduct which was also out of line and improper occurred at the time referred to in paragraphs numbered 15 to 19 in my letter of 16th August. The

discussion at the time revolved around the likely time of a trial and that if I appeared as a plaintiff in person the judge would have to accommodate me with the result that both time and costs would be great. At this time you said to me to the effect:- "I have read the two judgments handed down by Justice Ashley, the only reason your still here now is that the Judge was extremely good to you as a plaintiff in person. If you were not a Plaintiff in person your action would have been struck out long ago"

Again I say that mediation did not occur, it appears to me that at the time that you were having discussion with Mr. Wilson, and probably well beforehand you had adopted the position that my action was weak or fatally flawed and would fail and throughout the entire proceeding you acted accordingly. You expressed to me your information, advice, opinion that my action would fail due to the policy consideration. It may well be that in view of the position or opinion you adopted you considered the final outcome to have been fair and probably the best I could possibly get. You yourself additionally intervened by raising issues adverse to myself and absolutely failed to address let alone mediate on any of the true issues and also failed to discuss any of the issues, actual or otherwise, with me before the conference. You did not mediate at all you intervened and your intervention and your entire conduct of proceedings only makes sense in the context of your expressed information, advice, opinion that my action would fail. The effect, and apparently intended effect, of your intervention was to create in my mind the belief that my action would fail

In relation to your letter of 20th August 1999 I also wish to say that the matters raised by myself and complained of were matters to which I was party. To the extent that they are or may be private and confidential the continued discussing of them between you and I does not break any such privacy or confidentiality. My understanding is that the matters occurring at the conference were merely without prejudice to the proceeding.

Yours Faithfully



Glenn Thompson.

IN THE SUPREME COURT
OF VICTORIA
AT MELBOURNE

No. 7966 of 1995

BETWEEN:

GLENN ALEXANDER THOMPSON and
CHERYL MAREE THOMPSON Plaintiffs

and

THE MACEDON RANGES SHIRE COUNCIL and
OTHERS (according to the Schedule attached) Defendants

OUTLINE OF ARGUMENT

Date of document: 3 / August 1999
Filed on behalf of: The Second Defendant

Beck Sheahan Quinn & Kirkham
Solicitors
110 Pall Mall
BENDIGO 3550

Solicitor's Code: 1477
DX 55011 Bendigo
Tel: (03) 5443 1066
Ref: SE:CAB:D45.017

1. The application is brought on behalf of the Second Defendant, Coliban Region Water Authority ("Coliban") for summary enforcement of terms of settlement executed on 29 July 1999 by or on behalf of the Plaintiffs and Defendants following upon a court ordered mediation.

2. The facts are set out in the affidavits of Steven Mark Edward sworn 16 and 23 August 1999 and filed herein and the exhibits thereto.

3. Following a preliminary conference conducted on 21 July 1999 by Mr George H. Golvan QC, the mediator agreed by the parties, the Court-ordered mediation took place on 29 July 1999 as set out in the affidavit of Steven Mark Edward of 23 August 1999. Mr Glenn Thompson appeared in person on behalf of the Plaintiffs but was assisted throughout by Mr Peter Nevile, an experienced solicitor who was or had been retained by him in relation to the matter. The terms of settlement were written out by the mediator with assistance from the parties and their representatives after the conclusion of the mediation. The terms were then duly executed by parties or

representatives in front of each other. Mr Thompson and Mr Nevile were both present when this was done.

4. As the Court will see, the terms of settlement (exhibit SE1 to the affidavit of Steven Mark Edward of 16 August 1999), were in full settlement of the matters the subject of the Plaintiffs' claim in the proceedings. Clause 1 provided for payment by the Defendants to the Plaintiffs of the sum of $25,000 inclusive of costs on or before 13 August 1999. This was a Friday. Clause 3 provided for mutual releases between the parties. Clause 5 required the Plaintiffs to file a notice of discontinuance of the action with no order as to costs.

5. By a side agreement between the First and Second Defendants each was to pay $12,500 being one half of the total settlement monies of $25,000.

6. The Plaintiffs are resident in Orange, New South Wales, and act through New South Wales solicitors whose offices are also at Orange, and it was necessary for the two cheques of $12,500 each to be sent by respective Defendants' solicitors from Melbourne in one case and Bendigo in the other to Orange in New South Wales.

7. The Coliban cheque is dated 5 August 1999, and was sent under cover of a letter from Coliban's solicitors dated 11 August 1999. Confirmation that the second cheque for $12,500 had also been sent to the Plaintiffs was given to Coliban's solicitors by Phillips Fox, solicitors for the First, Third and Fourth Defendants on 13 August 1999. All of the Defendants' obligations under the terms of settlement have been performed.

8. Two affidavits have been filed on behalf of the plaintiffs both dated 18 August 1999. The affidavit of Thompson of 16 August 1999 makes it clear by Exhibit GAT 1 that he has recanted on the terms of settlement and intends to proceed to trial instead filing of a notice of discontinuance as he was obliged to do.

9. The affidavit of Jim Prosser-Fenn sworn 16 August 1999 exhibits the terms of settlement ("JPF1") and acknowledges receipt of the cheque dated 5 August 1999 from Coliban for the sum of $12,500, but states that the cheque

from Phillips Fox in Melbourne had not arrived in Orange as at 5:30pm on 16 August 1999 (the next business day after 13 August 1999). However, the suggested lateness is without legal significance as time was not of the essence under the terms of settlement.

10. Reliance is placed on the leading authority in this Court relating to the summary enforcement of *Roberts v Gippsland Agricultural and Earth Moving Contracting Co Pty Ltd* [1956] VLR 555; Williams - Supreme Court Practice - Vol 1 page 3443 [23.01.145]. In this case, summary enforcement is a far more convenient course than bringing a separate action.

11. The only point that has been raised is that the cheques did not arrive in Orange on Friday 13 August 1999 but in one case arrived on the next business day Monday 16 August 1999, and in the other a day or so later. However, there was never any suggestion that the Defendants were not acting in good faith in fulfilment of the settlement. The cheques were on the way as could readily have been verified by telephone call.

12. There is no proper basis at all for the repudiation of the terms of settlement.

13. The law is clearly stated by Fullagar J in *Carr v J. A. Berriman Pty Ltd* [1953] 89 CLR 327, 348-9

> "Where a contract contains a promise to do a particular thing on or before a specified day, time may or may not be of the essence of the promise. If time is of the essence, and the promise is not performed on the day, the promisee is entitled to rescind the contract, but he may elect not to exercise this right, and an election will be inferred from any conduct which is consistent only with the continued existence of the contract. If time is not of the essence of the promise, the promisee is not entitled to rescind for non-performance on the day. If either (a) time is not originally of the essence, or (b) time being originally of the essence, the right to rescind for non-performance on the day is lost by election, the promisee can, generally speaking, only rescind after he has given a notice requiring performance within a specified reasonable time and after non-compliance with that notice : see, e.g., *Taylor v. Brown* (1); *Stickney v Keeble* (2); *Panoutsos v Raymond Hadley Corporation of New York* (3)."

14. In *D.T.R. Nominees Pty Ltd v Mona Homes Pty Ltd* [1977-8] 138 CLR 423, 430, Stephen, Mason and Jacobs JJ held that even an obligation to do things

"with all due dispatch" did not make time of the essence and was not an essential term.

15. In the present case, there is submitted to be every reason why the terms of settlement should be upheld and enforced. The action relates to matters in 1989 and earlier but was only issued in 1995. The proceedings have had a chequered history as will be seen from the file. The parties having entered into an agreement to compromise their rights in the terms of settlement, there is every good reason in law and justice why they should be held to their agreement.

16. Relief is sought in the terms of the summons.

Owen Dixon Chambers
31 August 1999

GREGORY H. GARDE