IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMON LAW DIVISION

Court Number: **6321 of 2005**

B E T W E E N :

GLENN ALEXANDER THOMPSON
& CHERYL MAREE THOMPSON *Plaintiffs*

- and -

MACEDON RANGES SHIRE COUNCIL *First Defendant*

- and -

THE COLIBAN REGION WATER AUTHORITY *Second Defendant*

PLAINTIFFS' APPEAL SUBMISSIONS
PART 2.

Date of Document: - 30th October 2006
Filed on behalf of: The Plaintiffs
Prepared by: The Plaintiffs.

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This is part 2 of my submission.

1) **Credibility.**

   a) I make this aspect of my submission at this time because aspects of the matters I am about to raise go to the heart of the validity of the purported Terms of Settlement which is a topic I will address shortly.

   b) In addition these aspects got to the heart of the submission on costs which I will also make.

   c) In addition these aspects also go to further my arguments in opposition to the present applications.

   d) In their submissions before the Master Counsel and solicitors for the Defendants raised a number of issues. Some of the issues masqueraded as legitimate submissions intended to impugn my credibility while others were a bald and specific personal attack on my integrity, specifically intended to impugn my credibility.

   e) At the time the hearing before Master Efthim these submissions were successfully made for the purpose of:-

i) obtaining judgement against me;

ii) obtaining punishing costs orders;

iii) portraying me as a dishonest and vexatious litigant, as Major General Garde is wont to do.

f) As a consequence, at least in part, of these submissions the Master did make judgement against me and did specifically find me to be incredible and by definition, dishonest, and he did then make punishing costs orders against me.

g) The submissions by Counsel for the Defendants had two different styles or methods.

h) The first of these methods was an attack under the guise of legitimate submission as was done by Counsel for the First Defendant.

i) The second method was a deliberate and calculated personal attack against me by Major General Gregory H. Garde, AM, RFD, QC. and his instructing solicitor Mr. Steven Edward purportedly from their personal knowledge and recollections and purportedly with regard to or reliance upon their respective ethics and position as officers and senior officers of this honourable Court.

j) I am deeply distressed and filled with trepidation that I must now address these issues in this honourable Court however if I do not speak up at this time I will have the equally distressing prospect of having to live with myself hereafter.

k) My present task is made daunting by the status of these men as officers and senior officers of this honourable Court.

l) Although I am unrepresented at the present time, I have sought the opinion of Counsel in respect to the more serious aspects of the matters which I am about to raise and I am advised, and I believe as a matter of principle, that I have a public duty and a duty to this honourable Court to bring these matters to the attention of this honourable Court and I do not do so lightly.

m) At the time of briefing my ex-Counsel, I wished to raise those aspects of the following matters that were known before the last hearing, however my ex-Counsel refused by saying that the Courts did not wish to hear these things. I am personally of the opposite view, in that I think and understand that the Court will wish to hear them.

n) **The submissions of Major General Gregory Garde, AM, RFD, QC.**

i) At page 79 of the Transcript of the first day of the hearing before the Master Major General Garde said, "*Thompson matters seems to have impacted itself on me one way or another way for quite a considerable number of years*".

ii) This was a reference by Major General Garde that he has been involved with "*Thompson matters*" and has met and opposed me on a number of occasions since 1988.

iii) I first sat at a bar table with the then Lieutenant Colonel Garde in 1988 in the Planning Appeals Tribunal. Since then, on several occasions, I again personally opposed him on several occasions when he appeared for the Second Defendant during the entire period of the previous Woodleigh Heights proceeding and he is now again representing the Second Defendant at this time. We have met on a number of occasions.

iv) My principle submission in respect to the Major General is that he knowingly or carelessly misled the Planning Appeals Tribunal in 1988 and in 1999 wrongly obtained settlement of the previous Woodleigh Heights proceeding. Before attending to those issues I will, by way of lead in, first attend to two lesser issues relevant to the present proceedings.

v) **The present proceeding.**

(1) **The document entitled "Outline of Submissions of the Second Defendant for 14 November 2005**" purports to be authored by and authorised by Major General Garde and Sharon Burchell.

(a) I do not propose to entirely disassemble this document however a most brief glance provides an insight into the carelessness or neglect or perhaps deliberate intent to mislead with which it was prepared. On the face of it I suspect and submit careless neglect, I have previously set this out, however to re-iterate in context:-

(b) Paragraph 1 states "*The Plaintiffs allege that they are owners of certain parcels of land …… … … .. "*. Whereas:-

(i) The entire reason for the present proceeding is that I do not own the land having lost it to the fraud of the Defendants. **Paragraph 1 is false**; and;

(ii) It is self evident that the purported facts of paragraph 1 cannot co-exist with the purported facts of either paragraph 5 or paragraph 6 of that same submission.

(c) Paragraph 3 states "*The Plaintiffs allege that there was a requirement imposed by the Shire of Kyneton under s569E(1) and (1A) … …. … .. .. "*. Whereas:-

(i) Paragraph T5 of the present Amended Statement of Claim clearly alleges that the s.569E Notice was never served. **Paragraph 3 is false**.

(d) Paragraph 5 states *" ….. Woodleigh Heights land, … the land was sold by public auction by …. (AGC) on 17th November 1984.*". Whereas:-

(i) Paragraph W47 of the present Amended Statement of Claim clearly states that the proposed auction by AGC was cancelled and was cancelled because of the fraud of the Defendants. **Paragraph 5 is false**; and;

(ii) It is self evident the purported facts of paragraph 5 cannot co-exist with the purported facts of paragraph 6 of that same submission.

(e) Paragraph 6 states *"… .. … the Plaintiffs say …. .. the auction scheduled for … 1985 was cancelled …* " and further states. " …. … .. *the Plaintiffs sold their land in 1989* ….. ". Whereas:-

(i) Paragraph W71 of the present Amended Statement of Claim clearly states that Esanda exercised their right of mortgagee sale. The reason for this was because that due to the fraud of the Defendants the Plaintiffs could not sell their land with its lawful entitlement to a water supply. **Paragraph 6 is false**; and;

(ii) It is self evident that the purported facts of paragraph 6 cannot co-exist with either paragraphs, 1 or 5 of that same submission.

(f) The document is a nonsense, it should be relegated to the rubbish bin and completely disregarded by the Court it then goes on to purport to present various legal arguments.

(g) This document authored by and authorised by Major General Garde and Sharon Burchell and presented to the Court by Major General Garde, is simply self contradicting, false and misleading nonsense. It totally misrepresents my case by presenting a fabricated case of their own concoction.

(h) Four of the first six paragraphs are simply false and cannot co-exist with the other paragraphs.

(i) This document authored by, and authorised by Major General Garde and Sharon Burchell and presented to the Court by Major General Garde is simply, self contradicting, false and misleading. It is a nonsense which totally misrepresents my case by presenting a fabricated case of their own concoction.

(j) The entire document and submission of Major General Garde and Sharon Burchell is impugned.

(2) **For the specific purpose of impugning my credibility Major General Garde misled Master Efthim regarding my appearance and Mr. Francis Tiernan's alleged appearance in the Practice Court on 1/9/1999.**

(a) Major General Garde falsely represented that Mr. Francis Tiernan of Counsel appeared in the Practice Court on 1/9/99 and that I did not.

(b) I am advised by Mr. Francis Tiernan of Counsel that Court records will show that on 1/9/99 Mr. Tiernan appeared in the Masters Court in the matter of Roman Catholic

Trust Corporation v Van Driel and others. Mr. Tiernan appeared for the Roman Catholic Trust Corporation. Mr. Tiernan did not appear in the Practice Court on 1/9/99.

(c) On 1/9/99 I represented the Plaintiffs and appeared in person in the Practice Court before Justice Beach. I sat alongside Major General Garde and diagonally opposite Mr. Steven Edward at the bar table.

(d) The written reasons for judgement dated 1/9/99 [1] attest to the fact that I appeared in person.

(e) The Authenticated Order prepared by Mr Steven Edward's firm, Beck Sheahan Quinn & Kirkham,[2] wrongly records that Mr. Tiernan of Counsel appeared for me in the Practice Court on 1/9/99. This document, prepared by Mr. Edwards firm is wrong and at odds with the Court record and the facts. This document appears to have been authenticated in error by Justice Beach on 8/9/99.

(f) It was at this hearing in the circumstances set out in paragraphs 37 to 40 of the first Thompson Affidavit that I was shown the reticulation plans referred to in those paragraphs. The circumstances being that I represented the Plaintiffs in the Practice Court.

(g) For the purpose of impugning my credibility and my Affidavit at pages 9, 10 and 11 of the transcript of the second day before Master Efthim, Major General Garde, after saying that I was represented by Mr. Tiernan, then represented to the Court that in the circumstances where I was represented by Mr. Francis Tiernan the things said by me to have occurred could not have occurred.

(h) In relation to the Practice Court hearing there are only two possibilities. Either Major General Garde has personal recollection or he does not.

(i) In the event that Major General Garde has personal recollection, then he knew his submission to be false and misleading at the time he was making it.

(j) In the event that Major General Garde has no personal recollection then he knew full well that his submission was made carelessly and recklessly without caring as to whether or not it was false and misleading and it was made in such a manner as to appear to be a personal submission given verisimilitude by the erroneously Authenticated Order.

(k) Of further note is that Major General Garde's instructing solicitor Mr. Steven Edward was also present at the Practice Court and Mr. Edward listened silently to the

[1] SME2 Volume 4 Tab 96
[2] SME2 Volume 4 Tab 97

submission made by the Major General. I will speak more of Mr. Edward's conduct later.

(l) The submission was made in such a manner as to possess the weight of what Major General Garde represents to be his ethical standards.

(m) In the lead up to his submission Major General Garde said ".. .. *picture this, Master .. ..* ", the Major General then painted a word picture which was nothing more than an elaborate pretense which was intended to mislead and deceive the Court.

(n) Mr. Garde submitted:-

> *I'll take you to the order* ***because we've got some allegations made about this by Mr Thompson in current material****. Tab 97 is the order. You'll see there are applications by summons of 24 August and 30 August.* ***You've got Mr Tiernan of counsel appearing for the plaintiffs****. You've got Mr Langmeade appearing again for first, third and fourth defendants. …….. …*
> *.. … …. .. We have - picture this, Master,* ***we have an Affidavit from Mr Thompson saying that, and I'll take you to it, that at this Practice Court hearing what took place was that counsel and solicitors for the defendants showed him a plan*** *and he realised that the water main, would you believe, the water main was not constructed in 1979 as he had formerly believed, but in 1982. We can picture the environment of the eleventh court. Suddenly at the conclusion of argument about time being of the essence and solicitor/client costs,* ***counsel for the second defendant, namely Holiban, in the form of myself, suddenly I disregard Mr Tiernan's presence*** *and 25 years of bar* ***ethics about talking to a client on the other side****, I dash over in the very attractive environment of the eleventh court, produce a plan and I say, it would it would seem, to Mr Thompson, "Look the water main was constructed in 1982". But it's not only that because on his Affidavit Mr Langmeade of counsel disregards 20 years or so of practice at the bar and bar ethics, and the* ***constraint of talking to your opponent's clients****, he dashes over and says to Mr Thompson words along the same effect, "Here's a plan and look at the 1982 construction of the water main", but it's not only that because the allegation is that the solicitors are involved so Mr Edward, seeing this happy throng,* ***disregards the presence of legal advisors for the plaintiffs*** *and he joins in this discussion but it's not only that because the solicitor for the counsel being present to instruct Mr Langmeade also* ***disregards any ethical requirement about consulting with your opponent's clients*** *and dashes over and has that decision too.*
>
> *According to Mr Thompson it's at that moment he realises that he's in a desperate situation, his prospects have diminished because the water main was constructed in 1982, so he's been informed.*
>
> *Now, of course he had already settled this matter at the mediation with Mr Golvan. There was no extant action that was left and not only that but he'd gone past Master Kings. He'd just been in the Practice Court listening to Justice Beach announce that the terms of settlement were binding and so declaring, and ordering after a contested application, solicitor/client costs.*
>
> *Frankly, Master, let me say, one might feel somewhat insulted by this. I mean,* ***if one were to disregard 25 years of ethics of the bar and dash over and consult with someone****, it would perhaps have to be much more attractive than Mr Thompson and the proposition we might to discuss would have to be something more inspiring than whether the date of a water main conducted in a subdivision of land was in 1982 or 1979.*
>
> ***What we simply say about all that is that it's complete nonsense to advance the sort of material that is being advanced and that every document that we have and***

can point to suggests that you should view the statements made with very considerable hesitation. (emphasis added)

(o) This submission by the Major General paints an extraordinarily compelling picture of professional honour, propriety and ethics. It is a moving and theatrical portrayal of the unimpeachable ethics of a senior officer of this Court and Her Majesty's army.

(p) The problem is that the performance was just that, theatre, a total fabrication, a concoction, pompous puffery specifically designed and intended to mislead the Court and to impugn my character, credibility and integrity.

(q) The facts are:-

(i) Francis Tiernan did not appear, he was in another Court, before a Master, representing the Roman Catholic Trust Corporation.

(ii) The written Reasons for Judgement dated and signed on 1/9/99 by the Judges Associate states that the Plaintiffs appeared in person.[3]

(iii) I sat at the Bar Table alongside then Brigadier Garde and diagonally opposite Mr. Steven Edward.

(iv) Unless both Major General Garde and Mr. Steven Edward have total amnesia leaving not one scintilla of memory of the day in their collective memories then one or the other or both the Major General and Mr. Edward knew that the submission of the Major General was false and misleading at the time that it was made. In the event that there is not one scintilla of memory then the submission was known to be false to the extent that it purports to be from knowledge.

(v) On the subject of memory I note that in his theatrical submission the Major General said, "*We can picture the environment of the eleventh court."* It appears therefore that the Major General has recollection of which Court he acted so honourably in, I suspect and submit he in fact has adequate memory to know full well his submission was false and deliberately misleading..

(vi) It was during the course of the proceeding in the Practice Court that I was shown the Reticulation Plan which showed that the principle water mains were laid in 1982 and not 1979 as required by law and as previously represented by the First Defendant.

(vii) The inaccurate Authenticated Order which the Major General used to provide verisimilitude to his submission is just another example of a false and

[3] See SME 2 Volume 4 at tab 96.

misleading document prepared by and relied upon by the solicitor for the Second Defendant to impugn me.

(r) Brigadier Garde had several personal conversations with me during the course of the day. One such conversation occurred in the following circumstances. Immediately prior to opening of proceedings I was approached by an officer of the Court and the officer asked me to remove my substantial briefcase from the Bar Table. I did so and immediately after that the there was discussion at the Bar Table which included Brigadier Garde and it was explained to me to the effect that it was not proper to have briefcases on the Bar Table.

(s) Earlier conversation was held prior to the opening of proceedings when I and the representatives of the Defendants were waiting for the appointed time. In my presence, in a conversation directed at the other legal professionals present, Brigadier Garde noted that no court reporting facility or person was present and then spoke in quite demeaning terms of Justice Beach to the effect that Justice Beach was about to retire and liked to feel important and that he would suggest that a court reporter should be present because the Judgement may be important. I was agog and appalled at the implications which I saw as ingratiation. When the Court then first assembled Brigadier Garde did recommend that a court reporter be present and the reasons given by Brigadier Garde were accepted. The Court was then adjourned or delayed for some time while a court reporter was located. During this period of perhaps 30 or 40 minutes substantial conversation took place between the parties present including myself. I suspect that this conversation and reflection upon the Judge would not have occurred if Francis Tiernan was present.

(t) Substantial further conversation also took place during the extended period between the end of proceedings and delivery of judgement on that day.

(u) I have no personal knowledge of the records kept by the Court however if such records are kept the records will show that initially there was no court reporter allocated and that after an adjournment a court reporter was present and the matter then proceeded substantially later than the appointed time. Court records will also show a substantial period between end of proceedings and delivery of judgement.

(v) The suggestion by Major General Garde that he never spoke to me in the Practice Court is false and misleading. The suggestion that Francis Tiernan of Counsel appeared and not I is also false and misleading.

(w) It is reprehensible and an abuse of his position as a senior officer of this Honourable Court that the Major General misled the Master in this manner.

vi) **For the purpose of securing victory for his client and impugning my written submission the then Lieutenant Colonel Garde read from his written and signed submission and misled the Planning Appeals Tribunal on 7th March 1988. Had he not done so it is possible, perhaps probable, that the Plaintiffs may not have suffered ultimate loss on the Woodleigh Heights land and we would not be here today.**

(a) I submit that the credibility of the officers of this Honourable Court is a matter of serious public concern and interest and is also of concern and interest to this Honourable Court.

(b) I have already raised two issues with respect to the conduct and credibility of Major General Garde AM. RFD. QC however the seriousness of the issue I now wish to address transcends the earlier issues.

(c) I am representing myself today however in respect to this issue I have sought and obtained Counsel's opinion and I am advised that I have a duty to this court to raise this further issue.

(d) In relation to this particular issue the parties present at the Planning Appeals Tribunal hearing were:-

1. Myself on behalf of the Plaintiffs.
2. Woodleigh Heights Resort Developments Pty. Ltd. by its representative.
3. The then Lieutenant Colonel Garde as Counsel for Woodleigh Heights Resort Developments Pty. Ltd. under instruction from Gair and Brahe solicitors.
4. Mr. John Norman Price, solicitor instructing Lieutenant Colonel Garde.
5. Mr. Brian Murphy the Managing Director of Woodleigh Heights Resort Developments Pty. Ltd.
6. Mr. David Parkinson, the Secretary for both Defendants.
7. Mr. Graeme Wilson, Shire Engineer for the First Defendant.
8. The First and Second Defendants by their representatives.
9. Mr. Ian Lonie of the firm Maddock Lonie and Chisholm for the Defendants. Maddock Lonie and Chisholm was the predecessor to Maddocks the present solicitors for the First Defendant.

(e) In other words everybody who gets a mention in the present proceeding was present on that day right down substantially to the same legal representations.

(f) In other words there are no surprises in what I am about to present. Everybody here is already familiar with the documents I will shortly be seeking the leave of the Court to introduce.

(g) The documents I wish to introduce are on the public record being permanently filed with the Planning Appeals Tribunal in appeal number P87/2206..

(h) Although they contain matters pertinent to subject of the present proceedings for the present purpose these documents relate solely to the credibility of Major General Garde and what I submit is my right to reply, in full, to his falsely based, intended to damage and therefore malicious, personal attack, in this Court, on my credibility and integrity.

(i) These documents are:-

(i) A copy of a letter dated 26/2/88 from myself to the Planning Appeals Tribunal together with facsimile transmission report.

(ii) A copy of the same letter together with facsimile transmission report excepting that the letter is addressed to Woodleigh Heights Resort Developments Pty. Ltd. Care of Gair and Brahe solicitors.

(iii) Copy of a document entitled "Written Submission on behalf of Appellant" dated 7th March 1988 and purportedly signed by G. H. Garde.

(iv) Copy written Determination and reasons for determination appeal P87/2206.

(j) Before I seek the leave of the Court to submit these documents and then present my submission related to these documents I submit that the credibility of Major General Garde AM. RFD, QC. and the question as to whether or not he may have influenced the outcome of a matter by misleading a Tribunal is an important issue of public concern and of concern to this Honourable Court.

(k) I now seek the leave of the Court to admit these documents.

(l) In 1988 the Plaintiffs could not demonstrate any legal entitlement to an approved Reticulated Water Supply at Woodleigh Heights.

(m) The only approved Reticulated Water Supply which was known to the Plaintiffs at that time was the water supply which was supplied in purported pursuance of the Water Supply Agreement now referred to in paragraph W30 of the present Amended Statement of Claim.

(n) The Woodleigh Heights land was situated in an area where the supply of an approved Reticulated Water Supply was at the discretion of the Second Defendant.

(i) The said Water Supply Agreement[4] was unlawful and was used for unlawful purpose for numerous reasons, including:-

(ii) Those reasons set out in paragraphs 2, 3, 5, 6, 7, 12, 13, 14, 15 and 16 of the two letters dated 26/2/88.

(iii) The agreement was in breach of s.307AA(2) of the Water Act 1958 in that agreements pursuant to s.307AA(2) may only be with the owner of lands and by its specific terms the Agreement was between the Second Defendant and Woodleigh Heights Resort Developments Pty. Ltd and by its specific terms it provided for the supply of water to the whole of CS1134 including the common property and the Plaintiffs land and Woodleigh Heights Resort Developments Pty. Ltd was clearly not the owner of those lands.

(iv) The Water Supply Agreement was in breach of the Planning Permit as the Body Corporate was the only entity entitled at law to control the water supply within the subdivision.

(o) The Plaintiffs therefore could not enforce any rights under that unlawful agreement and the Plaintiffs could not force the Second Defendant to enter into a separate agreement with either the Plaintiffs or the Body Corporate. .

(p) I therefore formulated a plan whereby if I could show the Planning Appeals Tribunal that the Water Supply Agreement was unlawful and was being used for unlawful purpose by the Appellant and the Defendants then the Planning Appeals Tribunal should recognise that if it approved an appeal which would permit the sale of allotments to other people then those new owners could well be prejudiced in the same manner as the Plaintiffs. It would then have been probable that the Second Defendant could be left with no option other than to enter into a lawful agreement with the Body Corporate of the cluster subdivision.

(q) There is no other possible reason for my submission or appearance, I was not an objector and this fact was noted by the Tribunal in their written determination.

(r) I therefore, by the letters dated 26/2/88, gave notice of my intention to make a submission to the Tribunal. The letter set out the submission I intended to make. Notice was given to the Tribunal, the Appellant and the Defendants.

(s) On the day of hearing I sat at the Bar Table alongside then Lieutenant Colonel Garde and next along was Mr. Ian Lonie of Maddock Lonie and Chisholm the predecessor to Maddocks. Lieutenant Colonel Garde was representing the appellant Woodleigh

[4] Ref GAT-26

Heights Resort Developments Pty. Ltd and Ian Lonie was representing the Defendants as respondents..

(t) I was permitted to make my submission and I did so by reading the letter dated 26/2/88.

(u) Lieutenant Colonel Garde subsequently read his written submission to the Tribunal.

(v) Paragraph 4.0 of Lieutenant Colonel Garde's signed submission says, "*THE APPLICANT HAS THE BENEFIT OF ENFORECEABLE LEGAL AGREEMENTS WITH THE WATERWORKS TRUST FOR THE PROVISION OF WATER, AND THE SEWERAGE AUTHORITY FOR THE PROVISION OF SEWERAGE*"

(w) I say that for the reasons set out by me in my letters of 26/2/88 and that by its specific terms the Water Supply Agreement was in specific breach of s.307AA(2) there was no possibility of a belief by Lieutenant Colonel Garde that the Water Supply Agreement was either lawful or enforceable and I submit to this Court that at the time of drafting and making his submission Lieutenant Colonel Garde knew full well that his submission was false and misleading or alternatively Lieutenant Colonel Garde made the submission carelessly and recklessly not caring whether it was either true or false.

(x) I also say and I submit to this Court that at the time of making his submission Lieutenant Colonel Garde knew full well that his submission assisted in perpetuating the loss and damage which was being caused to the Plaintiffs or alternatively he made his submission without caring as to whether or not his submission was damaging.

(y) I also say and submit that Lieutenant Colonel Garde's submission misled the Tribunal and that Lieutenant Colonel Garde intended the Tribunal to rely upon his submission in preference to mine and he misused his position and status as an Officer of this Honourable Court to mislead the Tribunal for that purpose.

(z) I also say and submit that had Lieutenant Colonel Garde not misled the Tribunal then a very real possibility, indeed probability, is that the Second Defendant may have had no option other than to enter into a lawful agreement with the Body Corporate and in which case the Plaintiffs would not have suffered the loss and damage on the Woodleigh Heights land that they subsequently suffered and this present proceeding may never have occurred.

(aa) No doubt the Lieutenant Colonel rendered an account commensurate with his high office and great skill and his family dined well on the fruit of his labour. My family on the other hand found the fruit of his labour quite unpalatable, we continue to suffer the debilitating effect almost 20 years later.

(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. [5]

(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 29th July 1999. Present were myself, Mr. George Golvan QC. Mr. John Langmead of Counsel and his instructing solicitor Mr David Pumpa 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 31st August 1999, [6] 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.

[5] See GAT-6 Paragraph 4.
[6] 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 20th 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. [7] 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

[7] Refer SME2 Volume 4 Tab 99.

o) **The credibility of Mr. Steven Mark Edward, solicitor for the Second Defendant, instructing solicitor to Major General Garde.**

i) Steven Mark Edward had conduct of the previous Woodleigh Heights proceeding in behalf of the Second Defendant.

ii) The reticulation plan shown to me in the Practice Court was a document of the Second Defendant. It was in the possession of the Defendants on that day yet it was not discovered in the proceeding.

iii) Steven Mark Edward was present at the time of the aforementioned purported mediation and was also present in the Practice Court, he sat opposite the Brigadier and diagonally opposite me at the Bar Table.

iv) Mr. Edward and I knew each other very well because a short while earlier Mr. Edward had on two occasions spent a number of days in my private residence copying my documents including the Book of Pleadings.

v) In the Practice Court Mr. Edward and I addressed each other on a first name basis.

vi) Unless Mr. Edward is suffering total amnesia in relation to the circumstances of the hearing at which the previous Woodleigh Heights was finally put to bed then Mr. Edward knew full well that the Major General was misleading the Master when he made the submission previously referred to wherein the Major General represented that Mr. Francis Tiernan appeared.

vii) Mr. Edward swore a number of affidavits in the present proceeding. The first is dated 12th September 2005 according to the Bill of Costs which Mr. Edward has prepared it at a cost of $710.00. For 9 pages that is a rate of $78.88 a page, not bad if you can get it I suppose.

viii) In his Affidavit of 12th September 2005 Mr. Edwards says:-

(1) At paragraph 1. That he is a barrister and solicitor of this Honourable Court.

(2) At paragraph 15 Mr. Edward purports to provide a reliable comparison between the previous Tylden Rd proceeding and the present proceeding insofar as it relates to Tylden Rd. In relation to this Mr. Edward says at paragraph 15:-

(a) "*In both proceedings the plaintiffs allege that a requirement was imposed by the Shire of Kyneton under section 569E(1) and (1A) .. … …. …* "

(3) The first thing to notice about this paragraph is that it is simply wrong, false, a fabrication, misleading to the Court. Paragraph T5 of the present Amended Statement of Claim clearly says *" .. … … the Council .. .. .. omitted to issue 569E Notices … …. …* " and at paragraph T11 " …. … .. *no valid s.569E Notices had ever been served .. .. ..* " and at paragraph T12 "… … … *Council fabricated Notices of Requirement .. … ..* "

(4) The second thing to notice is that paragraph 15 of Mr. Edward's Affidavit is that it is a further instance of identically wrong in that what is said by Mr. Edward is identically wrong to that which was said by the Major General and by Mr. Delaney as previously discussed.

(5) At paragraph 30 of his Affidavit Mr. Edward purports to make a comparison between the previous Woodleigh Heights proceeding and the present proceeding insofar as it relates to Woodleigh Heights. The notable aspect of this paragraph is that it simply omits to set out the fact that in the first proceeding it was alleged that the private water supply and reticulation system was complete in 1979 whereas in the present proceeding the exact opposite is alleged.

ix) **Mr. Steven Mark Edwards also swore two false Affidavit in the proceeding before Master Efthim apparently for the specific purpose of impugning my integrity and then he and Major General Garde used those false Affidavit to successfully impugn my credibility**.

(1) The Plaintiffs refer to and read paragraphs 44 to 78 of the First Plaintiffs Affidavit dated 15th August 2005 filed in this proceeding.

(2) Upon examining the exhibits to an Affidavit sworn by Mr. Edward I noticed that he had exhibited documents which were my personal property and were privileged documents and should not have been in the possession of Mr. Edward.

(3) It was immediately apparent that Mr. Edward had breached a trust in that in 1999 when Mr. Edward was given unfettered access to my documents in my private domestic residence for the purpose of inspecting and copying documents relevant to 7699 of 1995 he had wrongly copied documents which he, as a solicitor would recognise as privileged and also not relevant to 7699 of 1995.

(4) Mr. Edward then swore an Affidavit dated 3rd November 2005 in specific response to matters raised in my first Affidavit. In this Affidavit he swore that he "*attended at the plaintiffs' solicitor's premises in Orange … …. … …. … to inspect documents discovered by the Plaintiffs*.". In addition he further swore "…. … *I again attended at the Plaintiffs' solicitor's premises at Orange and I photocopied all of the documents then produced for the purpose of discovery*"

(5) These statements by Mr. Edward were simply false for two reasons. Mr. Edward attended at and inspected and copied the documents in my private residence and the documents inspected and copied were not limited to discovered documents, Mr Edward had free range of all of my documents, discovered or not and relevant or not.

(6) I therefore stated the correct facts in my Second Affidavit dated 7th November 2005. In this Affidavit I said, "*Mr. Edward did not attend at my solicitors, he attended at my domestic premises and set up his photocopier in my kitchen area adjacent to my bedroom*"

(7) In specific reply to my Affidavit of 7th November 2005 Mr. Edward swore an extensive Affidavit dated 11th November 2005. This Affidavit culminates in the specific statement, "*Insofar as the first named plaintiff in the Second Affidavit of Glenn Thompson says that I did not attend at his solicitors but at his 'domestic premises' I say that in February and March 1999 I attended at the office of Baldock Stacy and Niven*"

(8) For the purpose of providing verisimilitude to this false statement Mr. Edward's Affidavit sets out and exhibits extensive communication wherein it was indicated that inspection and copying was intended to occur at the offices of Baldock Stacy & Niven however it matters not what was intended, the fact is Mr Edward did not attend as intended, he attended at my private residence and inspection and copying was carried out in my private domestic residence.

(9) For the purpose of providing further verisimilitude Mr. Edward states that he did not attend at 345 Lords Place Orange. For several years including the whole of 1999, 345 Lords Place was one of two private residential premises maintained by me, 345 Lords Place was occupied by my then wife and family. Mr Edwards attended at level 2, 68 Summer St Orange which was where I lived. Either address was a valid address.

(10) 68 Summer St Orange is a building owned by Snok Pty. Ltd. It is a 3 storey building the ground floor was occupied by Baldock Stacy and Niven and Country Secretarial and Computer Services Pty. Ltd. Baldock Stacy and Niven also occupied the first floor. I occupied the whole of the second floor. The building was purpose built as a hospital and the top floor was purpose built as the residence of the principal medical officer. I say it is impossible to construe the top floor as constituting offices and is impossible to construe the top floor as anything other than a purpose laid out and operating private residence. The sole internal entry is up a narrow staircase, through a lockable door and then through the bathroom, toilet, laundry area. There is no reception, no solicitors desks, no secretaries, no law books, basic furnishings, bedrooms, and has the look and feel of a bachelor residence.

(11) After initially arriving at the offices of Baldock Stacy and Niven on the first day of each visit to Orange and after introducing himself and after initial formalities Mr. Edward was escorted to my private residence but on each subsequent day of each visit he made his own way to my private residence. It is therefore true to say that Mr. Edward passed through the public areas of that part of the building which is occupied by Baldock Stacy

and Niven. On occasions during his stay Mr. Edward went to the office of Baldock Stacy and Niven for the purpose of sending or receiving of faxes however these things cannot be construed either as attending at the offices of Baldock Stacy and Niven or as part of the copying process which occurred entirely within my premises.

(12) The photocopier rented by Mr. Edward was a high speed automatic copier. It was too large to bring up the internal staircase and was delivered to my residence via the private external door.

(13) To the extent that Mr. Edward may rely upon semantics to claim that his affidavits are not false as alleged by me then any ambiguity which may be present in the wording of the affidavits is resolved by going to the understanding which Mr. Edward intended the Court to have and any reasonable person would expect the Court to have and the understanding the Court did have.

(a) My private residence is as much a solicitors office as it would be a fish shop or the Supreme Court if situated atop a fish and chip shop or the Supreme Court respectively.

(b) Mr. Edward variously and unambiguously swears that he attended at the "*office of Baldock Stacy and Niven*", "*Plaintiffs' solicitor's premises"*. In the circumstances and in the meaning of the affidavits these terms exclude my private domestic residence.

(c) I say and I have sworn on Affidavit that the fact is that Mr. Edward attended at my private domestic residence.

(d) If Mr. Edward intended either "*office of Baldock Stacy and Niven*" and/or "*Plaintiffs' solicitor's premises"* to include or be in addition to my private domestic residence then there would be no disparity and he could have and would have and should have said so.

(e) Mr. Edward's Affidavit of 11th November 2005 purports to refute my Affidavit of 7th November 2005.

(f) At pages 17 to 19 of the transcript of the second day of the proceeding, Mr. Greg Garde Q.C. drew the Court's attention to the disparity between my Affidavit of 7th November 2005 and Mr. Edward's responding Affidavit of 11th November 2005 and represented to the effect that the claims were mutually exclusive and that my claims "*are without any foundation whatsoever*"

(g) I say that by drawing the Courts attention to the disparity Mr. Edward and Mr. Garde intended that the Court believe that my Affidavit was false and that the Affidavit of Mr. Edward was true.

(14) From the Master's Reasons for Decision I say the Court understood as I say was intended by Mr. Edward and Mr. Garde.

(15) In his Reasons for Decision Master Efthim summarises as follows:-

(a) At paragraph 38 "*The Second Defendant has referred me to some inconsistencies in the affidavits sworn by Mr. Thompson … … .. "*.

(b) At paragraph 39 "*Mr. Steven Mark Edward (solicitor for the Second Defendant) in response to the first Affidavit of Mr. Thompson swore that he attended the Plaintiffs' solicitor's premises in Orange, New South Wales on 4 and 5 February 1999, to inspect documents discovered by the Plaintiffs. He did not have enough time on those two dates to inspect all documents. The documents he inspected included surveyor's plan of the subdivision of Tylden Road Land*."

(c) At paragraph 40 "*In his second Affidavit Mr. Thompson, in response to an Affidavit sworn by Mr.Edward, solicitor, swears that in the course of the 1995 proceedings he made discovery and that the Second Defendant's solicitor Mr. Edward, did not attend at his solicitor's premises but attended at the domestic residence of Mr. Thompson and set up a photocopier in his kitchen area adjacent to his bedroom. Mr. Edward had a free range of all documents that were produced by Mr. Thompson but was required, as a matter of principle, to limit the copying of documents that related to the matters in question in the 1995 Supreme Court proceeding. He believes that Mr. Edward copied numerous documents that he was not entitled to copy including confidential communications. Mr. Thompson did not object because as he was working and he had to leave Mr. Edward alone in his premises and did not have time to vet anything which Mr. Edward was doing*"

(d) At paragraph 41 "*In response to Mr. Thompson's Affidavit, a further Affidavit was sworn by Mr. Edward. He swears that on 23, 24 and 25th March 1999, he attended at the Plaintiffs' solicitors office and photocopies all documents produced by the Plaintiffs for discovery. On 22 March 1999, he drove from Bendigo to Orange for the purpose of photocopying the Plaintiffs discovered documents. He went to the offices of Baldock Stacy & Niven at about 9 am on the 23 March. He was present when a photocopying machine which he arranged to hire was carried to the room on the upper floor of the Baldocok Stacy & Niven (the Plaintiffs' solicitors) building. This was the same room where he carried out partial inspection of the Plaintiffs' documents on 4 and 5 February 1999*."

(e) At paragraph 42 "*In my view, **Mr. Edward in his further Affidavit provides a comprehensive and plausible explanation of the inspection process**. He also refers to letters relating to the discovery that had been written by the parties. **His explanation of the discovery process is to be preferred to matters deposed to by Mr. Thompson**. The inconsistencies referred to by the Second Defendant whilst interesting do not lead to me to determine the issues in favour of the Defendants*" (emphasis added)

(16) The Defendants successfully impugned my Affidavit material. In his written reasons for decision Master Efthim found my substantive Affidavit material to be not credible. It is the Defendants Affidavit material, and particularly that presented by the Major General and Mr. Edward which ought to have been impugned and which, I submit, now stands impugned.

(17) I now seek leave to introduce a series of Photographs of my premises which I have marked "A","B","C","D","E","F","G","H","I","J","K" and "L"..

(a) Photograph "A" is the view up the narrow staircase being the sole internal entrance to my private residence.

(b) Photograph “B” is a view from the landing of the staircase up to the back door.

(c) Photograph “C” is a view from the stairs into the bathroom, toilet, laundry area through the sole internal access doorway being the back door.

(d) Photograph “D” is a view inside the room where Mr. Edward had his photocopier set up. It is a generally northern view showing the kitchen referred to in my Affidavit of 7th November 2005. The photographer is standing in the approximate position that the photocopier was located.

(e) Photograph “E” is a further view of the room where Mr. Edward had his photocopier set up, this view is in a generally southern direction with the photographer standing in the kitchen. The woman in the photograph is standing in the approximate position where Mr. Edward had his photocopier set up.

(f) Photograph “F” is a similar view as in photograph “E” but turned slightly so as to see into the bedroom adjacent to where Mr. Edward had his photocopier set up.

(g) Photograph “G” is a view of the bedroom adjacent to where Mr. Edward had his photocopier set up.

(h) Photograph “H” is a view of the private entrance or front door from inside.

(i) Photograph “I” is a view of the private entrance or front door from outside in the stairwell.

(j) Photograph “J” is a view of the stairs leading from the front door to the external door.

(k) Photograph “K” is a view of the external door from the stairs

(l) Photograph “L” is a view of the external door and driveway.

(18) Each of the rooms depicted are in essentially the same state as when Mr. Edward was present in 1999.

(19) On a number of occasions Mr. Edward used my front and external door as shown in pictures “H”, “I”, “K” and “L”

(20) When Mr. Edward had finished copying all of my documents he parked his car in the driveway shown in photograph “L” and then carried the boxes down to his car using the route shown in pictures “H”, “I”, “J”, “K” and “L”.

(21) I say that no person would or could mistake my private domestic premise for a solicitors office or solicitors premises.

(22) I say Mr. Edward knew full well that he was in and attended at a domestic residence and he knew full well that it was my private domestic residence and he knew full well that it was neither the offices or premises of Baldock Stacy & Niven or any other solicitor.

(23) To the extent that Mr. Edward's Affidavit of 11th November 2005 is intended to deceive the Court and/or represent that my Affidavit of 7th November 2005 is false and/or that Mr. Edward did not attend at my private domestic residence then I say that Mr. Edward knowingly swore false affidavits.

(24) To the extent that Mr. Edwards intended his Affidavit of 11th November to deceive the Court and/or represent that my Affidavit of 7th November 2005 is false and/or that Mr. Edward did not attend at my private domestic residence then I say that Mr. Edward is a liar.

(25) To the extend that the Master determined, "*In my view, Mr. Edward in his further Affidavit provides a comprehensive and **plausible** explanation of the inspection process"* I say that to the unwary and those who expect the truth in Court, Mr. Edward is a plausible liar.

(26) Mr. Edward's Affidavit was made under colour of the office of barrister and solicitor of this Honourable Court. This too is reprehensible behaviour by a junior officer of this Honourable Court.

x) **The Major General, Mr. Steven Mark Edward and verisimilitude.**

(1) The misrepresentations of the Major General and Mr. Edward are, to the unwary, in the main characterised by the appearance of truth.

(2) In the case of the Major General

(a) The self contradicting Outline of Submission of the Second Defendant is plainly nonsense. It obtains its single strand of credibility from the fact that it was presented by the Major General. No one noticed it was a self contradicting, fabricated concoction.

(b) The misleading submissions of the Major General in relation to my appearance in the Practice Court rely upon a misleading document and the fact that the Major General made the submission as to his ethics.

(c) The false and misleading submission mad by the then Lieutenant Colonel to the Planning Appeals Tribunal relied solely upon the then Lieutenant Colonel's position as an officer of this Court.

(d) The false and misleading expressed opinions of the then Brigadier at the purported mediation relied solely upon his position as a senior officer of this Honourable Court to deceive me. Whether or not the remaining, as I thought, Q's C, believed him or not is not for me to say, the certainty is that they all genuflected to one another and the deception was complete and the Terms of Settlement dishonestly obtained.

(3) In the case of Mr. Steven Mark Edward.

(a) In the case of his false affidavit where he lied to the effect that he carried out the copying of my documents in the office of my solicitor Mr. Edward used a series of communications passing between himself and my solicitors to give the appearance of truth to his affidavit. The obvious point is that it matters not what was planned or intended. The fact is that on the day what was or may have been intended did not occur. He lied and used the communication to give credence to his lies. He is a liar. In my view and I submit the use of things to give the appearance of truth to lies compounds the lie, it increases the seriousness and the deliberation with which the lie occurred.

xi) **To say more of the Major General and Mr. Edward would be boring and repetitious. In my view and I submit that nothing said by either the Major General or Mr Steven Edward can be trusted by this Court or any Court. They both, apparently habitually, mislead Courts and people and rely upon their respective positions and other things to provide verisimilitude to their misrepresentations.**

xii) **In my view the Major General and Mr. Edward are indistinguishable from the villains complained about by me. The all sought to profit from falsehood and deception one way or the other. I submit that this Court could reasonably form a similar view.**

p) **The submissions of Mr. J. Delaney and G. J. Ahern.**

i) The document entitled "Outline of submissions on behalf of the First Defendant" purports to have been prepared by Mr. J. Delaney and G. J. Ahern.

ii) The submissions in that document rely upon classic obfuscation and are misleading and deceptive.

iii) I do not intend to disassemble the entire submission. The document makes two principle submissions the first related to Tylden Rd and the second to Woodleigh Heights.

iv) **The Tylden Rd Submission.**

(1) At paragraph 36 of the Defendants outline it is said, *".. … .. .. the 'critical document' from the black folder which led Mr. Thompson to reach the conclusions which are said by him to underpin the 'fresh allegations' he now wishes to advance … … .. "* and at paragraph 52 it is further said, *" …. The documents now relied upon to seek to establish the cause of action .. … .. have been in the physical possession of Mr. Thompson since 1991 .. .. "*

(2) The Master relied upon and accepted this aspect of the submission where at paragraph 51 of his written Reasons for Decision the Master states *" … .. the critical documents from the black folder …. … was the complete version of the plans … .. "* and at paragraph 53 the

Master further states, "*It is clear from Mr. Thompson's first Affidavit that the critical documents which led to this matter being further litigated are the complete versions of the plans .. .. …. "*

(3) Then at paragraph 54 the Master concludes, "*Based on the material before me there has been nothing concealed from Mr. Thompson. The documents contained in the black folder had been previously discovered to Mr. Thompson*"

(4) **Now there are two principal problems with the submission and with the conclusions of the Master, these problems are:-**

(a) Neither the plans nor any other document or documents contained in the black folder are any evidence of anything at all.

(b) Nowhere in my affidavits or elsewhere do I say what is alleged by the Defendants and relied upon by the Master. That the complete versions of the plans led to the present litigation is a complete fabrication concocted by the Defendants.

(5) At paragraph 53 of my first Affidavit, omitting non essential parts, I clearly say:-

(a) At paragraph 53(a) " …. *I began reviewing all of the documents available to me. I re-examined the contents of the large black folder …… "*

(b) Paragraph 53(b) "*Upon examining the documents contained in the black folder it became apparent that there were two versions of the plans … …. .. namely complete versions and clipped versions*."

(c) Paragraph 53(c) *".. … I then reflected on the Magistrates Court proceedings. ….. .. "*

(d) Paragraph 53(c)(i) "*In the Magistrates Court, a bundle of documents was tendered … … "*

(e) Paragraph 53(c)(ii) "*With reference to the bundle of documents .. … Graeme Wilson gave evidence .. .. .. "*

(f) Paragraph 53(d) "*Upon further reading of the documents it became apparent .. .. evidence in the Magistrates Court and in the Supreme Court … … .. "*

(g) Paragraph 53(e) " *From this I was able to deduce that the Notice of Requirement .. .. "*

(h) Paragraph 53(f) "*As a result of perusing the documents in the black folder.. … .. and reviewing the documents tendered in the Magistrates Court and the evidence given by Wilson in that Court I came to a number of conclusions ….. .. "*

(i) Paragraph 53(g) " *At the time of Wilson giving his evidence … .. recklessly indifferent to .. … … "*

(j) Paragraph 53(h) "*Upon reaching the above conclusions it became apparent to me for the first time:-"*

(k) Paragraph 53(i) "*I further concluded that at the time of sealing the series of residential plans the Council was not only fully aware that no services existed but it was also fully aware that there was no lawful means of providing or compelling the provision of those services*"

(6) **The submission of the Defendants as accepted by the Master is therefore plainly a fabricated baseless nonsense**

(a) Nowhere do I say or imply what was submitted by Counsel for the First Defendant as having been said by me. Nowhere do I say or imply that any document contained in the black folder is or was a critical document and neither do I say or imply that any such document "*led to this matter being further litigated*"

(b) The right of action as summarised in paragraph 53(i) of my first Affidavit is specifically said by me in my Affidavit to have resulted from all of those things set out in paragraphs 53(a) to 53(j) inclusive.

(c) It is clear from my paragraph 53(b) that the only thing which came out of the black folder was "*it became apparent … … clipped versions…. ..* "

(d) In other words, upon reviewing the black folder in August 2000 I came to the startling realisation at that time that the plans may have been "clipped" as distinct from poorly copied. The plans were not marked "clipped" and had been submitted into evidence and discovered as faithful documents. It was just a thought, the embryo of a hypothesis, which popped into my mind.

(e) That I reviewed the black folder with an empty mind is simply preposterous, plainly, from my Affidavit and common sense, I reviewed the black folder with a great deal of accumulated knowledge and preconceptions including the newly acquired holistic view of the effect of s.9 in my mind.

(f) Neither the Magistrate or the Chief Justice had previously concluded that the plans were anything other than faithfully representative documents albeit poorly copied. To revert to the Newton allegory for a moment it is possible to review the black folder a thousand times without concluding "clipped". The realisation that the plans may have been clipped was a Newtonian moment that may never have occurred except in the circumstances of that particular instant in time.

(g) It is also obvious that knowledge of or recognition of the right of action also resulted from an uncommon understanding of the law, an intimate knowledge of all conditions

precedent coalescing within an uncommonly analytical mind to produce what is now alleged.

(h) Without an understanding of the law, knowledge of matters and things precedent and the aforesaid startling realisation there could not have been a recognition of the present rights of action. It was nothing to do with the documents in the black folder per se.

(7) **At the time of making the submission in relation to the black folder and the complete version of plans Counsel for the First Defendant must have been aware that the submission was baseless and misleading and likely to mislead the Master or alternatively Counsel made the submission without caring as to whether or not it was wrong and misleading.**

(8) Reverting for a moment to Major General Garde I note that at paragraph 45 of his Outline of Submissions he picks up on this precise aspect. It may be of course that Counsel for the First Defendant fed off the submission of the Major General however it matters not which direction the nonsense flowed the fact is that the Major Generals's paragraph 45 is as identically misleading as the submission by Counsel for the First Defendant.

(9) At paragraph 45 the Major General says, "*The plaintiffs claim that … …. … it was only on examining the folder of documents … … … that cause him to issue the current proceedings*."

(10) Paragraph 45 of the Major General's is similar nonsense to his earlier paragraphs which I have already discussed.

(11) In my view and I submit that it is nigh on impossible for two Q's C to be so identically and so completely wrong, the only question is as to who plagiarised who and who will be charging QC rates for that plagiarised work. The absolute certainty is that both Q's C identically misled the Master. At least in the case of the Major General his lack of attention to fact and detail is at least consistent with the self contradicting nonsense of his earlier paragraphs which I have already discussed.

(12) It is little wonder the Master relied upon two Q's C and their respective Junior Counsel and bevy of instructing solicitors misleading him in identical fashion. On this point it is also little wonder that I was tricked into settling the Woodleigh Heights proceeding for $25,000.00. On that day I had three Q's.C in apparent agreement that as the matters complained of were done as a matter of policy of Public Authority I could not win. It was the common sense statement of Mr. Francis Tiernan that "fraud is fraud" which brought me to my senses on that occasion. It is the facts which speak for themselves on this occasion.

v) **The Woodleigh Heights submission.**

(1) In relation to Woodleigh Heights there are only three questions, these are:-

(a) When did the Plaintiffs first become aware that the principle mains comprising a component part of the private reticulation system were laid in 1982 and not 1979 as required by law?; and;

(b) When did the Plaintiffs first become aware that the laying of these mains in 1982 and not 1979 gave rise to a right of action?

(c) Did the Defendants conceal the facts related to the first two questions?

(2) **As to the first question**.

(a) In the present Amended Statement of Claim, in relation to Woodleigh Heights I make one single predicating allegation. This allegation is found at paragraph W10 of the present Amended Statement of Claim. And is that at the time of sealing the plans of cluster subdivision the First Defendant was well aware that no reticulated water supply had been installed in accordance with condition 8 of Planning Permit 2191.

(b) The water supply referred to is the private water supply and reticulation system referred to in paragraph W2 of the present Amended Statement of Claim.

(c) It is also clear from my first Affidavit that the sole reason as to why it is said that the said water supply was not present is that the component being the principle water mains were not laid in 1979 bit were instead laid in 1982 and that I first became aware of this in 1999 at the Practice Court.

(d) That this sole reason is clear and known to the Defendants is contained in the aforementioned theatrical performance of the Major General where he said of me in relation to the Practice Court, "*and he realised that the water main, would you believe, the water main was not constructed in 1979 as he had formerly believed, but in 1982."* A submission as to this fact is also found at paragraph 85(b) of the Outline of Submissions on behalf of the First Defendant.

(e) In relation to this issue Counsel for the First Defendant wished to and needed to convince the Court that I had prior knowledge that the principal water mains were laid in 1982 and not 1979 and that I could have therefore brought the present action earlier.

(3) **As to the second and third question.**

(a) I refer to and repeat the things said by me in relation to concealment in relation to Woodleigh Heights and reiterate that even if I knew of the laying of the water mains at an earlier date including 1987 then all knowledge of right of action remained concealed

and in any event the present proceeding is dependant upon knowledge of the unifying factor of the conspiracy to avoid the effect of s.9 and this knowledge was not possible until the confluence of events which I have previously described in relation to discovering the cause of action.

(4) **Mr Delaney could not provide reasonable or reasoned argument in relation to these questions, he therefore resorted to classic obfuscation to successfully mislead the Master.**

(5) Before addressing Mr. Delaney's obfuscation I will reassert two points:-

(a) The water supply in question is the private one, it was complete except for the water mains. The supply was present in 1979 in the form of the lake, the header tanks were also present, the sole missing component was the water mains which were constructed in 1982 instead of 1979. As a consequence the supply was not reticulated.

(b) A reticulated water supply provided by the Second Defendant is not and cannot be confused with the private water supply and reticulation system. There is simply no common component or aspect at all.

(6) The relevant submission of Mr. Delaney is found at paragraphs 86 to 91 of the Outline of submissions on behalf of the First Defendant.

(7) The seed of the obfuscation is sewn in paragraph 86 where the submission says, ".. ..*Mr. Thompson realised that if the reticulated water supply was not present in 1979 ……* "

(8) This seed planted the thought of reticulated water supply rather than principal water mains in the mind of the Master.

(9) By the next paragraph, paragraph 87 this seed has blossomed into full blooded obfuscation where Counsel for the First Defendant says, "*What Mr Thompson fails to mention, is that he was aware … … … since August 1987 … … that the* ***'reticulated water supply' had been laid in 1982*** *and not 1979*." (emphasis added)

(10) The at paragraph 88 the obfuscation continues, the submissions says, *"… Mr. Thompson's own correspondence establishes … …. .. was aware from at least 1987 that the* ***reticulated water supply was laid in 1982***." And further submits, " .. .. Mr. Thompson advised the Council as follows concerning the reticulated water supply **ON** the Woodleigh Heights subdivision" (emphasis added)

(11) Then still at paragraph 88 the submission transcribes a number of paragraphs from my August 1987 letter, paragraphs 30 and 33 of my letter are particularly relevant both to Mr. Delaney's obfuscation and my present reply..

(12) Paragraph 30 of my letter says in relevant part "*Kyneton Water Board .. …. water supply agreement … … for the supply of water to* ***THE WHOLE OF*** *the Woodleigh Heights Subdivision*." (emphasis added)

(13) Paragraph 33 of my letter says in relevant part " ….. pipes were laid along a considerable length of **EDGECOMBE ROAD** .. … to facilitate the supply of water **TO** the Woodleigh Heights Estate." (emphasis added)

(14) Then at paragraph 90 the submission purports to, but omits to, transcribe relevant extracts from the said Water Supply Agreement and by way of further obfuscation wrongly refers to the Water Supply Agreement as "the 1982 water **reticulation** agreement" (emphasis added)

(15) Then at paragraph 91 the submission builds to a crescendo of obfuscation where the submission says "What the August 1987 letter and the 1982 water **reticulation** agreement clearly show is that Mr. Thompson was aware from at least 1987 .. … .. that the **reticulated water supply** was not present in 1979 but was in fact laid down in 1982" (emphasis added)

(16) Throughout his submission Mr. Delaney adds to the obfuscation by saying, "*the* ***reticulated water supply was laid in 1982"*** whereas plainly one cannot "lay" as water supply, a water supply is supplied, not laid. Mr. Delaney knew full well that it was only the missing water mains which were "laid" but he had no possible way of showing any prior knowledge of that.

(17) **By his bald faced obfuscation Mr. Delaney successfully misled the Master to believe that knowledge of the reticulated water supply which was provided by the First Defendant in 1982 included;**

(a) **knowledge of the first provision of the missing water supply referred to in paragraph W10 of the present Amended Statement of Claim and;**

(b) **knowledge of the present right of action.**

(18) In the reasonable assumption that Mr. Delaney read paragraphs W2 and W10 of the present Amended Statement of Claim and had read the submission dated 3/11/78 referred to therein there is no possibility of a belief by Mr. Delaney that his submission was not misleading.

(19) **To adopt Mr. Delaney's own terminology. What Mr. Delaney failed to tell the Master is that the objective documentation discloses that Mr. Delaney was fully aware that the reticulated water supply provided by the Second Defendant is not and cannot be confused with the private reticulated water supply referred to in**

paragraph W2 of the present Amended Statement of Claim and particularly cannot be confused with or provide evidence of the laying in 1982 of the missing water main inside the Woodleigh Heights subdivision.

(20) **The facts are**:-

(a) The reticulated water supply referred to in my letter and in the purported Water Supply Agreement is a reticulated Water Supply provided by the Second Defendant. For the reasons previously set out by me it is not and cannot be confused with the private water supply and reticulation system referred to in paragraph W2 of the Amended Statement of Claim and it does not share and cannot share a single solitary component part of that private system.

(b) The Edgecombe Road referred to in my letter and in the purported Water Supply Agreement is a public road, the Dettman's Lane also referred to in the Water Supply Agreement is also a public road a mile or so from the Woodleigh Heights subdivision, the water main laid along those roads is entirely outside the Woodleigh Heights subdivision and is by operation of s.307AA(8) the property of the Second Defendant and it is not and cannot be confused with or be construed as being any part of the reticulation system within the subdivision the property of the Body Corporate.

(c) Paragraph 33 of my letter correctly refers to a water supply **TO** the Woodleigh Heights subdivision, not **ON** as misleadingly stated in the submission.

(d) The purported Water Supply Agreement purports to be an agreement pursuant to s.307AA(2) and it is specifically not a water **reticulation** agreement as misleadingly designated in the submission.

(e) Paragraph 30 of my letter is a specific reference to the terms of the purported water reticulation system which the submission of the First Defendant omitted to transcribe and by which terms the purported Water Supply Agreement is specifically ultra vires.

(f) To expand upon paragraph 30 of my letter, s.307AA(2) provides that the Second Defendant may enter into an agreement with the **OWNER** of any land, by its specific terms the purported water supply agreement provides for the supply of water to Woodleigh Heights Resort Developments Pty. Ltd of 68 Piper Street Kyneton owner or **OCCUPIER** of_ALL THAT piece of land .. …. described in Cluster Plan of Subdivision No 1134."

(g) In the copy of the Water Supply Agreement exhibited by me at GAT-26 and specifically referred to in paragraph 90 of the First Defendants submission the word

"occupier" is underlined by hand having been underlined by me in about 1987 or before.

(h) The water supply provided by the Second Defendant is nothing more than a water supply or source provided at the boundary of the Woodleigh Heights subdivision and is as a matter of fact metered at the boundary by the single water meter referred to in clause 6 of the further omitted terms of the purported Water Supply Agreement.

(i) The water supply provided by the Second Defendant may have been provided to augment or provide supply in lieu of the private water supply.

(j) In addition to not being capable of being confused with the private water supply and reticulation system the provision of the supply by the Second Defendant provides not one scintilla of evidence that the private water supply and in particular the private reticulation system did not exist either in 1982 or earlier.

(k) In summary therefore:-

(i) the water reticulation agreement referred to by Mr. Delaney is not a water reticulation agreement.

(ii) My letter refers to a water supply TO the Woodleigh Heights Estate, not ON as said by Mr. Delaney.

(iii) The Water Supply referred to in my letter is not the water supply referred to in the Amended Statement of Claim.

(iv) Edgecombe Road and Dettmans Lane are public roads and the pipes laid in them are entirely outside the Woodleigh Heights Estate and cannot be confused with the missing water mains shown in the Reticulation Plan for or within the Woodleigh Heights estate as shown to me in the Practice Court.

(v) The terms of the purported Water Supply Agreement which Mr. Delaney omitted to transcribe clearly indicate that the purported Water Supply agreement and the water supply provided in purported pursuance of it are plainly ultra vires and also clearly indicate that the supply is provided at a single meter which is adjacent to the boundary of the subdivision as with all water supplies by public authorities.

(vi) In addition to the fact that the water supply provided by the Second Defendant is totally irrelevant the additional fact is that the Plaintiffs could not assert any legal entitlement to the unlawful water supply provided in purported pursuance of the unlawful water supply agreement.

(21) **After misleading the Court with the aspects of the submission discussed so far Mr. Delaney went on to say at paragraph 91**

(a) ".. .it follows that it has been open to Mr. Thompson to reflect upon any legal consequences of these matters since at least August 1987. "; and;

(b) "No conduct on the part of the Council at any time after August 1987 has prevented Mr. Thompson from being able to make the allegations he now seeks to advance …. "

(c) The facts are however.

(i) Knowledge of the unlawful water supply pursuant to the unlawful water supply agreement does not provide any basis for a legal entitlement by the Plaintiffs to that water supply and no right of action existed in relation to that water supply.

(ii) As previously discussed in this submission under the topic "concealment of the cause of action – Woodleigh Heights" the fact is that both Defendants continued to fraudulently conceal the present right of action.

(22) Unfortunately the Master believed the misleading submissions of Counsel for the First Defendant. At paragraph 60 of his Reasons for Decision the Master said *"… . objective documentary evidence establishes that Mr. Thompson was aware from at least 1987 that the reticulation water supply was laid in 1982… .. .. "*

(23) Still at paragraph 60 the Master then refers to my August 1987 letter and says " …. *Paragraph 30 and 33 which are inconsistent with the allegations made by Mr. Thompson*" whereas the facts are:-

(a) Paragraphs 30 and 33 of my letter of August 1987 are entirely consistent with all of my allegations and the paragraph 30 referred to by the Master in fact discloses the unlawful nature of the water supply agreement and this alone defeats the submission of Mr. Delaney and the conclusion of the Master. .

(b) The reticulated water supply provided by the Second Defendant and referred to in the letter is not and cannot be confused with the private reticulated water supply referred to in paragraph W2 of the present Amended Statement of Claim.

(c) Despite the misrepresentations of Mr. Delaney before the Master and Major General Garde in the Planning Appeals Tribunal the water supply agreement between Second Defendant and Woodleigh Heights Resort Developments Pty. Ltd. was an abundantly and patently unlawful water supply agreement for the reasons set out in my August 1987 letter and my letter of submission to the Planning appeals tribunal and the law.

(d) For the reasons previously set out be me in this submission and in the August 1987 letter no right of action exists in respect to the reticulated water supply referred to in the letter. The Plaintiffs right of action exists only in relation to the private reticulated water supply referred to in paragraph W2 of the present Amended Statement of Claim.

(e) Notably, on the then known facts, the only hope of the Plaintiffs was to somehow force the Second Defendant to enter into a lawful water supply agreement with the Body Corporate but all hope of that was dashed when the then Lieutenant Colonel Garde, by his submission, and the Defendants by their silence, misled the Planning Appeals Tribunal in 1988.

(24) **The further objective documentation available to Mr. Delaney.**

(a) The 1982 purported Water Supply Agreement and the water supply provided in purported pursuance of the agreement and relied upon by so heavily by Mr. Delaney and the Master are patently unlawful for the reasons set out in my August 1987 letter and in the specific terms of the purported Water Supply Agreement. There was therefore plainly no actionable rights accruing to the Plaintiffs in relation to either the agreement or the water supply excepting of course to force its abandonment in favour of a lawful agreement with the Body Corporate but as stated earlier, the then Lieutenant Colonel Garde ruined any hope of that when he so ably misused his unimpeachable position and ethics to mislead the Planning Appeals Tribunal.

(b) The August 1987 letter referred to by Mr. Delaney is exhibited to an Affidavit of the Plaintiffs dated 14th December 1998. That Affidavit is now exhibited by the First Defendant at Tab 26 to MED1 and this is the reference provided by Mr. Delaney for the August 1987 letter. This letter is also exhibited by the Second Defendant at Tab 24 of SME 2 Volume 1. Here the August 1987 letter is exhibit GAT-A to an Affidavit sworn by me on 23rd February 1998. Significantly if one leafs through the exhibits to my Affidavit of 23rd February 1998 immediately following the last page of the August 1987 letter is exhibit GAT-B, which is without an exhibit note in the copy I have. Exhibit GAT-B is a transcript of an address by me to the full council in committee on 4th January 1989. This is a transcript prepared by the First Defendant for the information of its Councillors and officers. The first page of that transcript, about half way down includes an underlined part of my address where I said, "**the private reticulated water supply was completed in late 1979**" The underlining was done by the First Defendant at the time of making the transcript.

(c) It is significant that the First Defendant, for the information of its Councillors and officers, underlined this statement of belief by myself. That was my belief in 1989 and

at all times prior including at the time of the August 1987 letter. At the time of that address the Defendants were ware that the submission referred to in paragraph W2 of the present Amended Statement of Claim was concealed from me and that I therefore could not show that the private water supply was an approved reticulated water supply. Each and every Councillor of the First Defendant and Member of the Second Defendant was fully aware of all of the things being done by them were unlawful and damaging and had the effect of concealing the facts including the fact of the conspiracy to avoid s.9.

(d) **That underlined line in the transcript of my submission gives the absolute lie to the complete submission of the First Defendant in relation to Woodleigh Heights and the August 1987 letter. To again use Mr. Delaney's words, the objective documentation indicates that Mr. Delaney's submission was misleading.**

(e) **Of additional substantial significance is that on the copy of the August 1987 letter as exhibited by the First Defendant at tab 26 to MED1 is that at the top of the letter, there is handwritten names, these names are some of the people that my August 1987 letter was referred to by the Defendants. The addressees include all Councillors and Water Board members but in addition, at the top, there is the name "J Noy". This person is Mr. Jim Noy, he was a solicitor and/or partner of the firm Palmer Stevens & Rennick and which firm has been referred to by me. This firm and Mr. Jim Noy had a particular interest in concealing the matters and things now set out. Of additional note is that immediately above the name "J. Noy" is what appears to be a "J" then "Delaney". I do not know who this Mr. or Ms. Delaney is. As stated by me earlier every Councillor, every Water Board member and their officers and solicitors were aware of all of the facts of the conspiracy and the frauds carried out.**

(f) In addition to the aforementioned address I made a further address to a joint sitting of all Councillors and Water Board Members on 4th July 1989. About four months prior to when my land was sold at a value that reflected a value without a water supply.

(g) The transcript of this second address is also exhibited at tab 24 of SME 2 Volume 1 where it is exhibit GAT-D to my Affidavit of 23rd February 1998..

(h) This transcript also shows that each and every member, officer and councillor of the Defendants was completely ware of the entire details of the fraud and the effect of their fraud on my family.

(i) The transcript of 4th July 1989 discloses that I said to all officers, councillors and members of the Defendants, inter alia:-

(i) At page 3, "*Now the facts are that by 1980 .. .. .. concrete tanks …. .. From those tanks there is a reticulation system. It is on the common property ….. I have and always have had an undivided share in that common property and the reticulated water system that was out there*."

(ii) At page 4, "*Now the simple facts are that the reticulated water supply out there was complete in 1980*"

(iii) At page 7, " … *what happened …. with the reticulation system … … water supply agreement dated 1st January 1982 …. The Water Board went and hooked their water into the common property, the reticulation system out there….. .. once they had hooked there … ..they said it's only for Woodleigh Heights, you can't have any …*. "

(iv) At page 7 *"…because they hooked into the pipes out there and pumped their water into it .. … .. they claim to have the right to deny me water*"

(j) **To say more become repetitious and boring.**

(k) **It is clear that each and every Councillor, Member and officer of the Defendants was fully aware of all of the facts and fully aware that on the representations of the Defendants only those allotments owned by the Plaintiffs did not have access to a water supply. It is abundantly clear that every one of those persons was not capable of describing a lawful method by which this situation could exist and I say that the situation is so obviously wrong and iniquitous that it could only exist in fraud and I say that every single person, including each and every legal representative of the Defendants over the years has been aware of the fact of a fraud against the Plaintiffs and that every such person has been party to the concealment if not the fraud itself.**

(l) **Mr. Delaney's submission was false, absolutely baseless, flies in the face of the law and the facts. The objective documents available to Mr. Delaney disclose, including the matters set out in the present Amended Statement of Claim show that Mr. Delaney must have known his submission to be false and misleading or alternatively he made it without caring.**

(m) **I submit there is little difference between the behaviour of Mr. Delaney and the things complained of in the Amended Statement of Claim.**

(n) **Similarly, I particularly say that of the then Lieutenant Colonels false and misleading submission to the Planning Appeals Tribunal.**

vi) **Twice I personally made submissions to the assembled members and officers and councillors of the Defendants and on each occasion the specific topic was the water supply and reticulation system on the Woodleigh Heights subdivision and on each of those occasions I regularly and precisely enunciated that my belief was that the private water supply and reticulation system was complete when I purchased the land and on each of those occasion each and every assembled officer, member and councillor of the Defendants, and therefore the corporate entities of those defendants failed to say what was known to them. THE WATER MAINS WERE NOT LAID IN 1979, THEY WERE LAID IN 1982. -- They, individually and corporately, sat and listened to and observed the suffering of my family and not one of them had the integrity to speak the truth.** Mr. Delaney says there was no concealment!!!. **The fraud was obvious, only the Defendants and their respective officers knew the answers and the truth.**

vii) **Mr. Delaney's representations as to s.9**.

viii) .Mr. Delaney's submission or explanation of s.9 was simply abject nonsense. At page 40 of the Transcript for day 1 Mr. Delaney said:-

> "The council for an ulterior purpose ... (reads) ... of the Sale of Land Act". Just to fill you in a little bit because there are a few references to s.9 of the Sale of Land Act which provided at the time that you could tell - I think it's that you could sell two lots on a plan of subdivision - I'll tell you what it is "Where a proprietor subdivided any land" - I'll start again.
> Essentially, you can lodge a two lot plan of subdivision and you don't have to show roads, streets and so on on the plan and you can get it approved and off you go. But if you want to subdivide into more than two you have to show the roads and so on on the plan of subdivision. They have to be all marked. That's, as I understand it, the short version.
> What's said is to get around having to show roads or water on the plan, Mr Buchanan put forward to the council a series of plans. So whereas previously he might have had an 18 lot plan, he said, we'll do it in a slightly different way. What we'll do is we'll have two nine lot plans and then we don't have to show any roads - sorry, nine two lot plans, I think that's the complaint as I understand it."

ix) With nonsense such as from a Q'C it is little wonder the system is held in low regard. If Mr. Delaney believed himself he is not competent to either bring or argue the present application of the First Defendant, if he did not believe it he ought not have misled the Master, he should not be practicing.

2) **Disdain and contempt.**

a) For many years now the Defendants and their legal representatives from time to time have treated the Courts and the Plaintiffs with disdain and contempt.

(a) The First Defendant brought a false action in the Magistrates Court.

(b) The First Defendant Perjured itself in the Magistrates Court.

(c) The First Defendant made false affidavits in the Supreme Court Appeal.

(d) The then Lieutenant Colonel Garde misled the Planning Appeals Tribunal in 1988

(e) The Defendants and their officers, Wilson and Parkinson remained silent while the Lieutenant Colonel misled the Tribunal.

(f) The Defendants ran sham defences in the previous Tylden Rd proceeding and which sham defences concealed the complete defence which was known to them.

(g) The Defendants induced settlement in the previous Tylden Rd proceeding in full knowledge that the Plaintiffs remained ignorant of the true facts.

(h) The Defendants ran sham defences and mounted sham strike out applications in the previous Woodleigh Heights proceeding and which sham defences and sham strike out proceedings concealed the true and complete defence which was known to them.

(i) The Defendants and in particular the then Brigadier Garde secured settlement of the previous Woodleigh Heights proceeding by inducing the plaintiffs to believe that their case was hopeless because the matters complained of were done as a matter of policy of Statutory Authorities.

(j) The settlement of the previous Woodleigh Heights proceeding was induced by the Defendants in full knowledge that the true facts remained concealed from the Plaintiffs.

(k) The present strike out applications are based upon false and misleading submissions.

(l) In full knowledge that the Judgement of Master Efthim was obtained, at least in part as a consequence of his own misrepresentations and the misrepresentations of the Major General, Mr. Steven Edward has had the to date costs of the Second Defendant taxed already.

3) **Submissions of my ex-Counsel.**

a) It would be wrong and remiss of me not to address the conduct of me ex-Counsel.

b) At the beginning of this submission I made reference to my ex-Counsel and I disavowed the submission made purportedly on my behalf.

c) My then Junior Counsel, having been involved for four years was thoroughly briefed in this matter and the correct concepts. At essentially the last minute my expected Senior Counsel was unavailable and new Senior Counsel was retained to appear before Master Efthim. My new Senior Counsel was provided with all documents and briefed by my Junior Counsel. I was, by instruction, essentially silent party to several briefing sessions and listened while Counsel genuflected to one another while knowingly discussing precedent and authority, I answered questions as required.

d) At the final briefing session before the hearing it appeared to me that in relation Tylden Rd my ex-Counsel was overly enamoured with the series of 2 lot plans of subdivision whereas the fact is the plans were entirely irrelevant except to demonstrate male fides and to form a leg of the trifectas referred to in this submission. It did not occur to me that the correct concepts were not held.

e) Immediately following the briefing session I flew directly home and for the purpose of abundant caution in relation to Tylden Rd I hurriedly prepared a document which I emailed to both of my Counsel on 11/11/2005. This document clearly set out, inter alia,:-

   i) The series of plans did not and could not cause loss and damage,

   ii) Unlawful plans cannot cause loss and damage and in any event are validated by s.569B(10)

   iii) I was aware of the series of plans and the purpose thereof since at least 1985.

   iv) Adequately but briefly set out the true basis of the present right of action in relation to Tylden Rd as now set out in this present submission and the present Amended Statement of Claim.

f) I telephoned the secretary to my Senior Counsel to confirm receipt of the email.

g) I had faith in my Counsel and was confident of success. On the days of hearing I was most unwell and in serious pain with a severe tooth abscess and on mind numbing prescription drugs. I spent little time in Court and in any event could not concentrate.

h) I ordered transcripts of the hearing and read them during the Christmas 2005 break. I was astonished to find that my Senior Counsel had misrepresented me and my case.

i) Early in his submission, at pages 34 and 35 of the transcript for day 2 the following exchange took place between the Master and my Senior Counsel.

MR MIDDLETON: If I can hand up a copy of the Sale of Land Act and s.97 of the Transfer of Land Act and the Thirtieth Schedule. Can I take you to the statutory steps and s.9 is quite an important provision for you, Master, to understand, and what s.9, the Sale of Land Act it "prevents the sale of allotments on ... (reads) ... Transfer of Land Act". If I take you to the Sale of Land Act, s.9 says, "where a notice of ... (reads) ... s.97 of that Act". If you go to 97 of the Transfer of Land Act and s.97(2)(a), "The registrar shall not approve ... (reads) ... s.9 of the Sale of Land Act", or if there has been such a contravention certain things apply, don't need to worry with those. So, s.9 has a little bit more bite than my learned friend Mr Delany indicated because there is an absolute prohibition on a sale in the circumstances there prescribed.

Now, the villain in this litigation - sorry, one of the villains in this litigation is a fellow called Mr Buchanan and Mr Buchanan obviously sought to avoid the operation of s.9 and one way or the other the two defendants in this proceeding were involved in that avoidance. I will explain to you how it happened when I come to some simple facts.

You had to comply with s.9, simple way of doing it, lawyer telling you how to avoid it.
MASTER: Two allotments.
MR MIDDLETON: And do lots of them.
MASTER: As was mentioned yesterday, nine twos are 18, from memory.

And at page 38 of day 2.

It wasn't proceeded with. What was proceeded with to get around s.9 of the Sale of Land Act, we would say at the instigation of the villain Mr Buchanan, were a series of two lot subdivision but no requirements were made by any authorisation of the council whatsoever.

j) **Just as an aside for the moment, the Master's misunderstanding of s.9 appears to be encapsulated in his comment, "Two allotments"**

k) From this point the submission of my Senior Counsel was all downhill. My Senior Counsel had wrongly submitted to the Master that the method of avoiding s.9 was the 2-lot plans.

l) Not only was this submission nonsense, it was not tenable at law and at odds with my Affidavit, the present Amended Statement of Claim, and was not capable of sustaining a legitimate argument for the purpose of s.27 of the Limitations of Actions Act.

m) In addition the simple and obvious fact is that the 2-lot plans of subdivision were not only not concealed they were not concealable and in addition I had plainly been aware of this aspect since the early 1980's and I had so specifically advised my Counsel on many occasions and in my email of 11/11/05 and the fact of my knowledge was set out at paragraph 51 of my first Affidavit and in the Book of Pleadings.

n) It is not necessary and a waste of time to further disassemble the submission of my Senior Counsel. The remainder flowed from the fallacious base already mentioned.

o) I immediately wrote to both my junior and senior Counsel and extensively and forcefully advised them of their error, and also advised them that there was no possibility of success on the submissions made. The Judgement of the Master was precisely as forecast by me at that time.

p) It is little wonder the Master found that nothing was concealed. From the fallacious base of 2-lot plans, unlawful plans and unlawful sealing nothing submitted by my Senior Counsel was either concealed or concealable and both of my Counsel were aware that the things submitted by them had not been concealed from me and I had previously advised them so and my Affidavit said so.

4) **Purported Terms of Settlement of the previous proceedings.**

a) **The previous proceedings were not compromised by Terms of Settlement; they were already compromised by the fraud of the Defendants. The purported Terms of Settlement are also compromised by that fraud.**

b) **In addition the Terms of Settlement of the previous Woodleigh Heights proceeding were additionally compromised by the conduct of the purported mediation which was itself compromised by the conduct of the then Brigadier Garde when in the manner previously described by me he orchestrated my capitulation in the belief of his misrepresentations and**

as each of the then present, as I thought, Q's C, genuflected to one another in agreement as they are wont to do.

c) **The purported Terms of Settlement of the previous Woodleigh Heights proceeding were dishonestly obtained.**

d) **I will now address the remaining issues.**

e) The subject matter of the present proceeding is the fact of the avoidance of the effect of s.9 and the predicating facts giving rise to or facilitating that avoidance. The predicating facts of the previous proceedings and the present proceeding are mutually exclusive.

f) The purported Terms of Settlement purport to release the Defendants from the subject matter of the previous proceedings.

g) **The subject matter of the previous proceeding exists only in the fraud of the Defendants.**

h) As previously set out by me I say that the subject matter of the previous proceedings existed only in the fraud of the Defendants and therefore no subject matter exists except for that fraud. **The Terms of Settlement can not release the Defendants from that fraud and the Defendants cannot claim release from that which never existed except in their fraud.**

   i) Having said that I now set out the following arguments to address any residual subject matter which may be said to exist.

i) A principle of construction reading down general words relating to obligations and liabilities is well established in Australia in the context of construing the scope of a release. So much was recently confirmed by Campbell J in *Joshem Property Group Pty Ltd v Malachi Corporation Pty Ltd* [2004] NSWSC 1020; 51 ACSR 346 where his Honour noted (at [15]) that:

> "***[15]*** *One basis upon which the defendant asserts that the plaintiff's claim is not a genuine claim, within the meaning of the definition of "offsetting claim" in s459H(5) of the Corporations Act 2001 (Cth), is that the claim has been released by the releases which are contained in the deed. The releases which are contained in the deed, and in particular those in cl 23, are undoubtedly broad ones. However, as Grant v John Grant & Sons Pty Ltd (1954) 91 CLR 112 makes clear, both at law and in equity general* ***words of release are construed by reference to the circumstances which gave rise to them. Even words in general terms are construed as relating to the dispute which the parties either knew about, or had in mind as being intended to be released****. This approach of equity to releases derives from the same strand of principle as does the law of rectification, which seeks to hold parties to the bargain which they intended to make, but no more."* (Emphasis added)

As was noted by Heerey J in *Geoffrey Niels Handberg (in his capacity as administrator of Australian Risk Analysis Pty Ltd v Chacmol Holdings Pty Ltd* [2004] FCA 720 when his Honour applied the principle to construe the scope of an "*all monies clause*" in a deed of charge (at [15] to [16]):

> "***[15] This is a case where the general words of the all monies clause have to be read down and confined to what is the object of the transaction****. The applicable principle is*

stated by the High Court in Grant v John Grant & Sons Pty Ltd (1954) 91 CLR 112. ***In that case the general words of a release were read down and confined to the matters forming the subject of the disputes which the deed recited.*** *Dixon CH, Fullagar, Kitto and Taylor JJ said at 131:*

> *The question is whether upon a proper interpretation of the deed the general release clause should be restrained to matters in dispute within the meaning of these recitals. The question depends primarily upon the application of the prima facie canon of construction qualifying the general words of a release by reference to particular matters which recitals show to be the occasion of the instrument. But it is also affected by the general tenor of the deed. It is unnecessary to say more about the canon of construction or to discuss further the contents of the deed. As to the first, all that remains is to apply the principle that prima facie* ***the release should be read as confined to the matters forming the subject of the disputes which the deed recites****. As to the second, such indications as can be found in the provisions of the deed point rather in the same direction. The detailed character of the terms of the settlement, the careful readjustment of rights, the specific reference to the debt of H C Grant and his wife and its discharge and the particularity of the allocation of things and contracts between the companies do not favour the view that a general release was intended going outside the actual area of dispute.*

[16] I do not accept the respondents' argument that their Honours were confining themselves to some special rule of construction applicable only to releases. No rational reason was advanced why releases should be different from all other legal instruments in this regard. *Rather Grant is an example of courts construing an instrument as a whole and, in order to give effect to the intention of the parties (objectively determined), reading down general words to give effect to the intention so manifested rather than reading them literally."* (Emphasis added)

j) Each of the previous proceedings was entirely predicated on a fraudulent representation of the Defendants. In the case of Tylden Rd that the s.569E Notice had been served and in the case of Woodleigh Heights that the private reticulated water supply had been completed in 1979.

k) In each of the previous proceedings the Defendants each ran sham defences and in the case of Woodleigh Heights the Defendants each also ran sham strike out proceedings.

l) At the time of negotiating and of executing the Terms of Settlement the Defendants knew full well that the Plaintiffs were completely ignorant of the facts and that they had concealed them from the Plaintiffs and the Court. The Defendants concealed these matters and things intentionally, dishonestly and fraudulently and for fraudulent purpose.

m) The Defendants cannot now claim that the Terms of Settlement release them from those things that which were concealed from the Plaintiffs or from things flowing from those things which were concealed.

n) In this case the releases cannot be construed to cover the cause of action now sought to be addressed.

i) The fact is that at the time of executing the release only the defendants were aware of the matters now sought to be litigated. The releases cannot release the Defendants from that which was concealed by them.

o) The releases were obtained in fraud and the Defendants now seek to profit from that fraud by using the releases to avoid that which but for the fraud and concealment by the Defendants could have been litigated at the earlier time.

p) In relation to Tylden Rd the Terms of Settlement do not purport to extend to settlement of anything other than County Court proceeding 88094. The document recites "*in full settlement of the proceeding herein*"[8]

q) In respect to Tylden Rd, if any residual exists outside the fraud of the Defendants, then on the broadest construction the Defendants could only be possibly released from those things flowing from the circumstance where the 569E Notice was served.

r) In relation to Woodleigh Heights the Terms of Settlement do not purport to extend to settlement of anything other than claims in Supreme Court proceeding 7966 of 1995. The document recites, "*In full settlement of the matters the subject of the Plaintiffs' claims in this proceeding*" [9]

s) In respect to Woodleigh Heights, if any residual exists outside the fraud of the Defendants, on the broadest construction the Defendants could only be possibly released from those things flowing from the circumstances where the private water supply and reticulation system was completed according to law.

t) The Defendants cannot now claim that the releases extend to included excluded torts and particularly where those torts were excluded and concealed by the Defendants fraud.

5) **Security for costs.**

a) **The plaintiffs have now been involved in litigation with the Defendants and/or as a consequence of actions of the Defendants for approximately 22 years, approximately 14 years of which have had proceedings on foot but due to the fraud of the Defendants have not yet had a single solitary day in open Court on the issues. Every single day so far has been polluted by the fraud of the Defendants. The First Defendant now seeks to deny me that day in Court by seeking the protection offered by the product of its fraud, the Plaintiffs' impecuniosity.**

i) The proceedings so far have been:-

(1) Supreme Court proceeding 2360 of 1984.

(2) Magistrates Court proceeding at Bendigo D1419/87

[8] Purported Terms of Settlement at tab 47 SME 1 Volume 2
[9] Purported Terms of Settlement at tab 84 SME 2 Volume 4

(3) Supreme Court Order to Review. OR/235/87

(4) County Court proceeding 880949

(5) Supreme Court proceeding. 7966 of 1995

(6) Bendigo Magistrates Court proceeding 013493411.

(7) The present proceeding.

(8) The present application by the Defendants as heard by Master Efthim..

(9) Taxation of costs in the present proceeding.

ii) The circumstances of Supreme Court proceeding 2360 of 1984 are set out in paragraphs W28 to W33 and W37 of the present Amended Statement of Claim and are in summary that after Woodleigh Heights Resort Developments Pty. Ltd had defaulted upon contracts to purchase the Plaintiffs' land Woodleigh Heights Resort Developments Pty. Ltd. threatened to render the Plaintiffs' land valueless if the Plaintiffs attempted to sell their land to anyone other than Woodleigh Heights Resort Developments Pty. Ltd The Defendants then fraudulently represented that the Plaintiffs and/or their land could only have water with the agreement of Woodleigh Heights Resort Developments Pty. Ltd. As a consequence the Plaintiffs issued proceeding 2360/84 and then subsequently settled in reliance upon the fraudulent representations of the Defendants.

iii) The circumstances of Magistrates Court proceeding D1419/87 and the subsequent Supreme Court appeal and County Court proceeding 880949 and Supreme Court proceeding 7966 of 1995 have already been adequately referred to in this my submission and each of those proceedings was based upon the fraudulent representations of the Defendants. In addition in relation to the Previous Tylden rd and Woodleigh Heights proceeding the Defendants failed to use the complete defence which was available to them and thereby occupied the Courts and the Plaintiffs for years at great expense.

iv) The present proceeding has arisen because the fraud of the defendants has finally been discovered and now the Defendants have brought the present strike out applications and the circumstances of those applications have been substantially referred to in this submission under the topic Credibility.

v) Magistrates Court proceeding 013493411 was issued on 27th June 2000 and is a claim for rates on the parent industrial allotment referred to in paragraph T1 of the present Amended Statement of Claim and is still on foot. This claim includes rates on the non existent allotments set out in the series of industrial plans referred to in paragraph T4 of the present Amended Statement of Claim and is itself a fraudulent claim. This Magistrates Court proceeding remains on foot.

vi) In relation to the present proceeding the hearing before the Master was tainted by the representations of the Defendants as now set out in this submission under the topic Credibility.

vii) The Second Defendant has also issued Taxation summonses for the costs awarded by Master Efthim notwithstanding that this present appeal was yet to be heard let alone determined and Mr. Steven Edward issued that taxation summons in full knowledge of his own misrepresentations before Master Efthim and in full knowledge therefore that the Judgment of Master Efthim and the punishing costs order was obtained, at least in part, as a consequence of his personal misrepresentations and as a consequence of the misleading submissions of his clients Counsel, Major General Garde. AM. RFD. QC as instructed by him.

viii) During the period of these numerous proceedings the Plaintiffs have incurred and paid enormous costs and expenses and the Defendants have at all times been ware that the costs and expenses incurred were incurred as a direct consequence of their fraud, perjury, false admissions, false affidavits, sham defenses, sham strike out proceedings, false claims in Court and their misrepresentations and conduct generally.

ix) **The Plaintiffs now seek their first day in Court on the issues**.

x) **I submit that it would be wrong for the Plaintiffs to be denied that day in Court due to impecuniosity caused by the fraud complained and additionally caused by the great cost of the numerous proceedings which the Defendants fraudulently maintained over many years.**

b) I will now deal with the more mundane aspect of opposing the First Defendants claim for security for costs.

c) ***Order 62.02*** sets out the circumstances in which Security for Costs may be ordered:

i) Where-

(a) the plaintiff is ordinarily resident out of Victoria;

(b) the plaintiff is a corporation or (not being a plaintiff who sues in a representative capacity) sues, not for his own benefit, but for the *benefit of some other person, and there is reason to believe that the plaintiff has insufficient assets in Victoria to pay the costs of the defendant if ordered to do so;*

(c) a proceeding by the plaintiff in another court for the same claim is pending;

(d) subject to paragraph (2), the address of the plaintiff is not stated or is not stated correctly in his originating process;

(e) the plaintiff has changed his address after the commencement of the proceeding in order to avoid the consequences of the proceeding;

(i) under any Act the Court may require security for costs-

(f) the Court may, on the application of a defendant, order that the plaintiff give security for the costs of the defendant of the proceeding and that the proceeding as against that defendant be stayed until the security is given.

d) **Plaintiffs are Natural Persons**

i) ***Order 62.02*** clearly contemplates natural persons. However, it is also well established that the impecuniosity of a plaintiff who is a natural person is generally no bar to litigation.[10] It follows that only in exceptional circumstances will security be ordered against a natural plaintiff. The First Defendant has failed to establish any reason for departing from the ordinary rule.

e) **Sufficiency of Plaintiffs assets to meet a costs order**

i) The Plaintiffs *do* have an asset in the jurisdiction sufficient to meet a costs order. The asset is real property and as such represents a complete answer to the First Defendant's application, since the First Defendant would be able to recover costs by process of law.[11] Ms Dixon's evidence about the value of the Plaintiffs' Tylden Rd land is at best anecdotal, and even allowing for the usual practice of relaxing the rules of evidence in interlocutory proceedings, should be given little weight. To the extent that the evidence purports to be expert, it is hardly independent, coming as it does from an employee of the First Defendant.

ii) In any event, the Court would have little difficulty with the proposition that there is a significant difference between the value ascribed to land for rating purposes and that reflected in the sworn valuation of Messrs Smith and Brady. The evidence of Mr Thompson[12] and of the valuers is that the land is now effectively unencumbered and valued at some $195,000, which is more than enough to meet the sum of $162,000 claimed by the First Defendant to represent its likely costs. Notably, but for the fraud complained of this land would be subdivided into 6 allotments with a significant current value.

f) **Residency out of Victoria**

i) *Rules 1 (b)* to *(f)* of *Order 62.02* are clearly irrelevant to the current proceedings. The basis of the First Defendant's application is therefore limited to the fact that the plaintiffs are resident out of the jurisdiction in accordance with *Rule 1 (a)* above.

ii) In the first place, there is a presumption against making an order for security in the case of a plaintiff resident in another state, because judgments can be enforced by the operation of the

[10] Cowell v Taylor (1885) 31 Ch.D. 34 at 38 per Bowen L.J.
[11] Swinbourne v Carter (1853) 23 L.J. Q.B. 16, (1853) 2 W.R.80.
[12] Valuation report by WBP Property Valuers at GAT23.

Service and Execution of Process Act 1992 (C'wlth): See *Calvert v Melbourne Harbour Trust Commissioners (1939) VLR 94.*

iii) Secondly, the First Defendant is precluded from relying upon ***Rule 1(a)*** of ***Order 62.02*** unless it can establish that the Plaintiffs are resident, not merely out of Victoria, but out of Australia. To assert otherwise would offend ***S 117 of the Commonwealth Constitution***: See ***Australian Building Construction Employees & Builders Labourers Federation v Commonwealth Trading Bank of Australia (1976) 2 NSWLR371[13] per Helsham J at 374[14].***

iv) In the present case the Plaintiffs reside in NSW. The first Defendant has therefore failed to establish any power in the Court to make the order under the Supreme Court Rules.

v) It is further submitted that any power to order security under ***s.33ZF of the Supreme Court Act***, or under the Court's inherent jurisdiction, is equally fettered by ***s.117 of the Constitution.[15]***

g) The Plaintiffs' primary submission is that the Defendants ought not profit from their fraud by avoiding due process and that the Plaintiffs are entitled to their day in Court on the issues.

h) The Plaintiffs' secondary submission is that the First Defendant cannot overcome either the Constitutional issue, or the fact that the Plaintiffs have assets in the jurisdiction sufficient to meet a costs order.

i) Accordingly, its application must fail.

j) However, to the extent that they are relevant to the exercise of the Court's discretion, the Plaintiffs now turn to address other matters, some of which are outlined on p.2 of the Affidavit of Michelle Elizabeth Dixon of 23 September 2005 ("the security for costs Affidavit").

k) **Plaintiff's prospects of success**

i) The assertion at paragraph 5 of the first Defendants security for costs Affidavit that the Plaintiffs claim has poor prospects is entirely dependant upon the argument that the claim is either statute barred or estopped by the *Anshun* principle.

ii) For all the reasons set out in this submission, the limitation and Anshun arguments fail. The Plaintiffs' prospects could not therefore be characterised as poor. The evidence of misfeasance is compelling. In many cases the documents speak for themselves.

[13] Interpreting Pt.53, r2 (a) of the NSW Supreme Court Rules, which for practical purposes is identical to the Victorian rule.
[14] Any doubts that may have previously attended the correctness of His Honour's decision have now been removed by more recent decisions. See especially NSW Court of Appeal in Melville v Craig Nowlan & Assoc. Pty Ltd & Anor. (2002) 54 NSWLR 82 at 110.
[15] (1976) 54 NSWLR 371 at 374 .

iii) The claim is prima facie regular and discloses a cause of action. Accordingly, in the absence of evidence to the contrary, the Court should proceed on the basis that the claim is bona fide with reasonable prospects of success.[16]

iv) **The predicating facts are not complex, in the case of Tylden Rd it is that the s.569E Notice was never served and in the case of Woodleigh Heights it is that the principle water main were constructed in 1982 and not 1979. In the case of Woodleigh Heights as previously set out by me the Defendants admit to and rely upon the fact of the predicating claim, in the case of Tylden Rd if the s.569E Notice had in fact been served then the Defendants are required by the principles of Res Judicata and Anshun to say so now in support of their present applications, they have not done so. The predicating claims therefore are, prima facie, valid and in part admitted to, the proceeding is, prima facie, likely to succeed.**

v) Further and in the alternative the Plaintiffs' claim is one of some complexity and it is not practicable for the Court to assess the prospects of success.[17] Nor is the Court obliged to consider the merits of the Plaintiffs' claim at length.[18]

l) **The quantum of costs**.

i) The First Defendants rely upon the party/party estimate of costs in the sum of $162,000 by Hausler & Associates.[19] Whilst the Court can sometimes be assisted by estimated party/party taxed costs, it is not the practice to order security on a full party/party, nor on an indemnity basis. As Fullagar J said in ***Brundza v Robbie & Co (No.2) (1953) 88CLR 171*****;** "*The Court does not set out to give a complete and certain indemnity to a respondent*"

ii) Moreover, the Hausler estimate takes account of a number of steps in the process leading up to hearing, which may never eventuate, eg; 3-4 interlocutory hearings and mediation.

m) **Alleged failure to adhere to terms of settlement in the past.**

i) The assertion in paragraphs 14 and 15 of Ms Dixon's security for costs Affidavit is misleading. It suggests default on the part of the Plaintiffs and inaccurately states that the Defendants fully performed their obligations under the terms of settlement. The true position is as previously set out by me in this submission and is succinctly set out in the reasons for judgment of Beach J.[20] The fact that the defendants had not paid the settlement sums by the due date together with the circumstances of the Mediation precipitated the Plaintiffs action in

[16] Bryan E Fencott & Assoc Pty Ltd v Eretta P/L (1987) 16FCR 497; KP Cable Investments Pty Ltd v Meltglow Pty Ltd (1995) 56 FCR 189.
[17] Interwest Pty Ltd (recs and mgrs appointed) v Tricontinental Corp Ltd (1991) 5 ACSR 621.
[18] To do so would ordinarily be a waste of resources (see Impex Pty Ltd v Crowner Products Ltd (1994) 13 ASCR 440 and inter alia, quickset Concrete Productions Pty Ltd v Jayburn Pty Ltd VSC Unreported 26th Oct 1993.
[19] Exhibit "MED 1" to security for costs Affidavit.
[20] Tab 31 to Folder exhibit MED1

returning the cheques and issuing Notice of Trial. When the defendants sought specific performance in the Practice Court, the Plaintiffs defended the Summons on the basis of the circumstances of the mediation and the default of the Defendants. In doing so, the Plaintiffs were exercising a bona fide legal entitlement. The issue turned upon His Honour's refusal to consider the circumstances of the mediation and finding that time was not of the essence. The Plaintiffs were intending to appeal but were persuaded by the conduct of the Defendants in showing the reticulation plan not to do so, such conduct being one further act in a course of concealment practiced by both Defendants upon the Plaintiffs over many years. The Plaintiffs legitimate conduct in contesting the validity of the settlement is irrelevant to the exercise of the Court's discretion in this case.

n) **Public interest in outcome of the litigation**

i) The allegations made in the Plaintiffs' present Amended Statement of Claim if proven, amount to an abuse of power by two public authorities which has been sustained over many years. The Plaintiffs specifically plead that as members of the public and bona fide purchasers of land for value without notice, they were owed a duty of care. Both Defendants acted in a manner that was directly contrary to that duty. The Plaintiffs are, therefore, seeking to enforce obligations in the nature of public standards of conduct the maintenance of which are clearly in the public interest. Should an order for security be made in a sum that exceeds the value of the land, the litigation would not be able to proceed.[21] It is submitted that should the Court come to the view that the First Defendant is entitled to security, the desirability of ventilating an issue of public importance out weighs that entitlement.[22] In this case the issue is one of community trust and confidence in public authorities to perform their statutory obligations and to enforce bona fide, planning laws and regulations especially those designed to protect prospective purchasers of land.[23]

ii) The allegations made in the Plaintiffs' present Amended Statement of Claim if proven, disclose a serious shortcoming in the legislation of the day. The present equivalent legislation is found at s.9AA of the Sale of Land Act 1962 and s.21 and s.22 of the Subdivision Act 1988. The operation of the present legislation is essentially identical to the previous legislation. The present legislation provides at s.9AA a prohibition of settled sales of allotments unless the plan has been registered with the Registrar and at s.21 that the Council or other authorities may require works and when those works are completed a Statement of Compliance is issued and at s.22 that the Registrar may register a plan if the plan has been certified and a Statement of Compliance is provided to the Registrar. Notably the present legislation also has a s.569B(10)

[21] Para 9 of Thompson Security For Costs Affidavit
[22] See Aussie Airlines Pty Ltd v Australian Airlines Ltd (1995) ATPR 41-444 at 41-006.
[23] See Byron Shire Business for the Future Inc. v Byron Shire Council (1994) 83 LGERA 59 (Land & Environment Court NSW.)

equivalent, it is found at s.13 of the Subdivision Act 1988 and provides that certification of a plan is conclusive evidence, etc,.

iii) After the present proceeding is judged it may be that there are lessons for the legislature to prevent frauds of the type perpetrated by the Defendants and which may still be easily perpetrated under the present legislation. On the face of it, in addition to the modern equivalent of the method disclosed in the present proceeding a further present day method of avoiding s.9AA of the current Sale of Land Act 1962 is provided by a contract providing for no deposit and a single payment of the whole of the purchase price. There are numerous methods by which such a contract could be completed by a purchaser who possesses a small deposit together with existing collateral or equity and a mischievous vendor.

iv) I further submit that it is a matter of public interest that an ordinary citizen get a day in Court on the merits rather than statutory authorities and their throngs of Q's C holding sway by mere force of arms and their ability to delay until age overcomes.

6) **Summary Judgement/Stay Application**.

a) **Onus on the Defendants**.

i) The defendants seek summary judgement or a stay under either ***Order 23.01*** or ***Order 23.03*** of the Supreme Court Rules. In so doing they each bear the burden of satisfying the Court that there is no triable issue. The defendants are entitled to judgement if, but only if, it is inevitable that after a full hearing at trial, the Court would find for the Defendant: ***Camberfield Pty Ltd v Klapanis [2004] VSCA 104.***

ii) The stridency of the test to be applied in order to dismiss a proceeding at a preliminary stage was emphasised by Dixon J in ***Dey v Victorian Railways Commissioners (1949) 78CLR 62 at 91***[24]: *It must be "very clear indeed" that the action is "absolutely hopeless"*

iii) The burden cast upon the Defendants is a very heavy one and the Plaintiffs submit that the Defendants have failed to discharge it.

iv) **The defendants' application is based entirely upon three propositions**:

(1) that the current proceedings are essentially a re – run of earlier proceedings and are therefore Res Judicata or are estopped in accordance with the principle in ***Port of Melbourne Authority v Anshun Pty Ltd 147 CLR 589.***

(2) that the proceedings are statute barred

(3) that the plaintiffs are bound by terms of settlement and deeds of release in earlier proceedings

[24] Cited with approval by the Court of Appeal in S.E.C. of Victoria v Rabel & ors. (1998) 1998 1 VR 102.

v) The evidence brought by the Defendants in support of their respective applications is in fact non existent. That material which has been provided is false and misleading.

vi) The facts are:-

(1) that the current proceedings are fundamentally different to any prior proceedings

(2) that the conduct of the Defendants, including that pleaded in the present Amended Statement of Claim has concealed from the Plaintiffs their true cause of action until around August 2000

(3) that the pleadings in the prior proceedings reveal that the Plaintiffs proceeded on an assumption of facts which were incorrect because they were based upon the fraudulent representations of the Defendants. Those very pleadings *support* the Plaintiffs contention that they were ignorant at that time of the true facts upon which they now proceed.

(4) the Defendants fraudulently concealed the predicating facts and the rights of action until discovered by the Plaintiffs in August 2000 after having exercised extreme diligence during the entire period about 1984 until the fraud was discovered in August 2000.

(5) The Terms of Settlement in both proceedings were obtained in fraud.

7) **The relief sought by Defendants ought be refused**

8) **The Tylden Rd Industrial Land.**

a) It is not in dispute between the parties that there have been no prior proceedings in respect of the Industrial allotments. Accordingly, no Res Judicata or *Anshun* issue arises in respect of those allotments. The only issue is limitations.

b) Prior to August 2000 the plaintiffs believed that the plans had been prepared by Buchanan for the purpose of avoiding s.9 but prior to August 2000 it could not be shown that the Defendants had any actionable part in that scheme.

c) The plaintiffs purchased the parent industrial allotment while it was subject to the sealed plans of subdivision but before the Registrar of Titles had approved the Plans. Upon learning that the plans were unlawful and had been concocted for illegal purpose the Plaintiffs refused to progress the unlawful plans to approval by the Registrar of Titles.

d) No action existed against Buchanan because he did not seal the plans. No action existed as against the Defendants because it could not be shown that they were party to Buchanan's scheme.

e) The circumstances of the sealing of the series of industrial plans is identical to the circumstances surrounding the residential series of plans.

f) Upon discovering the conspiracy to avoid the effect of s.9 in relation to the Tylden Rd residential land and the identical conspiracy in respect to the Woodleigh Heights land it was instantly apparent that the industrial land had been subject to the same conspiracy.

g) Accordingly an action against the Defendants exists in relation to the Tylden Rd industrial land and that right of action was concealed by the Defendants until August 2000.

h) The Plaintiffs rely upon s.27 of the Limitations of Actions Act in relation to the right of action regarding the Tylden Rd industrial allotments.

9) **The Book of Pleadings – Details.**

a) The Book of Pleadings was compiled by me after completion of discovery in the previous Tylden Rd proceeding and before the drafting of the Amended Statement of Claim in that proceeding.

b) The document was a privileged document and was written for use by my then legal advisors and Counsel.

c) At the time of compiling this document I was hopeful of fixing the Defendants with all that I could.

d) The Amended Statement of Claim in that proceeding and which was drafted by my then Counsel, Mr. Francis Tiernan in full knowledge of the Book of Pleadings. It discloses that I was in fact unable to fix the Defendants with much of that which is alluded to or set out in the Book of Pleadings. It discloses that we were, in fact, limited to those purported facts derived from the fraudulent representations and perjury of the Defendants, which were then thought to be true.

e) At the time of the hearing before Master Efthim both Defendants relied upon the Book of Pleadings and the Master specifically relied upon it in his written Reasons for Decision.

f) Notably at paragraph 57 of his written Reasons for Decision the Master transcribed section of the Book of Pleading and in relation to page 17 of the Book of Pleadings the Master noted of myself "*here is knowledge of alleged covert or secret activity*"

g) With the greatest respect to the Master I must say that at that time I had a great deal of knowledge of the activities of the Defendants and a great deal more conjecture however such knowledge and conjecture is of little use unless it is actionable and capable of being proven in a Court of Law. The part referred to and transcribed by the Master was where I said, "*The Council however always intended that the requirements were secretly still on foot*". This was plainly conjecture on my part and even if true was plainly not actionable at all.

h) The fact is that this conjecture was totally wrong as it was based upon the proposition that the requirement had initially been on foot so as to be capable of being secretly still on foot. On the

facts now known, no requirement was ever served, therefore never on foot, and plainly not capable of being said to be "*secretly still on foot*".

i) Purported knowledge which is wrong is plainly not knowledge at all. Similarly, hypothesis and conjecture are not knowledge. The Master was in error. There was no knowledge of anything except that which was based on the fraud of the Defendants.

j) **The Book of Pleading is plainly a compilation of fact, hypothesis and conjecture which was compiled for the sole use and benefit of my Counsel of the day. It was a privileged document until unethically obtained by Mr. Steven Edward**.

k) **The Amended Statement of Claim in the previous Tylden Rd proceeding was drafted with knowledge of and consideration of the facts, hypothesis and conjecture set out in the Book of Pleadings. The Amended Statement of Claim is a reliable document to ascertain those actionable things known to the Plaintiffs at the time**.

10) The "Book of Pleadings" is divided into four sections:-

a) the first section is a cut and paste of the Statement of claim and the combined defence of the Defendants who are one and the same Defendants as in these proceedings.

b) the second section has pages numbered 1 to 32, these page are essentially a commentary by me with various supporting documents.

c) The third section has page numbers C1 to C42 consists of various cuttings from pleadings, interrogatories and answers and also comment and copy documents added by me. These pages contain that which is in pages 1 to 32 but is limited to those aspects which relate to the (C)ouncil, the First Defendant.

d) The Fourth section has page numbers WB1 to WB 35 and is similar on content to the section related to the Council whereas this section related to the (W)ater (B)oard, the Second Defendant.

11) The Book of pleading sets out my knowledge and thoughts and indicates hopes of pinning the Defendants with wrongdoing, these thoughts and knowledge include:-

a) At page 1. Buchanan applied for and obtained a planning permit for the Tylden Rd land. Buchanan did not own the land at this time. The owners certification on the application form was not filled in. Buchanan thereby obtained a planning permit for land which he did not own and the owner was ignorant of the fact of the planning permit. Buchanan then purchased what the owner thought to be a cow paddock for about $50,000 but which was in fact approved residential and industrial subdivision land worth several hundreds of thousands. This is a further fraudulent aspect of the Dealings of the Defendants which serves to add to the picture of the dealings of the time.

b) Page 2. A single plan was filed with a 30th Schedule Notice on 12th February 1980

c) Page 3. The Council considered the plan and resolved to issue a s.569E Notice.

d) Page 3. The land could not be sold because of the operation of s.9 of the Sale of Land Act.

e) Page 5. Buchanan had illegally sold two allotments

f) Pages 5 and 6. In order to avoid s.9 of the Sale of Land Act Buchanan filed the series of 2 lot plans together with separate 30th Schedule Notices..

g) Page 7. The Council, in addition to the single s.569E Notice referred to in paragraph 7 of the then Amended Statement of Claim also served separate s.569E Notices in respect to each of the plans in the series designated 79305/E to 79305/K. This was consistent with the Council's evidence in the Magistrates Court that it had processed the single plan of 20th February 1980 in several parts.

h) Page 8. Each of the 30th Schedule Notices was in breach of s.569(1)

i) Page 8. Each of the series of plans did not comply with s.569A(1)

j) Page 9. **Buchanan's intention to sell unlawfully in breach of s.9 of the Sale of Land Act had been stymied by the First Defendant.**

k) Page 10. To get around the fact that he had been stymied Buchanan approached the First Defendant to accept guarantees.

l) Page 11. The First Defendant indicated it would unlawfully seal the plans if a guarantee was provided. This is in fact consistent with the previously described mistake of law.

m) Page 12. No guarantee was lodged and the First Defendant **sealed the plans with a s.569E(3)(a) endorsement** placed thereon so **Buchanan's intentions remained stymied**.

n) Pages 13 and 14. At Buchanan's request I provided Bank Guarantees to both Defendants.

o) Page 15. Upon receipt of the Bank Guarantees the First Defendant **lifted the s.569E requirements**.

p) Page 15 and 16 . The First Defendant "lied" to the Registrar of Titles by advising him the s.569E Notices had been complied with. 15

q) Page 17. The First Defendant always intended that the s.569E Notices were still secretly on foot.

r) Pages 20 to 32. Details of my thoughts on how after I went to the police the Secretary to both Defendants, Stan Porter, started the chain of events at the apparent behest of Buchanan and his solicitor.

s) Page C4. Wilson's evidence in the Magistrates Court that all the plans were filed on12th February 1980 was false because the series of plans were in fact filed on 4th March 1980.

t) Page C6. The s.569E Notices served in relation to the series of plans pre dated the 30th Schedule Notices.

u) Page C11. The acceptance of the Guarantees and the **lifting of the requirements** gave effect to the First Defendant's unlawful intent referred to on page 11.

v) Page C12. Buchanan had illegally sold 2 lots and was able to do so because the First Defendant had accepted contrived plans.

w) Page C12. Buchanan was unable to complete his sale because the plans were sealed with a s.569E(3)(a) endorsement.

x) Repeat of pages 10 to 12. in pages C13 and C14.

y) The rest of the Book of pleadings contains nothing of additional relevance.

12) From the Book of Pleadings it is clear that my knowledge was that the Buchanan had contrived to avoid s.9 however the First Defendant had stymied that intention of Buchanan by serving the s.569E Notice(s) of Requirement and sealing the plans with a s.569E(3)(a) endorsement thereon. The Defendants had subsequently accepted my Bank Guarantees and had then lifted the requirement but wrongfully advised the Registrar of Titles that the requirement had been complied with.

13) The principle predicating fact of the present proceeding in relation to Tylden Rd is that the s.569E Notice of Requirement was never served. This contrasts starkly with the Book of Pleadings which repeatedly refers to Notices of Requirement served, withdrawn, lifted and secretly still on foot.

14) The content of the Book of pleadings is entirely consistent with the beliefs then held by me that the Notice of Requirement had been served and which belief was derived from the perjury of the First Defendant in the Magistrates Court and then further derived from the false admissions in the three defences which pre-date the Book of Pleading and the defence which was subsequent to the Book of Pleadings and subsequent to the then Amended Statement of Claim.

15) The Book of Pleadings contains many thoughts, but the difference between thoughts and actionable facts is vast. The then Amended Statement of Claim is an accurate record of the things which were thought actionable at the time. The then Amended Statement of Claim was drafted by the Plaintiffs Counsel in full knowledge of the things set out in the Book of Pleading. Paragraph 7 of the then Statement of Claim and the then Amended Statement of Claim refers to a single s569E Notice having been served. The Defendants admitted to this four times in their four defences.

16) I am grateful to Mr. Edward for having exhibited the Book of Pleadings and to both Defendants for relying on it so heavily. It fully supports my position and I probably would not have otherwise been able to get it into evidence.

17) **The previous Tylden Rd proceeding. Mistake of law.**

a) The previous Tylden Rd proceeding was a proceeding to recover monies had and received in mistake of law.

b) The specific mistake was as follows.

i) At that time it was believed by the Plaintiffs that the s.569E Notice had been lawfully issued and served.

ii) s.569E(1) provides that a Council may make a requirement pursuant to either s.569E(1)(a)(i) OR (1)(a)(ii) OR (b) OR (c) OR (d)(i) OR (d)(ii) AND either (1A)(a) OR (1A)(b) or (1A)(c).

iii) The specific requirement must be specified in the s.569E Notice served.

iv) Once made a Council cannot change or amend it may only withdraw a requirement.

v) The s.569E Notice purportedly served by the First Defendant by its specific terms was a requirement pursuant to s.569E(1)(a) AND (1A)

vi) The s.569E Notice purportedly purported to be an unspecified requirement pursuant to s.569E(1) and (1A) it did not specify either (1)(a), (b) (c) or (d) OR (1A)(a), (b) or (c)

vii) The First Defendant and the Second Defendants may have been under the mistaken belief that they could substitute one requirement for another and in this instance despite the specific terms being a requirement pursuant to s.569E(1)(a) and (1A) the Defendants accepted the Bank Guarantees in purported pursuance of a requirement under s.569E(1)(d) AND (1A)(a) or (b).

viii) In the case of such a mistake while there was a lawful s.569E Notice issued the Notice did not provide for the lawful giving and accepting of guarantees as was done.

ix) In the case of such a mistake the Defendants could have been under the mistaken belief that the requirement had been complied with on the giving and accepting of guarantees.

x) Nothing more serious than mistake of law could be demonstrated at the time of the previous Tylden Rd proceeding. Nothing more serious than mistake of law was alleged in the previous Tylden Rd proceeding.

18) **A personal aspect.**

a) If the Court will indulge me for just a minute.

i) I represent my family.

ii) The matters and thing set out in this submission are but the tip of the iceberg of deceit and contempt of the Defendants and their legal professionals over the years. It will fill a book.

iii) My firstborn was one year old when we was first defrauded by the Defendants in 1979. My two other children were not yet conceived. My two eldest two children are now adults. My

youngest is almost 16. The fraud began to hurt in 1983. They have not had a single day of childhood free from the trauma, deprivation and the suffering brought by these things.

iv) No doubt the Major General Grade AM. RFD, Q.C. and his children dined well on the fruit of his labour when he deceived the Planning Appeals Tribunal. Mine were poisoned by that fruit and its still lingering aftertaste. No doubt his were well educated, mine were not.

v) Each and every officer, Councillor and Member of the Defendants and therefore the corporate Defendants were each thoroughly aware of the trauma inflicted upon my family and I by their deliberate fraud and dishonest silence yet they allowed it to continue, year after year after interminable year.

vi) I am merely the vehicle for my entire family. They all now deserve and are entitled to their first day in Court on the merits, free from the deceit and lies and perjury of the Defendants and their legal professionals. My children had not even learned to walk or talk when they each first suffered at the hands of these Defendants and their representatives. I now speak for my children as well, they wish to be heard and to finally walk tall, having been heard by this Honourable Court.

vii) Nothing however will restore the laughter and opportunity stolen from them.

19) **Costs in the present applications.**

a) **The Plaintiffs rely upon the authorities and principles relied upon by the Second Defendant. The Plaintiffs refer to and read paragraphs 50, 51 and 52 of the document entitled Outline of Submissions of the Second Defendant for 14 November 2005.**

b) Notably the Major General got his costs application correct.

c) At the time of the hearing before the Master the Defendants sought and obtained punishing costs orders.

d) The Plaintiffs now seek the same.

e) The Defendants concocted the grounds for their present applications and then misled the Court. This is beyond any possible dispute.

f) This is not the first time they have done so. I have provided ample material as to the contempt and disdain which the Defendants and their legal representatives from time to time have shown for the rights of the Plaintiffs but more importantly for the fabric of our society and in particular the Court system including this Honourable Court and even before the Chief Justice no less.

g) To reiterate to a small extent the fallacious basis for the present applications.

h) The First Defendants entire basis for the Tylden Rd grounds was concocted and baseless, it is plain that the First Defendant did not and could not believe that the Black Folder contained the

evidence which they had concealed by perjury and false admission. It is also clear that the First Defendants Counsel did not believe these things either notwithstanding that it was they that made the submissions to that effect.

i) The First Defendants grounds in relation to Woodleigh Heights were also concocted and baseless. There is no possibility that they held a belief that the water supply provided by the Second Defendant was one and the same as the private water supply and reticulation system referred to in paragraph W2 of the present Amended Statement of Claim. Similarly, if they had exercised even a modicum of care there is no possibility of them confusing one for the other. The submission made in relation to Woodleigh Heights was nothing more than very deliberate, calculated and successful deception by obfuscation.

j) The Second Defendants entire submission from and including paragraph one of its written Outline to the number of deceptive affidavits was false and misleading and done with such little care and regard for facts and the truth as not possess even a scintilla of legitimate grounds for the application made by it and in many aspects was deliberately false for the specific purpose of impugning me.

k) I submit that this is a clear instance of a case where the Court should exercise it‘s unfettered discretion and award punishing costs including all incidentals and in this instance including recognition for the very considerable time and monies spent and wasted by the Plaintiffs personally.

l) I recollect that at the time of the appeal against the Magistrates Decision the Chief Justice said that while he could not order it he recommended that the First Defendants then solicitors and Counsel not get paid. The principle reason for this is that I was plainly not the owner to which the s.569E Notice, which was then thought to have been issued and served, applied. The owner was Buchanan. The case should never have been brought against me. We now know that the s.569E Notice did not even exist. The First Defendant perjured itself. There is little difference between that and the present concocted applications.

m) While it is obvious that I have no particular sympathy for the Defendants I submit that it is so clear that the present applications should never have been brought and so clear that the purported grounds for the present applications are so utterly baseless and concocted that the Defendants solicitors and Counsel should never have brought these applications. Having brought them it is clear that the applications were a joint expedition where the Defendants and the members of their respective legal teams sought to and stood to profit and it would be wrong for those legal professionals and in particular the Major General and Mr. Edward to now profit from that expedition. If it is in the power of this Court to order that the legal professionals not get paid then I

submit that such an order ought be made and if not then a recommendation similar to that made by the Chief Justice would not be out of place.

n) I submit that the Plaintiffs are entitled to all costs, including indemnity costs, incidental costs, and compensation for time wasted.

20) **SUMMARY.**

a) My family and I stand before you today.

b) Our case is simple and just.

i) These defendants conspired with Kenneth Raymond Buchanan to enable him to avoid the effect of s.9 of the Sale of Land Act 1962.

ii) Because of the fraud and deceit of these Defendants we were sold unusable land. Any citizen of this great Country could have purchased that land. We were the unfortunates.

iii) To conceal that fraud and deceit and to make the land useable these Defendants then conducted further fraud and deceit specifically and maliciously aimed at my family and in the case of the Woodleigh Heights land they did so in such a calculated manner as to ensure that the land was only useable by interests associated with their co-conspirator.

iv) We lost our land, our business, our home, our self respect and our laughter to the malicious fraud of the Defendants.

c) All of these things remained concealed until with great diligence and effort and after many years the fraud and conspiracy was finally discovered in August 2000.

d) Since then we have now had to endure yet one more Court proceeding where not only was our case not put but the Defendants again resorted to deception and deliberately misled the Master. We again, had to suffer at the hands of the Defendants.

e) Our s.27 argument is unassailable. The Defendants did conceal the rights of action. They would not, not conceal them.

f) The Plaintiffs and our children wish to be heard by this Honourable Court.

g) Despite many years with litigation on foot we have not yet had a single day in Court, on the issues, free from the perjury and deceit of the Defendants.

h) We say and believe that we are entitled to our first day in Court on the issues, we ask that this Honourable Court grant us that day.

Glenn Thompson