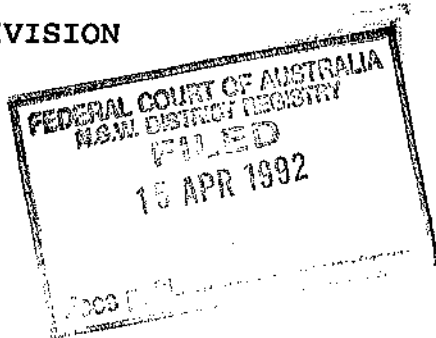


(ORIGINAL)

IN THE FEDERAL COURT OF AUSTRALIA)
NEW SOUTH WALES DISTRICT REGISTRY)
GENERAL DIVISION)

No G0029 of 1992



ALEC FINLAYSON PTY LIMITED
(ACN 001 144 501)

Applicant

ARMIDALE CITY COUNCIL
First Respondent

BASIA HOLDINGS PTY LIMITED
(ACN 002 375 528)
Second Respondent

DEFENCE OF SECOND RESPONDENT

1. The second respondent admits paragraphs 1, 3, 11, 12, 13, 15, 16 and 17 of the statement of claim.
2. The second respondent does not plead to paragraphs 2, 6, 20-28 (inclusive) and 31-37 (inclusive) of the statement of claim in that such paragraphs raise no allegation against the second respondent.
3. To the extent that paragraph 4 of the statement of claim alleges that the second respondent was, at all material times, a trading corporation within the meaning of that expression in the Trade Practices Act, 1974 (Cth) ('the TP Act'), the second respondent does not admit the said allegation.

This defence of the second respondent is filed by Messrs Watson McNamara & Watt Solicitors of 156 Beardy Street Armidale NSW 2350 DX 6002 Armidale ref: MGD34412 by their city agents HILL THOMSON & SULLIVAN Solicitors 59 Pitt Street Sydney NSW 2000 DX 209 Sydney.

4. In answer to paragraph 5 of the statement of claim, the second respondent says that it acquired all the land comprised in Lot B, Deposited Plan 161700 being a parcel of land situated between Martin Street, the Northern Railway Line and White Avenue in the City of Armidale on 5 May 1982.
5. The second respondent does not admit paragraphs 7, 8, 9, 18, 19, 29 and 30 of the statement of claim.
6. To the extent that paragraph 10 of the statement of claim alleges that the second respondent, at all material times, knew or ought to have known the matters pleaded in paragraphs 7, 8 and 9 of the statement of claim, the second respondent denies the said allegation.
7. In answer to paragraph 14 of the statement of claim, the second respondent admits that it applied to the first respondent for approval to subdivide the balance of the land comprised in Lot B, Deposited Plan 161700 into twenty seven residential lots, on or about 30 October 1985.
8. The second respondent does not admit paragraph 38 of the statement of claim.

PARTICULARS

If the terms of each promotion and each representation alleged

to have been made by the second respondent to the applicant are in writing, the second respondent has not been provided with a copy of the said terms by the applicant.

If the terms of each such promotion and each such representation are not in writing, the second respondent has not been informed by the applicant:

(a) in respect of each such promotion:

- (i) by whom the promotion was spoken;
- (ii) to whom the promotion was spoken;
- (iii) the date and time when each such promotion was made;
- (iv) the precise terms of the promotion; and,

(b) in respect of each such representation:

- (i) by whom the representation was spoken;
- (ii) to whom the representation was spoken;
- (iii) the date and time when the representation was made;
- (iv) if it is alleged that the representation is to be implied, the facts and circumstances alleged to give rise to the implication;
- (v) the precise terms of the representation.

9. In answer to paragraph 39 of the statement of claim, the second respondent denies that the applicant relied upon

and was induced by any representation by the second respondent to the applicant, in order to do the things and undertake the expenses pleaded in paragraph 22 of the statement of claim.

10. The second respondent denies paragraphs 40-44 (inclusive) of the statement of claim.

11. Further, and in the alternative, to the extent that the applicant claims relief pursuant to sections 82(1) and 87(1A) of the TP Act by reason of an allegation that the second respondent engaged in conduct which was misleading or deceptive or likely to mislead or deceive in contravention of the provisions of section 52(1) of the TP Act with respect to representations in relation to the land referred to in each of the contracts for sale listed in the schedule to the statement of claim and completion of which took place on 3 February 1986 and 2 November 1988 (an allegation which is denied by the second respondent), the second respondent says that the applicant's alleged cause of action with respect to the said contracts for sale accrued more than three years before the commencement of this action and is barred by sections 82(2) and 87 (1CA) of the TP Act.

Dated: 10 April 1992

Roderick James Helt


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Solicitor for Second Respondent