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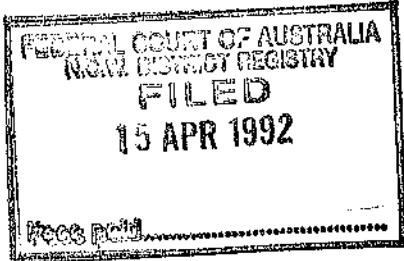
15/4/92

IN THE FEDERAL COURT OF AUSTRALIA)

NEW SOUTH WALES DISTRICT REGISTRY)

No G0029 of 1992

GENERAL DIVISION)



ALEC FINLAYSON PTY LIMITED
(ACN 001 144 501)

Applicant

ARMIDALE CITY COUNCIL

First Respondent

BASIA HOLDINGS PTY LIMITED
(ACN 002 375 528)

Second Respondent

BASIA HOLDINGS PTY LIMITED
(ACN 002 375 528)

Cross Claimant

ARMIDALE CITY COUNCIL

Cross Respondent

CROSS CLAIM

The cross claimant Basia Holdings Pty Limited claims against the cross respondent Armidale City Council but without admitting to any matter pleaded by the applicant in its statement claim against the cross claimant that:

1. In or about 5 May 1982, the cross claimant acquired land including the land subsequently acquired by the applicant

This cross claim 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.



being the land the subject of the action by the applicant. The land was then zoned Residential 2'C'.

2. The cross claimant thereafter made application to the cross respondent as the responsible authority that the zoning then affecting the land be altered so as to permit the use of it only for light industrial purposes.
3. The cross respondent then knew that the land had been used for the purpose of an offensive and hazardous industry namely, for the purpose of the treatment and impregnation of timber with creosote and copper-chrome-arsenic (CCA).
4. The cross respondent then knew or ought to have known that the land was unsuitable for purposes other than light industrial purposes.



PARTICULARS:

- (i) the cross respondent was aware of the matters pleaded in paragraphs 3 and 4 above;
 - (ii) the cross respondent had received complaints of contamination of waters and soil in the vicinity of the land.
5. The land was contaminated by creosote and CCA and by leaching and transmission by surface water and

underground water, the land was liable to be further contaminated by surrounding lands also contaminated by creosote and CCA.

6. The cross respondent was under a duty of care to the cross claimant as applicant for re-zoning to ensure that the result of its determination of the application for re-zoning did not expose the cross claimant to liability for injury or loss suffered by actual and potential owners and users of the land.
7. The cross respondent refused the application for re-zoning and in doing so negligently performed or omitted to perform its duty.



In consequence of the refusal by the cross respondent to rezone it, persons were entitled to and did use the land for residential purposes, in consequence whereof the cross claimant is or may be liable in the action by the applicant.

9. The cross respondent was under a duty of care to all present and potential and actual future owners and users of the land to ensure that they did not by such ownership or use suffer injury or loss. In particular, the cross respondent was under a duty to refuse to allow use of the land for residential purposes.
10. The cross claimant made application to the cross

respondent as the responsible authority to subdivide the land into allotments and a development approval for subdivision was granted by the cross respondent in 1985.

11. In granting the subdivision application the cross respondent negligently performed or omitted to perform its duty.

12. In permitting use of the land for residential purposes the cross respondent represented to the cross claimant and to all potential and actual future owners of the land that the same was safe and suitable for use by such persons for residential purposes.

13. In subdividing the land, the cross claimant relied upon the representation of the cross respondent that the land was safe and suitable for use for residential purposes.

14. It was foreseeable that reliance would be placed upon the representation pleaded in paragraph 12 hereof.

15. Such representation was untrue. The cross claimant repeats paragraphs 3 to 6 inclusive, hereof.

16. The cross claimant relied upon the representation pleaded in paragraph 12 hereof, in consequence whereof the cross claimant is or may be liable in the action by the applicant.



17. The cross claimant claims damages against the cross respondent in such amount as the cross claimant is or may be liable in the action by the applicant.

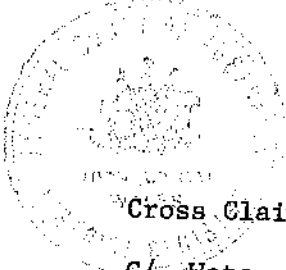
Dated: 10 April 1992

Roderick James Watt
by *[Signature]*
Solicitor for Cross Claimant

TO: Armidale City Council
135 Rusden Street
ARMIDALE NSW 2350

Judgment may be given or an Order made unless the prescribed form of notice of your appearance is received in the Registry within 14 days after service of this Statement of Cross Claim upon you and you comply with the Rules of Court relating to your defence.

Dated: 15.4.92



[Signature]
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DEPUTY DISTRICT REGISTRAR

Cross Claimant's address for service:-

C/- Watson McNamara & Watt
Solicitors
156 Beardy Street
ARMIDALE NSW 2350
DX 6002, Armidale