*the contracts and land to the Plaintiffs. As a result the trust was at an end.*

21-31. (Deleted).

31A By April 1984 a company, Woodleigh Heights Resort Developments Pty. Ltd ("WHRD") were developing a Timeshare Resort on CS1134, it had purchased much of the land within CS1134 and had entered into contracts of sale to purchase all of the ~~Plaintiffs'~~ land but had defaulted upon those contracts. *The said contracts and the land subject thereto had been assigned to the Plaintiffs pursuant to the Deed of Assignment referred to in subparagraph 20I(c).*

31B. WHRD advised the Plaintiffs that if the Plaintiffs attempted to rescind the contracts and sell to anyone other than WHRD then WHRD would prevent the ~~Plaintiffs'~~ land from having access to water and thereby render the land worthless.

**PARTICULARS**

(a) The advice from WHRD was contained within conversations between the Firstnamed Plaintiff and a Director of WHRD, Mr. Brian Murphy in or about March and April of 1984.

(b) WHRD advised the Firstnamed Plaintiff;

(i) That WHRD had a Private Water Supply Agreement between itself and KSWWT ("the water agreement") for the supply of water to all of CS1134 including the ~~Plaintiffs'~~ land;

(ii) That under the water agreement WHRD controlled the supply of water within CS1134 including the supply of water to the ~~Plaintiffs'~~ land;

(iii) That under the water agreement WHRD were in a position to render the ~~Plaintiffs'~~ land valueless by denying a supply of water to it and thereby preventing the issue of building permits in respect of the ~~Plaintiffs'~~ land.

32. In April 1984 the Plaintiffs made enquiries of the KSC and the KWB to ascertain whether the matters communicated to the Plaintiffs by WHRD (refer Paragraph 31B ) were correct.

PARTICULARS

The enquiries were oral and contained in a telephone conversation in or about April 1984 between the Firstnamed Plaintiff and Mr. Stan Porter who was known to the Plaintiffs and known by the Plaintiffs to be the Secretary of both KWB and KSC.

33. In response to the Plaintiffs' enquiries the KSC and KWB represented to the Plaintiffs that:

a) CS1134 was outside the Kyneton Water Trust area and in an area where under the provisions of the Water Act 1958 water was supplied under private agreements at the discretion of the Trust;

b) There was under the provisions of the Water Act 1958 a legally valid water agreement in existence between the KWB and WHRD Pty. Ltd.;

c) that under the water agreement WHRD Pty. Ltd. owned and operated the water supply and reticulation system within CS1134;

d) the ~~Plaintiffs'~~ land;

(i) was not entitled to the water supply or reticulation system within CS1134;

(ii) could not obtain access to the water supply and reticulation system without the agreement and consent of WHRD Pty. Ltd.

e) the body corporate of CS1134 was not entitled to the water supply or reticulation system within CS1134;

f) KWB would not;

(i) transfer the existing Water Agreement to the body corporate of CS1134 except with the agreement of WHRD Pty. Ltd.;

(ii) enter into a separate water supply agreement with the body corporate of CS1134 except with the agreement of WHRD Pty. Ltd.;

g) Unless the Plaintiffs had access to a reticulated water supply the KSC would not issue building permits to build upon the ~~Plaintiffs'~~ land.

("the first representations").

**PARTICULARS**

The first representations were oral and contained in a telephone conversation between the Firstnamed Plaintiff and Mr. Stan Porter in or about April 1984.

34. In April 1984 the Plaintiffs requested the KSC, the KWB and WHRD Pty. Ltd. for a copy of the said water agreement, however each of the said parties failed and/or refused to either give the Plaintiffs access to the water agreement, or to supply them with a copy of the same.

**PARTICULARS**

(a) The request of the KSC and KWB by the Plaintiffs for a copy of the water agreement was verbal and was contained in a telephone conversation in or about April 1984 between the Firstnamed Plaintiff and Mr. Stan Porter, the joint KSC and KWB Secretary

(b) Mr. Porter for the KSC and KWB advised the Plaintiffs that the water agreement was a private agreement between the KWB and WHRD Pty. Ltd. and that any request by the Plaintiffs for a copy of the water agreement should be directed to WHRD Pty. Ltd.

(c) The request of WHRD Pty. Ltd. by the Plaintiffs for a copy of the water agreement was verbal and was contained in conversation between the Firstnamed Plaintiff and Mr. Brian Murphy for WHRD Pty. Ltd.

(d) Mr. Murphy for WHRD Pty. Ltd. advised the Plaintiffs that WHRD Pty. Ltd. would not give the Plaintiffs a copy of the water agreement.

(e) At that time neither KWB, KSC nor WHRD Pty. Ltd. provided the Plaintiffs with a copy of the water agreement.

35. As at August 1984 the ~~Plaintiffs'~~ land was encumbered by various mortgages including the following:

a) First Mortgage to General Credits Limited registered number K379135 in the principal sum of $40,000.00.

b) Second Mortgage to The Associates Pty. Ltd. registered number K814538 in the principal sum of $100,000.00

c) Third Mortgage to Stateside Credit Corporation Pty. Ltd. registered number K814539 in the principal sum of $90,000.00 and which mortgage had been assigned to The Associates Pty. Ltd.

d) The Associates Pty. Ltd. during the currency of the mortgages set out in subparagraphs b) and c) changed its name to "Mercantile Credits Limited" ("MCL")

***PARTICULARS***

(a) *In relation to the Mortgage to General Credits Limited the Plaintiffs refer to paragraph 20E hereof.*

(b) *In relation to the Mortgages to The Associates Pty. Ltd. the Plaintiffs refer to paragraph 20J hereof.*

36. As at August 1984 the First Mortgagee General Credits Limited had been taken over / acquired by or otherwise merged with Australian Guarantee Corporation Limited such that the conduct and management of the First Mortgage was from then on conducted by Australian Guarantee Corporation Limited. ("AGC")

37. As at August, 1984, the Plaintiffs were in default in respect to each of the mortgages detailed above and it was agreed between the Plaintiffs and AGC for the First Mortgagee that the ~~Plaintiffs'~~ land would be sold by public auction.

**PARTICULARS**

a) Each of the mortgages had been defaulted upon as the Plaintiffs had made no payments due under the various mortgages since about April of 1984.

b) The agreement between the Plaintiffs and AGC to sell the ~~Plaintiffs'~~ land by public auction was partly oral and partly to be implied.

c) Insofar as the agreement between the Plaintiffs and AGC was oral it was contained within the following discussions:

i) The Plaintiffs had informed each of the Mortgagees of the default of WHRD Pty Limited under the contracts of sale detailed above;

ii) The Plaintiffs had informed each of the Mortgagees of the representations of KWB and KSC and the threats of WHRD Pty Limited in respect to the supply of water to the ~~Plaintiffs'~~ land .

iii) The Plaintiffs had informed each of the Mortgagees that the Plaintiffs had as a result of the representations of KWB and KSC and the threats of WHRD Pty. Limited elected to seek specific performance by WHRD Pty. Limited of

the contracts of sale and that the Plaintiffs had in May, 1984, issued proceedings to that effect in Supreme Court proceeding No. 2360 of 1984.

iv) In respect to the management of the First Mortgage the Plaintiffs from time to time held discussions with Mr. Des Roberts, a property finance officer of AGC In or about September of 1984, Mr. Roberts enquired of the Plaintiffs as to the existence of official documentation setting out the representations of either or both KWB or KSC and also enquired as to the Plaintiffs' attitude should an attempt to sell the land by mortgagees auction be made. The Plaintiffs advised Mr. Roberts:

(a) that the representations had all been verbal;

(b) that it was also in the Plaintiffs' interests to realise upon the land as soon as possible;

(c) that if AGC wished to sell the land that the Plaintiffs would not attempt to hinder or stop that sale on condition that the ~~Plaintiffs'~~ land could be expected to sell at a price reflecting entitlement to and access to water and entitlement to the issue of building permits.

(d) Mr Roberts for AGC then advised the Plaintiffs that in the absence of official written advice to the contrary AGC continued to rely upon the valuation obtained by it in 1983 in respect to the ~~Plaintiffs'~~ land and which valuation advised that each allotment was entitled to a reticulated water supply and the issue of a building permit.

v) In the circumstances the Plaintiffs agreed with the wish of AGC to conduct a public auction of the ~~Plaintiffs'~~ land at that time.

d) Insofar as the agreement between the Plaintiffs and AGC was implied it was implied from the said discussions and from the facts and circumstances surrounding the same and or from the law.

38. L.J. Hooker, real estate agents of Kyneton were appointed by AGC as agents to sell the ~~Plaintiffs'~~ land, and the auction date of 17 November 1984 was fixed.

**PARTICULARS**

a) AGC retained L.J. Hooker of Kyneton to sell the ~~Plaintiffs'~~ land at mortgagees auction.

b) L.J. Hooker erected advertising hoardings adjacent to the main entrance to Woodleigh Heights Estate. The hoarding provided a map or plan of CS1134 with the ~~Plaintiffs'~~ land delineated and the 17th November 1984 set and advertised as the auction date.

c) Advertisements of the auction of the ~~Plaintiffs'~~ land were published in Melbourne newspapers advising that the date of the auction was 17th November 1984.

39. (Deleted)

39A. On or about 13th November 1984 KWB represented to L.J. Hooker Kyneton and AGC that water and sewerage were denied to the ~~Plaintiffs'~~ land and could not be obtained. ("the second representation").

**PARTICULARS**

The second representation is to be implied from the content of a letter dated 11th September 1985 from AGC to the First Plaintiff and further implied from the facts and circumstances surrounding and subsequent to the proposed auction of the ~~Plaintiffs'~~ land.

39B On or about 13th November 1984 Mr. Stan Porter for and on behalf of KWB repeated the second representation to AGC.

**PARTICULARS**

The repeating of the second representation is to be implied from the content of a letter dated 11th September 1985 from AGC to the First Plaintiff and further implied from the facts and circumstances surrounding and subsequent to the proposed auction of the ~~Plaintiffs'~~ land.

39C The second representation was made and repeated with the intention that the Plaintiffs act upon it.

40. (Deleted)

40A. The second representation was communicated by L.J. Hooker Kyneton and AGC to the Plaintiffs.

**PARTICULARS**

(a) Mr. Kevin Sheppard, the Proprietor of L.J. Hooker was a friend of the Firstnamed Plaintiff and the second representation was initially communicated to the Firstnamed Plaintiff by telephone on or about 13th November 1984.

(b) In pursuance of the agreement between AGC and the Plaintiffs that the ~~Plaintiffs'~~ land would only be sold in the circumstances set out in paragraph 37 Mr. Des Roberts for AGC communicated the second representation to the Firstnamed Plaintiff in a telephone conversation.

40B In reliance upon the second representation the Plaintiffs and AGC agreed that the proposed auction of the ~~Plaintiffs'~~ land set down for 17th November 1984 be cancelled and they instructed L.J. Hooker Kyneton to do so.

**PARTICULARS**

In pursuance of the agreement between AGC and the Plaintiffs that the ~~Plaintiffs'~~ land would only be sold in the circumstances set out in paragraph 37 the Plaintiffs and AGC agreed to cancel the proposed auction. Pursuant to the agreement between the Plaintiffs and AGC to cancel the proposed auction AGC instructed L.J. Hooker to cancel.

41. By letters dated 29th November, 1984, AGC requested advice from KWB and KSC;

a) as to the availability of sewerage and mains reticulated water to the ~~Plaintiffs'~~ land;

b) as to the acceptability to KSC and/or KWB of the alternatives of tank water/bore water and septic sewerage.

42. (Deleted)

42A By letter dated 20 December 1984, KSC responded to AGC's said letter of 29th November, in which it represented that in accordance with previous planning

approvals the issue of building permits was conditional upon the development (inclusive of the ~~Plaintiffs'~~ land) being serviced by reticulated sewerage ("the third representation")

42B The third representation was made by KSC with the intention that the Plaintiffs act upon it.

43. (Deleted)

44. (Delete)

44A By letter dated 3rd May 1985, KWB responded to AGC's said letter of 29th November 1984 (and a subsequent letter by AGC dated 9th April 1985), in which it represented that the KWB was not in a position to supply water to the ~~Plaintiffs'~~ land. ("the fourth representation")

44B The fourth representation was made by KWB with the intention that the Plaintiffs act upon it.

45. By further letter dated 7th May, 1985, KWB ~~further~~ represented to AGC that;

a) Water had been supplied to WHRD Pty. Limited as an outside of the water *area* agreement on the basis that all costs for construction of the mains were paid for by that company;

b) The board therefore has no mechanism by which the allotments referred to may be supplied with water except with the agreement of WHRD Pty. Limited;

c) That AGC would be aware that a shire permit to build within CA41 will not be issued unless the blocks are supplied with water. ("CA41" is a reference to Crown Allotment 41 where CA1134 was located).

d) That WHRD Pty. Limited either or all of owns, operates, and or controls the water mains referred to in sub-paragraph a).

("the fifth representations")

**PARTICULARS**

i) Those parts of the fifth representations set out in sub paragraphs a), b), and c) are express and contained in the letter dated 7th May, 1985;

ii) That part of the fifth representations set out in paragraph d) is implied from the content of the letter dated 7th May, 1985.

46. (Deleted)

47. (Deleted)

48. By October 1985 the ~~Plaintiffs'~~ land had been re-developed.

**PARTICULARS**

i) Each of the ~~Plaintiffs' lots~~ lots comprising the land had been re-subdivided into three allotments and the ~~Plaintiffs'~~ land was now 18 lots namely lots 46, 47, 48, 49, 50, 54, 63, 64, 65, 72, 73, 74, 78, 79, 80, 130, 131 and 132 of CS1134 being the land more particularly described in Certificates of Title Volume 9596 Folios 163 to 177 inclusive and Volume 9596 Folios 187 to 189 inclusive.

49. (Deleted)

50. In or about October 1985 the Plaintiffs engaged the estate agents, L.J. Hooker Kyneton to sell the ~~Plaintiffs'~~ land, and the date for a public auction was fixed for 23 November 1985.

**PARTICULARS**

a) The engagement was in writing in that the Firstnamed Plaintiff signed a document supplied by L. J. Hooker Kyneton and retained by L.J. Hooker Kyneton and which gave L. J. Hooker Kyneton exclusive right to sell and auction the ~~Plaintiffs'~~ land.

51. (Deleted)

52. (Deleted)

52A. On 11th November 1985 the Fourth Defendant during the course of a discussion with the Firstnamed Plaintiff concerning the proposed auction on 23rd November 1985;

a) Repeated the first representations, the second, third, fourth and fifth representations, and;

b) Represented:

i) That the ~~Plaintiffs'~~ land never did have an approved reticulated water supply available to it;

ii) That the ~~Plaintiffs'~~ land never was entitled to access to an approved reticulated water supply;

iii) That KWB would not supply water to the ~~Plaintiffs'~~ land;

iv) That the ~~Plaintiffs'~~ land was not entitled to a water supply;

v) That without a reticulated water supply building permits from KSC were not available to the ~~Plaintiffs'~~ land;

vi) That the Fourthnamed Defendant knew that WHRD wanted to purchase the ~~Plaintiffs'~~ land and that the Plaintiffs had refused to sell to WHRD without going to auction;

vii) That Council's unofficial position was that the auction should not go ahead and that the Plaintiffs should sell their land to WHRD;

viii) That in 1978 at the time of the application for cluster subdivision the subsdivison was for KSC planning purposes considered to be outside the Kyneton Waterworks District of the KWB and the Plan of Cluster Subdivision was not referred to the KWB;

ix) That the subdivision was now inside the Kyneton Waterworks district of the KWB;

x) That the Body Corporate of CS1134 was not entitled to the water supply or reticulation system within CS1134;

xi) That KWB would not enter into a water supply agreement with the Body Corporate of CS1134;

xii) That KWB and KSC had been advised by WHRD Pty. Ltd. of the recent court action between the Plaintiffs and WHRD Pty. Ltd. and the terms of settlement;

xiii) That with or without the agreement of WHRD Pty. Ltd. water would not be made available to the ~~Plaintiffs'~~ land;

xiv) That without a reticulated water supply building permits were not available to the ~~Plaintiffs'~~ land.

("the sixth representations")

**PARTICULARS**

The Firstnamed Plaintiff in company with Mr. Max McDonald M.L.A. for Whittlesea and Mr. Graeme Anderson a friend of the Firstnamed Plaintiff met with the Fourthnamed Defendant in the Shire of Kyneton Offices at Kyneton at about midday on 11th November 1985. This meeting went for approximately one hour.

53. (Deleted)

54. (Deleted)

54A On 13th November 1985 the Thirdnamed Defendant, during the course of a telephone discussion with the Firstnamed Plaintiff concerning the proposed auction on 23rd November 1985;

(a) repeated the first representations, the second, third, fourth, fifth and sixth representations; and

(b) represented that the private water supply and reticulation system within CS1134 had never been approved by either KSC or KWB ("the seventh representation")

**PARTICULARS**

a) The telephone call to the Thirdnamed Defandant was intiated by the Firstnamed Plaintiff from the home of the Firstnamed Plaintiff to the office of the Thirdnamed Defendant. This telephone call lasted for approximately 15 minutes.

b) During the course of the telephone conversation the Thirdnamed Defendant advised the Firstnamed Plaintiff;

i) you do not have water;

ii) you will not get water;

iii) you will not get building permits.

iv) there never was an approved water supply available to the ~~Plaintiffs'~~ land.

v) that KSC has no authority to approve water supplies and that any early water supply on the subdivision was a private system which did not have the approval of either KSC or KWB.

vi) that the body corporate of CS1134 was not entitled to the water supply or reticulation system within CS1134.

vii) that KWB would not enter into a water supply agreement with the Body Corporate of CS1134

viii) that WHRD Pty. Ltd owns and operates the water supply and reticulation system within CS1134.

ix) that notwithstanding the letter of the KWB to the Plaintiffs' solicitor dated 4th October 1985 (as referred to in paragraph 49) the KWB would not resolve to give effect to the terms of settlement.

55. (Deleted)

55A In reliance upon the representations referred to in paragraphs 52A and 54A hereof the Plaintiffs acted by canceling the second proposed auction set down for 23rd November 1985.

**PARTICULARS**

The Firstnamed Plaintiff instructed Mr. Kevin Sheppard of L.J. Hooker Kyneton to cancel the auction.

56. (Deleted)

56A During the period November 1985 to October 1989 the Defendants repeated to the Plaintiffs the various representations alleged herein;

a) during further telephone discussions between the Firstnamed Plaintiff and the Thirdnamed Defendant between November 1985 and October 1989.

**PARTICULARS**

During the period July 1986 through to October 1989 the Plaintiffs made numerous telephone calls to the Thirdnamed Defendant at his office in Kyneton. During the course of these telephone conversations the Thirdnamed Defendant continued to advise the Plaintiffs in the terms set out in paragraph 54A above.

b) during further telephone discussions between the Fourthnamed Defendant and the Firstnamed Plaintiff between November 1985 and October 1989.

**PARTICULARS**

During the period July 1986 through to October 1989 the Plaintiffs made numerous telephone calls to the Fourthnamed Defendant at his office in Kyneton. During the course of these telephone conversations the Fourthnamed Defendant continued to advise the Plaintiffs in the terms set out in paragraph 52A above.

c) During meetings between the Firstnamed Plaintiff and the Thirdnamed Defendant during the period November 1985 to October 1989.

**PARTICULARS**

During the period November 1985 to October 1989 the Firstnamed Plaintiff made numerous visits to the KSC offices at Kyneton for the purpose of researching the Minute Books of KWB and KSWWT. At the time of these visits the Firstnamed Plaintiff would often speak with the Thirdnamed Defendant and discuss relevant matters including the representations. During these meetings the Thirdnamed Defendant repeated the representations set out in paragraph 54A .

d) During meetings between the Firstnamed Plaintiff and the Fourthnamed Defendant during the period November 1985 to October 1989.

**PARTICULARS**

During the period November 1985 to October 1989 the Firstnamed Plaintiff made numerous visits to the KSC offices at Kyneton for the purpose of researching the Minute Books of KWB and KSWWT. At the time of these visits the Firstnamed Plaintiff would often speak with the Fourthnamed Defendant and discuss relevant matters including the representations. During these meetings the Fourthnamed Defendant repeated the representations set out in paragraph 52A.

e) In a letter dated 30th December 1986 from KWB to the Firstnamed Plaintiff.

**PARTICULARS**

The repetition of the representations is to be implied from the content of the letter and from the facts and circumstances surrounding the same and from the law.

f) In a letter dated 18th September 1987 from KWB to the Firstnamed Plaintiff.

**PARTICULARS**

The repetition of the representations is to be implied from the content of the letter and from the facts and circumstances surrounding the same and from the law.

g) In or about October 1988 to G. D. Sutherland Pty. Ltd., Registered Valuers.

**PARTICULARS**

The representations to G.D. Sutherland Pty. Ltd. are implied in that the representations are repeated in part in a letter dated 12th October 1988 from G. D. Sutherland Pty. Ltd. to Mercantile Credits Limited and further particularised in a Valuation by G. D. Sutherland Pty. Ltd. dated 17th March 1992 which addressess the content of the letter dated 12th October 1988 and the status of the ~~Plaintiffs'~~ land as at the 12th October 1988 and which attributes the representations to discussions between G. D. Sutherland Pty. Ltd. and KWB.

h) During the course of a meeting of the KSC on 4th January 1989 at which time the Firstnamed Plaintiff addressed the assembled Council on relevant matters including the representations.

i) During the course of telephone conversations between the Firstnamed Plaintiff and Councillor Bill Hickey in or about June and July 1989 during which the Firstnamed Plaintiff raised the various representations.

j) During the course of a joint meeting of the KSC and the KWB on 4th July 1989 at which time the Firstnamed Plaintiff addressed the assembled KSC and KWB on relevant matters including the representations.

57. (Deleted)

57A The first representations, the second, third, fourth, fifth, sixth and seventh representations (referred to collectively as "the representations"), were false and untrue. In particular:

a) The representation as set out in subparagraph 33 b) was false and untrue for the following reasons;

(1) The Water Agreement provided for the supply of water to land which was outside the Kyneton Waterworks District and the approval of the Governor in Council for that supply as required by S.186 of the Water Act 1958. was neither sought by KWB nor obtained by KWB.

(2) The Water Agreement provided for the construction of certain works and the approval of the Minister for Water as required by S307AA(5) of the Water Act 1958 was neither sought by KWB nor obtained by KWB in respect to the plans and specifications for the works required and carried out under clause 2 of the Water Agreement.

(3) Condition 6 of Planning Permit No 2191 required the Body Corporate of CS1134 to be resposible for all private facilities within CS1134 including water whereas the effect of the Water Agreement as represented by KSWWT and KWB placed that control in respect to Water and the Water Reticulation System with the private company WHRD Pty. Ltd.

b) The representations as set out in subparagraph 33 c), d i), d) ii) and e) were false and untrue for the following reasons:

(1) The Plaintiffs refer to paragraphs 7 - 14 above.

c) The third representation of KSC as set out in paragraph 42A was false and untrue for the following reasons:

(1) The letter by KSC states, inter alia, that in accordance with previous planning approvals the issue of building permits is to remain conditional upon the development being serviced by reticulated water and sewerage, whereas;

(a) sewerage was not a condition of any of the planning approvals issued by KSC in respect to the subdivision or re-subdivision of CS1134;

(b) sewerage was not, under the provisions of either PP2191 or PP2784 a condition to the issue of building permits in respect to lots 1,2, 7, 10, 12 or 27 being the ~~Plaintiffs'~~ land;

(c) Under condition 8 of Planning Permit 2191, as set out in the submission, drinking water and bathroom water were to be supplied to the ~~Plaintiffs'~~ land by roof rainwater tanks;

(d) Under condition 8 of Planning Permit 2191, as set out in the Submission, onsite septic tanks were approved effluent disposal means for each of Lots 1, 2, 7, 10, 12 and 27 being the ~~Plaintiffs'~~ land.

(e) KSC failed to advise that rainwater tanks and onsite septic tanks were approved for use in respect to the ~~Plaintiffs'~~ land.

d) The fourth representation set out in paragraph 44A was false and untrue for the following reasons;

i) The fourth representation set out in paragraph 44A was made in answer to AGC's letters of 29th November 1984 and 9th April 1985 as set out in paragraph 44A;

ii) AGC's letter of 9th April 1985 sought from KWB information as to the advice of the KWB's engineers to KWB as foreshadowed in the letter to AGC from the KWB dated 7th December 1984;

iii) The relevant report of the engineers for KWB is set out in the Minutes of the KWB of 6th March 1985;

iv) The engineers report set out in the Minutes of the KWB of 6th March 1985 sets out that water would be available to the ~~Plaintiffs'~~ land however the private consulting engineers of the KWB recommended against approving a supply to the ~~Plaintiffs'~~ land on the basis of proprietorship rather then engineering considerations;

v) The KWB was in a position to supply the ~~Plaintiffs'~~ land based upon engineering and water supply considerations.

e) That part of the fifth representations of the KWB as set out in paragraph 45 b) were false and untrue for the following reasons:

i) By Minute dated 8th November 1984 the KWB resolved to sign and seal a plan which increased the Kyneton Waterworks District and the Kyneton Urban District to include, inter alia, all of CS1134 including the ~~Plaintiffs'~~ land;

ii) On 8th November 1984 the KWB did sign and seal the plan referred to in subparagraph i) above;

iii) The plan referred to in subparagraph ii) above was approved by the Governor in Council on 13th March 1985;

iv) The plan approved by the Governor in Council on 13th March 1985 was gazetted on page 811 of the Goverment Gazette of 27th March 1985. As and from that date the ~~Plaintiffs'~~ land was situated within the Kyneton Urban District therefore in addition to any other right of access to the water supply and reticulation system within CS1134 the Plaintiffs and/or the ~~Plaintiffs'~~ land also had a right to the water and the reticulation system of the KWB pursuant to S.208 of the Water Act 1958;

v) By Minute dated 1st May 1985 KWB accepted the letter of AGC dated 9th April 1985;

vi) By further Minute of 1st May 1985 KWB resolved to sign and seal a further plan excising, inter alia, the ~~Plaintiffs'~~ land from the Kyneton Urban District but leaving it within the Kyneton Waterworks District;

vii) On 1st May 1985 KWB did sign and seal the plan referred to in sub paragraph vi) above;

viii) The plan referred to in subparagraph vii) above had not been approved by the Governor in Council as at the 7th May 1985;

ix) By letter dated 6th May 1985 the KWB sent to the Department of Water Resources for subsequent approval of the Governor in Council the plan signed and sealed by the KWB on 1st May 1985;

x) The plan excising the ~~Plaintiffs'~~ land from the Kyneton Urban District but leaving it within the Kyneton Waterworks district was not approved by the Governor in Council until 25th June 1985 and was not gazetted in the Government Gazette until July 1985;

xi) As at 7th May 1985 the ~~Plaintiffs'~~ land was within both the Kyneton Urban District and within the Kyneton Waterworks District;

xii) As at 7th May 1985 the main of the KWB which supplied water to CS1134 was a pipe of the Authority within the meaning of S208 of the Water Act 1958;

xiii) As at 7th May 1985 in addition to any other rights of the Plaintiffs and/or the ~~Plaintiffs'~~ land to the water supply and reticulation system within CS1134 the

Plaintiffs and/or the ~~Plaintiffs'~~ land had a further right of access to the water and reticulation system of the KWB pursuant to S208 of the Water Act 1958.

f) The implied part of the fifth representation of KWB as set out in paragraph 45 d) was false and untrue for the following reasons:

i) in respect to water mains within CS1134 the Plaintiffs refer to paragraphs 7 - 14 above;

ii) notwithstanding the matters set out in paragraph 57A a) above, any water mains constructed pursuant to Clause 2 of the Water Agreement outside CS1134 were subject to S307AA(8) of the Water Act 1958 and were at all material times the property of KWB and deemed to have been constructed by KWB.

g) That part of the first representations as set out in paragraph 33 b) was false and untrue for the following reasons:

i) The water agreement provided for the supply of water to land which was outside the Kyneton Waterworks District and the approval of the Governor in Council for that supply as required by S.186 of the Water Act 1958 was neither sought by KWB nor obtained by KWB;

ii) The Water Agreement provided for the construction of certain works and the approval of the Minister for Water as required by S307AA(5) was neither sought by KWB nor obtained by KWB in respect to the plans and specifications for the works required and carried out under Clause 2 of the Water Agreement;

iii) Condition 6 of Planning Permit No 2191 required the Body Corporate of CS1134 to be responsible for all private facilities within CS1134 including water whereas the effect of the Water Agreement as represented by KSWWT and KWB placed that control in respect to water and the water reticulation system with the private company WHRD Pty. Ltd;

iv) Those parts of the first representations as set out in paragraph 33 c), 33 d) i), 33 d) ii) and 33 e) were false and untrue for the following reasons;

v) The Plaintiffs refer to paragraphs 7 - 14 above.

h) The fourth representation set out in paragraph 44A was false and untrue for the following reasons:

i) The representation set out in paragraph 44A was made in answer to AGC's letters of 29th November 1984 and 9th April 1985;

ii) AGC's letter 29th November 1984 sought advice as to the availability of mains water to the ~~Plaintiff's~~ land. KWB responded by letter dated 7th December 1984 and advised AGC that the KWB had referred the matter to its engineers Garlick & Stewart for report;

iii) The relevant report of the engineers for KWB is set out in the Minutes of the KWB of 6th March 1985;

iv) The engineers' report set out in the Minutes of the KWB of 6th March 1985 sets out that water would be available to the ~~Plaintiffs'~~ land and sets out how such water could be made available. The private consulting engineers of KWB

recommended against approving a supply of water to the ~~Plaintiffs'~~ land because it was owned by the Plaintiffs but did not recommend against supply for any supply or other engineering consideration;

v) KWB was in a position to supply the ~~Plaintiffs'~~ land based upon engineering and water supply considerations.

i) The representation of KSC as set out in paragraph 42A was false and untrue for the following reasons:

(1) The letter by KSC states, inter alia, that in accordance with previous planning approvals the issue of building permits is to remain conditional upon the development being serviced by reticulated water and sewerage, whereas;

(a) sewerage was not a condition of any of the planning approvals issued by KSC in respect to the subdivision or re-subdivision of CS1134;

(b) sewerage was not, under the provisions of either PP2191 or PP2784 a condition to the issue of building permits in respect to lots 1,2, 7, 10, 12 or 27 being the ~~Plaintiffs'~~ land;

(c) Under condition 8 of Planning Permit 2191, as set out in the Submission, drinking water and bathroom water were to be supplied to the ~~Plaintiffs'~~ land by roof rainwater tanks;

(d) Under condition 8 of Planning Permit 2191, as set out in the Submission, onsite septic tanks were approved effluent disposal means for each of lots 1, 2, 7, 10, 12 and 27 being the ~~Plaintiffs'~~ land.

j) The implied representation of KWB as set out in paragraph 45 a) was false and untrue for the following reasons:

i) Implicit in the representation is a meaning or representation that WHRD Pty. Ltd. either or all of owns or controls or is otherwise responsible for or has authority in respect to the water mains constructed pursuant to the water agreement;

ii) in respect to water mains within CS1134 the Plaintiffs refer to paragraphs 7 - 14 above;

iii) notwithstanding the matters set out in paragraph 57 a) above, any water mains constructed pursuant to Clause 2 of the Water Agreement outside CS1134 were subject to S307AA(8) of the Water Act 1958 and were at all material times the property of KWB and deemed to have been constructed by KWB.

k) The representations of the KWB as set out in paragraph 45 b) were false and untrue for the following reasons;

i) By Minute dated 8th November 1984 the KWB resolved to sign and seal a plan which increased the Kyneton Waterworks District and the Kyneton Urban District to include, inter alia, all of CS1134 including the ~~Plaintiffs'~~ land;

ii) On 8th November 1984 the KWB did sign and seal the plan referred to in subparagraph i) above;

iii) The plan referred to in subparagraph ii) above was approved by the Governor in Council on 13th March 1985;

iv) The plan approved by the Governor in Council on 13th March 1985 was gazetted on page 811 of the Goverment Gazette of 27th March 1985, as and from that date the ~~Plaintiffs'~~ land was situated within the Kyneton Urban District therefore in addition to any other right of access to the water supply and reticulation system within CS1134 the Plaintiffs and/or the ~~Plaintiffs'~~ land also had a right to the water and the reticulation system of the KWB pursuant to S.208 of the Water Act 1958;

v) By Minute dated 1st May 1985 KWB accepted the letter of AGC dated 9th April 1985;

vi) By further Minute of 1st May 1985 KWB resolved to sign and seal a further plan excising, inter alia, the ~~Plaintiffs'~~ land from the Kyneton Urban District but leaving it within the Kyneton Waterworks District;

vii) On 1st May 1985 KWB did sign and seal the plan referred to in sub paragraph vi) above;

viii) The plan referred to in subparagraph vii) above had not been approved by the Governor in Council as at the 7th May 1985;

ix) By letter dated 6th May 1985 the KWB sent to the Department of Water Resources for subsequent approval of the Governor in Council the plan signed and sealed by the KWB on 1st May 1985;

x) The plan excising the ~~Plaintiffs'~~ land from the Kyneton Urban District but leaving it within the Kyneton Waterworks district was not approved by the

Governor in Council until 25th June 1985 and was not gazetted in the Government Gazette until July 1985;

xi) As at 7th May 1985 the ~~Plaintiffs'~~ land was within both the Kyneton Urban District and within the Kyneton Waterworks District;

xii) As at 7th May 1985 the main of the KWB which supplied water to CS1134 was a pipe of the Authority within the meaning of S208 of the Water Act 1958;

xiii) As at 7th May 1985 in addition to any other rights of the Plaintiffs and/or the ~~Plaintiffs'~~ land to the water supply and reticulation system within CS1134 the Plaintiffs and/or the ~~Plaintiffs'~~ land had a further right of access to the water and reticulation system of the KWB pursuant to S208 of the Water Act 1958.

l) Those parts of the sixth representations set out in paragraphs 52A(b)(i), 52A(b)(ii), 52A(b)(iv), 52A(b)(x), and the seventh representation were false and untrue for the following reasons:

i) The Plaintiffs refer to paragraphs 7 - 14 above.

58. (Deleted)

58A The Defendants at the time when they made or caused to be made, the representations, knew them to be false and untrue or made them recklessly not caring whether they were true or false.

**PARTICULARS**