

**MAGISTRATES COURT of WESTERN AUSTRALIA
(CIVIL JURISDICTION)
GENERAL FORM OF AFFIDAVIT
FORM 2**

Registry: 3 Stephen street, Bunbury

**Case number:
BUN/GCLM/316/2015**

Phone:

Fax:

Claimant Andrew Laughton

Defendant Sharyl Marsh



I Andrew Laughton of 11b Keble Heights, College Grove, Bunbury. 6230.

(full name and address) (occupation) Electrician

(* Delete as applicable)

having been duly sworn say on oath the following:

1. I am the Claimant (*description of party*) in this case.
2. This is the affidavit to support my request to deny all of the defendants requests made on 2nd November 2015 .
3. After trying every other avenue, I eventually resorted to applying to the court on 28th April 2015.
4. The first pre-trail hearing was on 18th June 2015. The entire point of this pre-trail hearing was to establish the facts and try to come to some sort of agreement. The bulk of any statement of defense should have been prepared before this date, and only edits made as any misconceptions are cleared up.
5. Prior to the first pre-trail hearing, the Marshes had offered approx ¼ of the cost to replace the boundry fence, and nothing towards the cost of the boundry retaining wall. After both pre-trail hearings had completed, that offer had not changed in any way. Put in doller terms, the Marshes offered approx \$600 to cover approx \$50,000 in costs and damages caused entirely by themselves.
6. After the second pre-trail hearing the court ordered on 30 July 2015 that the defendant needed to respond within 21 days of Service of Statement of General Procedure Claim.
7. I received this paperwork from the court on 3/8/2015.
8. On 4 November 2015 I have received a copy of Form 21 from the Marshes requesting to overturn the default hearing, over 19 weeks after it should have been substantially completed, 12 weeks after I submitted form 19, and 9 weeks after the deadline.
9. This paperwork is not slightly overdue, it is overdue by a very large margin, and the delays are costing me a lot of money.

10. The statement of defence, after over 19 weeks and 2 pre-trail hearings, still shows a fundamental misunderstanding of the facts surrounding this case.

The next bullet point in this document is numbered 20.

20. On 4/8/2015 I sent an email to the Marshes containing a list of documents that I possess, and documents that I would like a copy of.

21. On 9/9/2015, after receiving no response to my earlier email for over a month, I submitted the official forms 35 & 36, (Documents that I possess, and documents that I would like a copy of), to both the court and the Marshes.

22. The deadline set by the court for the Marshes to Submit forms 35 & 36 was 2 October, 2015.

23. As of the date of this document, Forms 35 and 36 have still not been received from the Marshes, over a month past the deadline. I still do not have a list of the documents they hold, and I have still not received the documents that I requested.

24. The defendants are also in default for missing the deadline for submitting Forms 35 & 36, as neither myself nor the court have received anything, however the application to set aside default judgement does not include these documents.

30. Referring to bullet point 5 in the Marshes affidavit to set aside default judgement, where it states that "I say the claim is legally ill-founded because it is against only one of two owners of the adjoining property". The Marshes have had over 20 weeks to raise this point, and if it has not been a concern up to this date it should not be a concern now.

40. I originally signed with a real estate agent to sell my house on 23/6/2013, and I purchased a new block of land on 13/12/2013, believing that the retaining wall drama would be resolved in a short time frame, and I would be able to sell my house. This has not been the case, and while the Marshes are well aware that my mortgage payments are costing me approx \$500 per week, the Marshes are delaying settlement for as long as possible in an apparent attempt at extortion.

41. Because I had every intention of selling the house, I borrowed money against the house only to buy the new block of land, without any mortgage on the block of land itself. Because I have no mortgage on the block of land I am not eligible for Centerlink payments. I have been told I should sell this block of land and live on the proceeds. The bank does not offer interest free loans on mortgages on the primary residence. Apart from the fact that my new block of land is interstate, I cannot live there as there are no buildings on it, and I am depending on the sale of my house in College Grove for money to build an abode. To change the terms of the loan to include a mortgage on the block of land as well, I need to either have full time employment or to have been in the same casual job for at least 3 months. Because I am about to move interstate, getting local work has not been possible. I have tried, but failed to get a full time FIFO job where I can remain employed at the same time as living interstate. Getting any work at all is made a lot harder as I need to be in Bunbury on certain days to be able to attend court.

42. It should be noted at this point that not only did the Marshes fail to prepare for the first pre-trial hearing, they also failed to prepare for the second pre-trial hearing. This extra delay has cost me an additional approx \$3,000 in mortgage payments as well as lost work opportunity's.

43. The excuse for the second pre-trial hearing was to get an alternate quote to fix the retaining wall, and as of the date of this letter, no other quote has been received.

44. As explained above, It is very urgent to have this case resolved from my point of view as there is a very real possibility that the bank could foreclose on my house if there are any extra delays in resolving this case.

50. It is also urgent to resolve this case sooner rather than later as I may be living interstate at the time of any delayed court case, making it difficult as well as expensive to attend court.

60. In the structural report made by the same engineering firm that has caused this problem, they state that the overburden on the boundary retaining wall is causing it to move and fail. This overburden is still present 3 years after the original report.

A. L. [Signature]

G. Jell Registrar



61. Over the 3 years that this drama has been playing out, the crack in the boundary retaining wall is getting bigger, and the repair to the retaining wall is getting more and more urgent. This is not just my opinion, this is the opinion of the same structural engineers that have caused this problem in the first place, and Ian Mossison is fully aware of this as he told me at great length that it needed to be fixed sooner rather than later.

62. I do not have the money to repair the damage caused by the Marshes, and selling the house without this repair has been proved very unlikely.

63. There is a very real danger that any delays in this case could result in the damaged retaining wall failing completely.



SWORN
At *Bunbury* this *-6th* day

of November 2015 in the presence of

G. Jell

.....
Registrar/Justice of the Peace/other authorized witness

A. Laughton

.....
Deponent

Each page is to be dated and signed by the person making the affidavit and the witness.

Tick [✓] appropriate box

| | | | | |
|---------------------|---|---------------|------|--------------------------------------|
| Lodged by | <input checked="" type="checkbox"/> Claimant or claimant's lawyer <input type="checkbox"/> Defendant or defendant's lawyer <input type="checkbox"/> Other | | | |
| Address for service | 11b Keble Heights, College Grove, Bunbury, 6230 | | | |
| Contact details | Telephone: 0409 931 559 | Lawyer's ref: | Fax: | E mail: laughton.andrew@gmail.com |