

Liability limited by a scheme approved under Professional Standards Legislation

15 January 2015

Mr Andrew Laughton  
11B Keble Heights  
Bunbury  
WA 6230

Dear Mr Laughton

**RE: Retaining Wall**

Please find enclosed a sealed copy of Form 21, Statement of Defence to General Procedure Claim filed at the Bunbury Court House today.

Kind regards

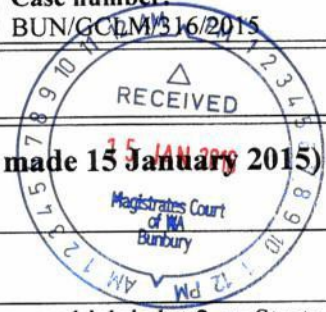


Ian Morison

PS I have made a  
number of changes -  
Ian Morison

**MAGISTRATES COURT of WESTERN AUSTRALIA  
(CIVIL JURISDICTION)  
STATEMENT OF DEFENCE TO GENERAL PROCEDURE CLAIM  
FORM 21**

<b>Registry:</b> Bunbury	<b>Case number:</b> BUN/GC/M/316/2015
<b>Claimant</b>	<b>Andrew Laughton</b>
<b>Defendant</b>	<b>Sharyl Marsh and (by order of Magistrate Scanlan made 15 January 2015) James Glynn Marsh</b>



**Summary of the facts relevant to the defence:**

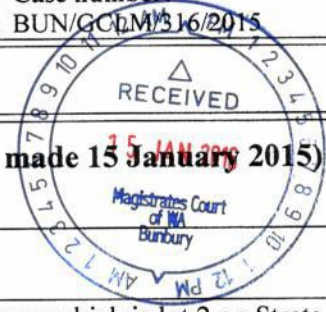
1. The Claimant is the registered proprietor 11B Keble Heights, College Grove which is lot 2 on Strata Plan 29201 ("the Claimant's property").
2. The Claimant's property was transferred to the Claimant on 11 March 2011.
3. The Defendants are the registered proprietors of 14 Trinity Rise College Grove being lot 26 on plan 18152 ("the Defendants' property").
4. The Defendants' property was transferred to them on 14 April 2003.
5. Part of the eastern boundary of the Claimant's property has a common boundary with part of the western boundary of the Defendants' property ("common boundary").
6. The natural ground level slopes down from east to west across Defendants' property down to the Claimant's property.
7. When College Grove was developed the Water Corporation built sewer mains throughout the development.
8. The sewer mains run through some of the properties in College Grove.
9. A sewer main runs through the Defendants' property ("sewer main").
10. The sewer main runs in a north south direction near the west boundary of the Defendants' property.
11. The Water Corporation holds an easement over the Defendants' property to protect its interests in and arising from the sewer main.
12. On 24 January 1996 the land partly bordering on the western boundary of the Defendants' property ("strata land") was subdivided into a two lot strata subdivision.
13. The Claimant's property is one of the two strata lots comprising the strata land.
14. Prior to the registration of the strata plan the strata developer, in order to make the strata land level, cut into the downward slope from the Defendants' property to the strata land at the common boundary and constructed a retaining wall ("retaining wall") along a length which comprises the common boundary and the common boundary between the strata land and the neighbouring property south of the Defendants' property ("southern neighbour's boundary").
15. The top of the retaining wall was built, and is, lower than the natural ground level at the common boundary alternatively the ground level at the time the sewer main was installed.
16. The retaining wall was built defectively and is defective in that it lacked proper support and reinforcement behind the wall.
17. The retaining wall was not constructed in accordance with an engineer's detail prepared for the retaining wall.
18. The retaining wall was not constructed in accordance with the building permit issued for the retaining wall.
19. The developer constructed a fence upon the retaining wall along the common boundary ("fence").
20. Further and in the alternative the fence retains the natural ground level above the retaining wall alternatively the ground level at the time the sewer main was installed.
21. The Claimant or a prior occupant of the Claimant's property tied a tree to the retaining wall.
22. Before September 2012 the Defendants' constructed two retaining walls on their property.
23. The base of the Defendants' retaining wall closest to the common boundary is at the natural ground level alternatively the ground level at the time the sewer main was installed.
24. The Defendants' retaining wall was built in accordance with approved plans and an engineer's detail.
25. The Defendants' retaining wall was built in accordance with a building permit issued for it, and was approved by the City of Bunbury.
26. In about September 2012, after a storm, the retaining wall moved by leaning toward the Claimant's

*Jan Morrison*

15/1/16

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<b>Defendant</b>	<b>Sharyl Marsh and (by order of Magistrate Scanlan made 15 January 2015) James Glynn Marsh</b>



**Summary of the facts relevant to the defence:**

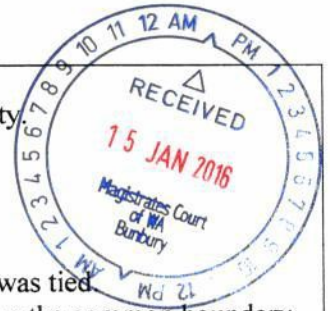
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14. Prior to the registration of the strata plan the strata developer, in order to make the strata land level, cut into the downward slope from the Defendants' property to the strata land at the common boundary and constructed a retaining wall ("retaining wall") along a length which comprises the common boundary and the common boundary between the strata land and the neighbouring property south of the Defendants' property ("southern neighbour's boundary").
15. The top of the retaining wall was built, and is, lower than the natural ground level at the common boundary alternatively the ground level at the time the sewer main was installed.
16. The retaining wall was built defectively and is defective in that it lacked proper support and reinforcement behind the wall.
17. The retaining wall was not constructed in accordance with an engineer's detail prepared for the retaining wall.
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19. The developer constructed a fence upon the retaining wall along the common boundary ("fence").
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21. The Claimant or a prior occupant of the Claimant's property tied a tree to the retaining wall.
22. Before September 2012 the Defendants' constructed two retaining walls on their property.
23. The base of the Defendants' retaining wall closest to the common boundary is at the natural ground level alternatively the ground level at the time the sewer main was installed.
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25. The Defendants' retaining wall was built in accordance with a building permit issued for it, and was approved by the City of Bunbury.
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*Jan Morrison*

15/1/16

property.

28. Some of the sand retained by the retaining wall fell onto the Claimant's property.
29. At or at around the same time the fence broke.
30. Some of the fence fell onto the Claimant's property.
31. The movement of the retaining wall was caused by:
  - (a) The defective state of the retaining wall;
  - (b) Further and alternatively the movement of the tree to which the retaining wall was tied.
32. The Defendants' agreed to pay half of the cost of replacement of the fence along the common boundary.
33. On 2 December 2014 the City of Bunbury issued to the Claimant a building permit for a retaining wall along the common boundary and the southern neighbour's boundary.
34. The Claimant had applied for, and the City of Bunbury had declined, to issue a building permit for a retaining wall confined to the common boundary.



Legal basis of the defence:

1. The Defendants did not build up soil against the boundary fence above the natural ground level alternatively the ground level at the time the sewer main was installed.
2. The soil against the boundary fence was at the natural ground level alternatively the ground level at the time the sewer main was installed.
3. The top of the retaining wall built by the developer of the Claimant's property is below the natural ground level alternatively the ground level at the time the sewer main was installed, and the retaining wall is defective.
4. In building a retaining wall which was too low, and in building a defective retaining wall, the Claimant's predecessor in title withdrew support of the Defendants' property.

The basic contentions of the party:

1. The Claimant in this action seeks to make the Defendants pay for the construction of a new retaining wall extending along the common boundary and the southern neighbour's boundary.
2. Alternatively the Claimant seeks to make the Defendants liable for construction of a new retaining wall extending along the common boundary.
3. The Claimant claims that the top of the retaining wall is the natural ground level.
4. The Defendant denies that and says the top of the retaining wall is below the natural ground level alternatively above the ground level at the time the sewer main was constructed.
5. The Claimant claims that the soil against the fence on the Marsh's side of the Marsh's property is a surcharge above the natural ground level.
6. The Claimant claims that the surcharge caused the fence to lean over.
7. Further the Claimant says the leaning over of the fence caused to the retaining wall to lean over.
8. The Claimant admits the retaining wall is defective.
9. The Claimant wants the Defendants to maintain at the common boundary a soil level at the height of the retaining wall.
10. The Claimant says it is impossible to raise the level of the retaining wall.
11. The Claimant says that is because of the defective state of the retaining wall.
12. The Claimant says the defective state of the retaining wall is irrelevant because the retaining wall would not have leaned over except that the fence leaned over and took the retaining wall with it.
13. The Claimant says the movement of the tree would have contributed to the retaining wall leaning over but to a negligible extent.
14. The Defendants say it was the movement of the tree which caused the retaining wall to lean over, and further the fence to break.
15. The Defendants say the strata developer withdraw the natural support of the Defendants' property at the common boundary alternatively the support of the Defendants' property at the level it was after the sewer main was built, by building a retaining wall lower than the natural ground level alternatively lower than the level of the ground at the common boundary after the sewer main was built.
16. The Defendants say the strata developer withdraw the natural support of the Defendants' property at the common boundary by building a defective retaining wall.
17. The Defendants say the level of the soil against the fence on the Marsh's side is the natural ground level alternatively the ground level after the sewer main was built.
18. The Defendants say that if the Claimant establishes the Defendants' liability, the Claimant's loss and damage is confined to the cost of building a retaining wall along the common boundary.

*San Morrison* 15/1/16

Details of anyone who the party alleges is liable for the claim and the grounds upon which the party so alleges:

None



Date: 15 January 2016 Defendant or lawyer: Ian Morison  
Morison Legal  
Please Turn Over

Sufficient copies of this form must be lodged to enable service by you on the claimant in accordance with the Magistrates Court (Civil Proceedings) Rules 2005.

Date: 15 January 2016 Defendant or lawyer: Ian Morison  
Morison Legal

Lodged by	<input checked="" type="checkbox"/> Defendant or lawyer <input type="checkbox"/> Other			
Address for service	Morison Legal 24 Arthur Street Bunbury			
Contact details	Telephone: 9792 4693	Lawyer's ref: Ian Morison	Fax: 9791 7493	E mail: ian@morisonlegal.com.au

If more than one page is used to complete the Statement of Defence then each page must be signed and dated.