

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

Registry: **3 Stephen street Bunbury, WA, 6230**

Case number:
BUN/GCLM/316/2015

Phone:

Fax:

Claimant

Andrew Laughton

Defendant

Sharyl Marsh and James Glynn Marsh

I Andrew Laughton of 11b Keble Heights, College Grove, Bunbury, Electrician
(occupation)
having been duly affirmed say on affirm the following:

1. I am the Claimant (*description of party*) in this case.
2. This affidavit is a written submission for the court hearing on 16th – 17th August 2016 as ordered by the court on 2nd March, 2016. Submitted on 30th March, 2016
3. Statement of the issues of fact and law that the Claimant contends will need to be determined at the trial.
 - 3.1. That 700mm of sand was allowed to build up and remain against the boundry fence.
 - 3.2. That the super six boundry fence was never designed or intended to retain any soil or sand.
 - 3.3. That the boundry fence failed as a direct result of the Marsh's negligence.
 - 3.4. That 700mm of overburden was on the boundary retaining wall.
 - 3.5. That the 700mm of overburden, and / or the bobcat used in the constuction of the Marshes new retaining walls damaged the boundry retaining wall.
 - 3.6. That the Marshes are liable for all of the costs caused by their actions or negligence.
4. How each allegation of fact will be proved.
 - 4.1. To prove 700mm of sand was placed against the boundary fence the following evidence is offered;
 - a) Photos of the affected area.
 - b) Structerre engineering report confirming the above statement.
 - c) WML engineering report confirming the above statement.
 - d) Expert witness from WML.
 - e) Emails regarding removal of excess sand.
 - 4.2. To prove that the Super Six boundry fence was never designed to retain any soil or sand.
 - a) WML engineering report confirming the above statement
 - b) Expert witness from WML
 - c) Product guild for this type of fence found at
<http://www.jameshardie.com.au/products/fencing/hardie-fence-easylock-system/> and



G. J. Regnier

[Signature]

<http://www.jameshardie.com.au/uploads/files/HardieFence%20Install%20Guide.pdf>
PDF page 8, numbered page 6, very last paragraph under heading "Retaining walls"

- 4.3. To prove that the boundary fence failed as a direct result of the Marshes negligence.
a) Same evidence as point 4.1 above.
- 4.4. To prove that 700mm of overburden was placed on the retaining wall.
a) Same evidence as point 4.1 above.
- 4.5. To prove that the 700mm of overburden damaged the retaining wall.
a) Same evidence as point 4.1 above.
- 4.6. That the Marshes are liable for all of the costs caused by their actions or negligence.
a) Civil Liability's Act 2002.
http://www.austlii.edu.au/au/legis/wa/consol_act/cla2002161/
b) <http://www.austlii.edu.au/au/journals/UWALawRw/1968/6.pdf>
5. *Statement of the issues of fact and law that the Defence contends will need to be determined at the trial.*
- 5.1. *Did the Claimants predecessor undermine the Defendants property or did the Defendant's surcharge the Claimants property ?*
a) The Claimants property was excavated before the house on 11b Keble Heights was built in 1994.
- 5.2. *Was the Claimants wall defective ?*
a) If the defence assumed the retaining wall was defective before it was damaged then they should have a greater responsibility to avoid damaging it in the first place.
b) Given that the boundary retaining wall has not yet totally collapsed, it is reasonable to assume that this retaining wall was built stronger than the design minimum.
- 5.3. *What is the cause of the loss and damage ?*
a) As per the Claimants form 32, Listing Conference Memorandum, the 700mm of overburden damaged both the boundary retaining wall and the boundary retaining fence.
- 5.4. *What was the natural ground contour ?*
a) The original ground contour is not relevant to this case as the "Limitation Act 2005", or the statute of liability's expired 6 years after it was built in 1994, or in the year 2000, or over 15 years ago.
6. Invitation to admit facts. As of the date of this document, no response has been received to my "Invitation to admit facts", form 37, submitted on 22 February 2016.
- 6.1. Admitting to any of these facts may reduce the overall cost, and the necessity of having an expert witness present at the trial.
7. Missing documents. As of the date of this affidavit, the following documents have been requested, but not yet received or sighted, and this document may be amended if and when they are received;
- 7.1. On request for documents dated 25 January, 2016.
a) Points 9 & 10. An explanation as to why the Marshes new retaining wall, which appears not to meet building regulations, was given building approval. It is possible that no such document exists.

G. J. Shell
Magistrate

AMS.



2

- b) Point 11. The weight of the bobcat used to build the new retaining wall was requested, but never received. This weight was guesstimated based on the most likly model used, and the engineering report may need to be updated once this has been received.
 - c) Point 17. A copy of any building permits or drawings showing contour lines on or near the Marshes property.
 - d) Point 18. A list of building permits issued to 14 Trinity Rise.
- 7.2. Email request for documents on 26 February, 2016, refering to "Listing conference memorandum" dated 17th February, 2016.
- a) Point 8. Email from the city of Bunbury to Sharyl Marsh dated 28th May 2015.
 - b) Point 11. Unsigned letter from Agiuras to James Marsh dated 7th May, 2015.
- 7.3. Email request on 26 Feb 2016 for a document for the defence.
- a) A hand written letter from Defendant to WA Building commision.
8. Payment for expenses incurred due to the failed default judgment. I would like the statement to support the default judgment ruling submitted on 5th January, 2016 to be considered, highlighting the following points;
- 8.1. Point 19. **The deadline to appeal the default judgement was missed by 10 days.**
 - 8.2. The defence were fully aware that the delays were costing me about \$500 per week in mortgage payments, and the only reason given that the defence missed these deadlines is because they were busy.
 - 8.3. The deadline to submit any documents defending the case was **missed by 42 days**, and the reason for the requested default judgement.
 - 8.4. The deadline to submit the list of documents available was **missed by 40 days.**
9. Attached as an apendix is an affidavit, updated on 30 March 2016 is to define the costs incurred by Andrew Laughton because of the damage caused to the boundary retaining wall between 11b Keble Heights and 14 Trinity Rise, College Grove by the Marshes

AFFIRMED

At Bunbury this 30th day of March 2016 in the presence of

.....
J. Gell
 Registrar/Justice of the Peace/other authorised witness

.....
Andrew 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	11 b Keble Heights, Bunbury. 6230.			
Contact details	Telephone: 0409 931 559	Lawyer's ref:	Fax:	E mail: llaughton.andrew@gmail.com

