

6. Appeal notice (r. 51(1))

District Court of Western Australia Held at Perth ¹		Appeal No:
		APPEAL NOTICE
Parties	Andrew Laughton	Appellant
	Sharyl Marsh and James Glynn Marsh	Respondent
PRIMARY COURT'S DECISION		
Primary court	3 Stephen street Bunbury, WA, 6230	
Case number	BUN/GCLM/316/2015	
Parties	Andrew Laughton Vs Sharyl and James Marsh	
Date of decision	17th August 2016	
Judicial officer	Magistrate Pontifex	
Decision details ²	Judgment against claimant.due to lack of evidance.	
APPEAL DETAILS		
Notice of appeal	The appellant appeals to the District Court against the above decision.	
Grounds of appeal ³	1. As per Apendix marked "General form of Affidavit" dated 19 December 2016.	
Acts that allows appeal ⁴	<i>Magistrates Court (Civil Proceedings) Act 2004 (WA)</i> Section: 40	
Notice to the respondent ⁵	If you want to take part in this appeal you must file a Form 8 (attached) under the <i>District Court Rules 2005</i> within 21 days after the date on which you are served with this notice and serve it on the appellant. If you file a Form 8 you must attend a directions hearing at the time and place stated below.	
Last date for appealing	Last date: Is an extension of time needed? Yes No	


Notes to Form 6 —

1. If not held at Perth, state the location of the relevant registry.
2. Examples:
 - Judgment against the defendant for \$40 000.
 - Dismissal of claim to recover possession of real property.
3. Set out the grounds in numbered paragraphs.
4. State the short title of the Act under which the appeal is being made.
5. A copy of Form 8 (Notice of respondent's intention) must be attached to this form when it is served on the respondent.
6. The Court will complete this row when the appeal notice is filed.

Date of filing	
Directions hearing ⁶	Date: Time: Place:
APPELLANT'S SERVICE DETAILS	
Geographical address of appellant (Must be provided unless otherwise ordered by the Court: see <i>Rules of the Supreme Court 1971</i> Order 71A rule 2 and <i>District Court Rules 2005</i> rule 22C)	PO Box 1796 Port Lincoln, S.A. 5606. No fixed address. Please contact me if anything needs to be sent.
Name of lawyer (If one has been appointed)	Self Represented
Postal address for service of documents (Must be provided)	PO Box 1796 Port Lincoln, S.A. 5606. No fixed address. Please contact me if anything needs to be sent.
Email address (Optional — if provided, may be used for service of documents)	Laughton.andrew@gmail.com
Fax number (Optional — if provided, may be used for service of documents)	
Telephone number	0409 931 559
Reference	

Notes to Form 6 —

1. If not held at Perth, state the location of the relevant registry.
2. Examples:
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 Signature of appellant or lawyer	Appellant/Appellant's lawyer	Date: 20 Dec 2016
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Notes to Form 6 —

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 - Dismissal of claim to recover possession of real property.
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1.1. MAGISTRATES COURT of WESTERN AUSTRALIA
1.2. (CIVIL JURISDICTION)
GENERAL FORM OF AFFIDAVIT
FORM 2

2.1. Registry: 3 Stephen street Bunbury, WA, 6230 2.2. Phone: Fax:	2.3. Case number: BUN/GCLM/316/2015
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Claimant	2.4. Andrew Laughton
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Defendant	2.5. Sharyl Marsh and James Glynn Marsh
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I Andrew Laughton of No fixed address, but formally of 11b Keble Heights, Bunbury.

(full name and address) (occupation) Electrician

(* Delete as applicable)

having been duly affirmed say on affirm the following:

1. I am the Claimant (*description of party*) in this case.

2. This affidavit submitted on 20th December 2016 is as an appendix to appeal the decision handed down by the court on 17 August 2016 for the following reasons of law and fairness.

3. Issues of Law.

3.1. Under the MAGISTRATES COURT ACT 2004 - Sect 30.

http://www.austlii.edu.au/au/legis/wa/consol_act/mca2004214/s30.html

MAGISTRATES COURT ACT 2004 - SECT 30

30. Court's duties in respect of self-represented parties

In a case where a party is self-represented, the Court must inform the party of —

(a) the need, when cross-examining a witness called by another party, to ask the witness about any evidence of which the witness or the other party has not previously had notice that the self-represented party —

(i) intends to adduce; and

(ii) intends to allege will contradict the witness's evidence;

and

(b) the consequences of not doing so.

3.2. I was not given an opportunity to object to material being presented as evidence, nor was I aware that I had the right to object, and I did not know the consequences of not doing so.

4. **My statement of fact and law that was submitted on 8th August 2016** was totally ignored, and no reason was ever given for it to be ignored.

4.1. This is arguably the most important document in any court proceedings, and I feel that at least some reason should be given as to why it was ignored.

4.2. Instead a much earlier version of this same document submitted to the court on 22 February 2016 was used, and while I finally received a notice of what the defense was going to be on 11th August 2016, I believed this was obsolete.

4.3. **I did not know what the defense was going to be before I walked into the court room on 16th August 2016, and I did not know my statement of fact and law was going to be ignored.**

ACL

5. Plan showing contours of 14 Trinity rise.

- 5.1. This document was not listed in the list of documents provided by the defense on 19th January 2016.
- 5.2. This document, and any others like it was requested by me on 25/1/2016. Reminders were given by email and other documents submitted to the court including a final request for documents on 8th August 2016, bullet point 4.6.
- 5.3. A copy of this document has never been provided, nor has any opportunity been given to examine it.
- 5.4. This document was submitted as evidence in court without me having the ability to read it, or the opportunity to object to it.
- 5.5. This document has the potential to determine the ground level at an unknown point in time, and is very important evidence.
- 5.6. If I had of know of its existence I would have been able to get a relative height reference for the known contours on the boundry retaining wall.

6. Folder of 48 documents from the city of Bunbury.

- 6.1. I was given access to this folder between 9:45 am and 9:50 am on the morning of 16th August, when the hearing itself started at 10 am.
- 6.2. 10 or 15 min is not sufficient time to scan these documents, let alone read and consider if they are important.
- 6.3. As of the date of this appeal, I still do not know if I had the ability to delay the hearing or to object to these literally last minute documents.
- 6.4. As of the date of this appeal, I have still been denied access to these documents.

7. Folder of documents thought to be from the water board.

- 7.1. I was given no access at all to this folder, but believe it to be correspondence from the water board.
- 7.2. As of the date of this appeal, I still do not know if I had the ability to delay the hearing or to object to these literally last minute documents.

8. Plans, Diagrams, correspondence and emails held by Structerre Consulting Engineers.

- 8.1. I have a pink A4 paper dated 10/08/2016 listing plans, diagrams, correspondence and emails held by Structerre Engineering. This has never been received, but may have been in the folder I was not given access to.
- 8.2. This potentially holds critical information about who accepted responsibility for the height of the new retaining walls at 14 Trinity Rise, and for not complying with the building regulations, which in turn has resulted in the damage and this court case.

9. Various Plans and Pictures of the property situated at 14 Trinity Rise College Grove.

- 9.1. I have an extra pink A4 paper dated 10/08/2016 listing "Various plans and pictures of the property situated at 14 Trinity Rise". This has never been received, but may have been in the folder I was not given access to.
- 9.2. This has the potential to hold critical information about the ground level at the boundary retaining wall.

A-2

10. **Incorrect statements made under oath by Sharyl Marsh.**

- 10.1. The statement that the Marshes dug a hole behind the retaining wall, all the way to the base of the retaining wall and found no evidence of backing blocks.
- a) While it is theoretically possible to exploit the gap created by the face of the retaining wall moving away from the backing blocks, this gap would be very small, possibly enough to force a flat shovel blade down. However it is very doubtful that this would extend all the way to the base as claimed, and it would be impossible to do without finding any evidence of backing blocks. This needs to be confirmed by an independent person.
 - b) Access to confirm this detail has been denied.
 - c) I did not know photos of the top of this hole existed before the hearing, and did not know I could object to them.
 - d) This is relevant because it implies that the retaining wall was not built to the appropriate standards, which I believe is false.
- 10.2. The statement was that the boundary retaining wall in question did not extend to the North between 12 Trinity Rise and 14 Trinity rise, and instead 12 Trinity Rise had a raised garden bed.
- a) This will be very easy to prove false with photos or inspection as it has not changed for over 20 years, and at the Northern end of the retaining wall, where the ground level actually goes below the height of the retaining wall, the retaining wall is visible to the Marshes every time they enter their driveway and they need to turn to avoid hitting it every time they leave their driveway.
 - b) This is relevant for the following reasons:
 - As can be seen by both the building permit and photos submitted as evidence, the retaining wall extends from the Southern boundary of 13 Keble Heights, past 15 Keble Heights, and extends along the entire length of 14 Trinity Rise to Trinity Rise itself.
 - Along 13 Keble Heights and most of 15 Keble Heights the ground level is equal to the height of the boundary retaining wall.
 - Close to 14 Trinity Rise the ground level raises to 700mm above the height of the retaining wall, and this level continues through to the driveway on 14 Trinity Rise.
 - The ground level along the majority of the boundary retaining wall between 12 Trinity Rise and 14 Trinity Rise is also 700mm higher, and a post and rail retaining wall has been erected on the sewerage easement, against building regulations, to help stop this extra 700mm of sand from damaging the fence.
 - I believe this false statement severely damaged my claim by making it seem that 12 Trinity Rise was built much higher than it is, and that the raised ground level was the original ground level.

11. **I was never given the opportunity to interview my primary witness.**

- 11.1. Before entering the court I was expecting to be able to present my side of the story, the defence to be able to present their side of the story, for us both to be able to clarify any possibly misleading information given.
- 11.2. By denying me the opportunity to interview my primary witness, myself, I was denied the ability to present my side of the story, or to present any evidence to back it up.
- 11.3. The defence was given the opportunity to interview everybody.

A.L.

12. **Sewerage manhole.**

12.1. The Courts decision depended heavily on a **confidential** email from the water board to myself stating that they did not think the height of the sewerage manhole had changed from original. **It made no reference to the ground level at any point in time, and only applied to the Manhole itself.** It also claimed that I could verify this at any time, however it did not provide me with any permission to enter my neighbors land, and I strongly doubt they have the authority to give this permission. For your convenience that email from 11/09/2015 is copied as the following point.

12.2.
Mr Laughton,

*We have checked our infrastructure on the easement at 14 Trinity Rise and are confident that it has not moved or been raised since 1991.
This also reflects the information on Buildernet and the fact there are no updated ascons. When installed, the top of the man hole was 39.94 AHD, should you wish to survey the height, you are welcome do so.*

Regards,

Dave Taylor

Civil Team Leader

South West Region

Water Corporation

T: (08) 9725 5113

Dave.Taylor@watercorporation.com.au

www.watercorporation.com.au

- 12.3. Any admission on my part about this email is only that Dave Taylor appears to have written it, not that it was correct as a point of fact.
- 12.4. As can be seen by photos submitted as evidence, this manhole is at a different height to the other sewerage reference points, and even if the manhole did have a reference to ground level, the other sewerage points do not.
- 12.5. As can be seen by photos submitted as evidence, the Manhole in question is about 10 to 15 Meters away from 11 Keble Heights.
- 12.6. **Any assumptions made by the court about the ground level are most likely incorrect as a point of fact.**

13. I cannot afford a copy of the entire transcript, the points above are taken from notes made shortly after the trial and from memory and I believe them to be accurate. I have received a copy of the decision itself and there are several errors of fact, law and fairness as listed in the items below.

14. Page 90, second last paragraph.

- 14.1. These statements make the assumption that the ground level was not raised to the height(s) of the sewerage infrastructure.
- 14.2. The statements also assume that the ground level at the boundary was not raised to the height(s) of the sewerage infrastructure.
- The contours show sloping ground, with a fall of about 200mm for every Meter.
 - The photos given as evidence show level ground.

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AT

15. Page 90. Last paragraph.
- 15.1. the contours at that point was 10 meters high and the retaining wall was only 1.7 meters high.
- a) This paragraph does not make sense.
 - b) Did the court expect the retaining wall to be 10 meters tall ?
 - c) This shows a basic lack of understanding of what they were looking at.
- 15.2. It is not common ground that the retaining wall was built too low. This statement conflicts with the first paragraph on page 92, and also the engineering report.
16. Page 94, paragraph 4, 5 & 6
- 16.1. These paragraphs assume that no engineering assessment needed to take place before constructing the Marshes new retaining walls. This is wrong as a matter of law. Also referred to on page 91, paragraph 1.
- a) Building Act 2011, section 77. Other land not to be adversely affected without consent, court order or other authority.
 - b) The eves of the house at 11b Keble Heights were level with the new ground level on the Marshes property, and the roof at one point is within 2 Meters of the boundary fence. It is not reasonable that the Marshes did not know there was a retaining wall between the roof and the boundary fence.
 - c) The only unknown would have been the height of the retaining wall, and this would be very easy to determine by looking over the fence. The 700 mm difference between the new ground level and the the top of the retaining wall is obvious, and should have been known about.
- 16.2. The retaining wall on the abutting property has its foundation 500mm deeper than the Marshes new retaining wall, this by itself should have raised awareness.
17. Page 96. paragraph 3.
- 17.1. Allowable costs for some reason allow for a quote to install reinforced concrete, **but not for the reinforcement bar itself**, nor for any bracing to prevent further damage, nor to relocate the soakwell displaced by the new foundations.
- 17.2. The amount allowed for to replace the damaged boundary fence "averaged" costs between two different dates by the same company to do the same work. Unfortunately inflation only ever goes up over time, never down.
- 17.3. The court did not allow for the cost of the engineering reports, or the witness costs, costs of attending the court from interstate, or even the costs imposed by the court itself in court charges.
18. Page 97, paragraph 4 regarding the default judgment.
- 18.1. There was an agument using a previous case as a precedent.
- a) The previous case involved the court aproving a default decision dispite irregularatys. This decision effectivly introduced an extra requirement, which in that case was not met. It did not effectivly nullify any laws.
 - b) In this case, that extra requirement was met, but the original requirement appears not to have been considered, effectivly nullifying any laws about deadlines if there is a plausible case.
- 18.2. The default judgment failed because "The defendant was busy". Not because someone died, or was in hospital, but because they were "busy".
- a) Some paperwork was **40 days overdue**, some was **42 days overdue**, and they **missed the deadline to appeal the default decision by 10 days**.
 - b) I would suggest to the court that them being "busy" should be at their own expense, not at mine.

A-L

M

19. I assumed the court would have the general knowledge to be able to read the evidence put before it, or to at least ask if they did not understand what they were looking at. Given the statements made in the judgement an explanation about contour lines appears to be needed.
- 19.1. Contour lines show the level of the ground at a given height.
- If someone is moving along a contour line, they are traveling at the same height or level.
 - If someone is crossing contour lines at an angle, they are either moving up or down, depending on the direction of travel.
- 19.2. The contour lines drawn up over 20 years ago for the boundary retaining wall simply picked a convenient reference point and gave it a convenient integer value high enough not to need to show negative numbers.
- Any other values are relative to this reference point.
- 19.3. Any sewerage point references need to be relative to each other over a wide area, and so the most convenient reference point happens to be expressed as AHD (Australian Height Datum).
- 19.4. I do not know what reference any contours shown on 14 Trinity Rise uses, as I have yet to be given access to this document.
- 19.5. I do not know what reference any contours drawn for the new retaining wall at 14 Trinity Rise uses as I have yet to be given access to this document.
- 19.6. It is possible to convert any contour lines to any reference by simply finding the height the reference points are to each other, but this cannot be done with no access to the documents to find their reference points.

AFFIRMED

At Albany this Thursday the 20th day

of December 2016

in the presence of

Geoffrey Gordon McNeill JP

Justice of the Peace

Registrar/Justice of the Peace/other authorised witness
Western Australian Reg. No: 29418


Deponent

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

Tick [ü] 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	laughton.andrew@gmail.com			
Contact details	Telephone: 0409 931 559	Lawyer's ref:	Fax:	E mail: laughton.andrew@gmail.com

as at 01/09/2008