

SUPREME COURT OF WESTERN AUSTRALIA		NO.: CACV 9 OF 2019
COURT OF APPEAL		Appellant's submissions
Parties to the Appeal	Andrew Laughton	Appellant
	Sharyl Marsh	First Respondent
	James Glynn Marsh	Second Respondent
Person making affidavit	Andrew Laughton	
Date Made	26 February 2019	
Purpose	Appellant's submissions	
Filed by	Andrew Laughton	
Index	Contents	Page
	1. Affidavit of Andrew Laughton	2
[Party's] address for service		
Firm name		
Street Address	11b Keble Heights, College Grove, Bunbury. 6230	
Telephone no	0409 931 559	Fax No
Reference	Laughton vs Marsh	
Email address	Laughton.andrew@gmail.com	

I, Andrew Laughton, of 11b Keble Heights, Bunbury, Electrician, *affirm in accordance with the Oaths, Affidavits and Statutory Declarations Act 2005*] as follows —

1. This relates to the following Western Australian courts;
 - 1.1. Magistrates court case MC/CIV/BUN/GCLM/316/2015
 - 1.2. Magistrate Bailiff reference: 180544
 - 1.3. Bunbury District court appeal 1 of 2017.
 - 1.4. Court of Appeal CACV 9 OF 2019
 - 1.5. All of the following refer to the transcript of the hearing on 21 November 2018.

2. That I had not complied with the order made by Registrar Melville on 30 October 2017 as it is written is wrong in law.
 - 2.1. The order did not specify which specific part of the court system to pay money to.
 - 2.2. I was given the option of having my house seized by the Bailiffs office from the Magistrates court, or to pay this \$13,000 to the District court.
 - 2.3. I made it clear that I would not be able to pay both the Magistrates court and the District court at the hearing on 13 July 2017.
 - 2.4. That not only the letter of the Law was followed, but also the spirit of the law in that I had demonstrated my ability to pay any costs awarded against me.
 - 2.5. The District court hearing to deny hearing the appeal was held on 13 July 2017.
 - 2.6. 23 August 2017, appeal to suspend payment to the Magistrates court is dismissed.
 - 2.7. 11 September 2017, Bailiffs Office had only received \$10,000, with \$15,371.30 remaining, and had issued notice of seizure of property and potential land seizure. At a later date they had instructions to seize the land if I did not pay this amount in full.

3. Transcript page 16 and 17, the assumption that I had received a copy of the order made by Registrar Harman was wrong in fact.
 - 3.1. This is why the one of the requested outcomes of the appeal was for a written copy of this decision.
 - 3.2. Registrar Harman was the registrar that conducted the directions hearing, and when asked about paperwork regarding the decision he informed me that it was an “Oral decision”, and that there was no paperwork.

4. Transcript page 18, 19, 45 and 46, the assumption that I had not paid the \$13,000 to a court was wrong in fact.
 - 4.1. As per my affidavit dated 13 September 2018
 - 4.2. This affidavit has not been included at the directions of the Court of Appeal Registrar.

5. Transcript page 25, 29, 34 and 35. The assumption that the affidavit made on 13 September 2018 did not exist is wrong in fact.
 - 5.1. Original copies of this affidavit were sent by;
 - a) Normal post to the District Court in Perth.
 - b) By registered post to Ian Morrison. Tracking number 518642850018
 - 5.2. A scanned copy was also sent by email to Ian Morrison on 13 September at 15:20.

- 5.3. A scanned copy was also sent to Max Owens on Mon, 17 Sep, at 18:02
 - 5.4. If the eCourts Portal allowed PDF files to be lodged this would have been done as well on the same date.
 - 5.5. During the hearing on 21 November 2018 this document was unavailable to the Judge for unknown reasons.
6. Transcript page 30. The assumption that I have deliberately caused delays is wrong in fact.
 7. Transcript page 30, paragraph 1 referring to the settlement offer being to cause delay, is wrong in fact.
 - 7.1. Any settlement offer by definition is an attempt to settle, not to delay proceedings.
 - 7.2. This settlement offer acknowledges that the financial and mental stress of the legal process is not worth the additional \$20,000 + that I would win if I was to have a fair trial.
 8. Transcript page 30, paragraph 1 referring to the settlement offer being to cause delay, is wrong in fact and law.
 - 8.1. The defense is aware that I know about the BUILDING ACT 2011 - SECT 89, copied here for convenience;

BUILDING ACT 2011 - SECT 89

89 . Obligation to maintain, repair encroachments, party walls, shared boundary retaining walls

(1) Unless otherwise agreed, each owner of land from which part of a building or incidental structure encroaches into, onto, or over, other land, is responsible for the costs of maintenance and repair of the encroaching part.

(2) Unless otherwise agreed, if a party wall or a boundary retaining wall that is wholly or partly on the boundary of land needs maintenance or repair each owner of land on either side of the wall is liable to join in or contribute in equal proportions to the maintenance and repair of the wall.

- 8.2. They are also aware that the most the Marshes have ever offered is about 25% of the cost to repair the diving fence that was damaged by having 700mm of sand stacked against it.
 - 8.3. They are also aware that regardless of the outcome of this hearing, there will be another hearing to recover half of the cost of the repairs to the boundary retaining wall.
 - a) The difference between winning or losing this appeal is the difference between recovering all the taxation I have already paid, plus my expenses, or only recovering the expenses for the new hearing.
 - 8.4. This is an abuse of the legal system.
9. Transcript page 30 and 42, that the assumption that the court would have records of court payments relating to this same case is unreasonable is, I believe, wrong in fact.
 - 9.1. To a lay person such as myself, the Court system includes every part of the court, and for one section of the court not to have easy access to another section of the court involving exactly the same case and exactly the same people is very surprising.
 - 9.2. I do not have, and have never had access to the court records and I had no way of foreseeing this problem.

10. Transcript page 33, that the assumption that I did not try to make a second payment to the District Court is wrong in fact.
 - 10.1. I was expecting communication from the court regarding the 24 May 2018 hearing. After a delay to allow it to arrive I tried to chase it up.
 - 10.2. On 11 and 12 June 2018 I contacted the court attempting to pay a filing fee for my form 9 that was submitted on 9 August 2017.
 - 10.3. On 13 June 2018 I contacted the court attempting to pay the \$13,000 security to the District court.
 - a) Tracy from the Bunbury court contacted the principle registrar in Perth, and rang me back telling me it was too late to make this payment.
 - 10.4. The first I knew that the court payments that I had made were not acceptable was after the court would accept those payments.
 - 10.5. This was well within 28 days of the 24 May 2018 decision.
 - 10.6. There was no “reference number of any sort given during this phone call, but I do have a recording.
11. Transcript page 37, 38 and 39, that the assumption that I had received a Chamber summons and an affidavit in support of it is wrong in fact.
12. Transcript page 39, that I could not have been misled or confused by the email I received on 23 May 2018 is wrong in fact.
 - 12.1. The Judge has explained that it does not mean what I thought it meant, but no-one has ever explained what it does mean.
13. Transcript page 40. The statement that I did not have any doubt about which court to pay the money to is wrong in fact.
 - 13.1. This is supported by my affidavit dated 9 November 2017.
14. Transcript page 44. The statement that I would have a file note is wrong in fact.
15. Transcript page 44. The statement that the proceedings will come to an end is wrong in fact.
16. This should be read in conjunction with my affidavit dated and sent on 13 September 2018, which was removed at the direction of the Court of Appeal registrar .
 - 16.1. Original copies of this affidavit were sent by;
 - a) Normal post to the District Court in Perth.
 - b) By registered post to Ian Morrison. Tracking number 518642850018.
 - 16.2. A scanned copy was also sent by email to Ian Morrison on 13 September at 15:20.
 - 16.3. A scanned copy was also sent by email to Max Owens on Mon, 17 Sep, 18:02
 - 16.4. If the eCourts Portal allowed PDF files to be lodged this would have been done as well on the 13 September.
 - 16.5. During the hearing on 21 November 2018 this document was apparently unavailable to the Judge for unknown reasons.
 - 16.6. This is not the first time the District Court did not have all their paperwork together.
 - a) Hearing on 25-05-2017 was postponed in part because they only had the transcript for one day of a two day hearing.
 - b) Hearing on 26-04-2018 was postponed due to their paperwork problems.

c) Hearing on 13-09-2018 I think was postponed due to their paperwork problems.

17. This 13 September 2018 affidavit states, as point 12, that \$13,000 had been paid to a court before the due date.

17.1. The following table shows the day and amounts that were paid.

17.2. The Bailiffs office sent me an SMS that it had been paid in full.

17.3. If the Baliffs office sent me an invoice, which I doubt, I do not have access to it at the moment.

29 Jun 18	-\$20.00	TRANSFER DEBIT	INTERNET BPAY Baycorp (WA) DOTAG 1805449
22 Jun 18	-\$20.00	TRANSFER DEBIT	INTERNET BPAY Baycorp (WA) DOTAG 1805449
22 Jun 18	-\$12,324.44	MISCELLANEOUS DEBIT	V9619 21/06 BAYCORP WA DOTAG PARRAMATTA 74564728172
15 Jun 18	-\$20.00	TRANSFER DEBIT	INTERNET BPAY Baycorp (WA) DOTAG 1805449
08 Jun 18	-\$20.00	TRANSFER DEBIT	INTERNET BPAY Baycorp (WA) DOTAG 1805449
01 Jun 18	-\$20.00	TRANSFER DEBIT	INTERNET BPAY Baycorp (WA) DOTAG 1805449
25 May 18	-\$20.00	TRANSFER DEBIT	INTERNET BPAY Baycorp (WA) DOTAG 1805449
18 May 18	-\$20.00	TRANSFER DEBIT	INTERNET BPAY Baycorp (WA) DOTAG 1805449
11 May 18	-\$20.00	TRANSFER DEBIT	INTERNET BPAY Baycorp (WA) DOTAG 1805449
04 May 18	-\$20.00	TRANSFER DEBIT	INTERNET BPAY Baycorp (WA) DOTAG 1805449
27 Apr 18	-\$20.00	TRANSFER DEBIT	INTERNET BPAY Baycorp (WA) DOTAG 1805449
20 Apr 18	-\$20.00	TRANSFER DEBIT	INTERNET BPAY Baycorp (WA) DOTAG 1805449
13 Apr 18	-\$20.00	TRANSFER DEBIT	INTERNET BPAY Baycorp (WA) DOTAG 1805449
06 Apr 18	-\$20.00	TRANSFER DEBIT	INTERNET BPAY Baycorp (WA) DOTAG 1805449
03 Apr 18	-\$20.00	TRANSFER DEBIT	INTERNET BPAY Baycorp (WA) DOTAG 1805449
23 Mar 18	-\$20.00	TRANSFER DEBIT	INTERNET BPAY Baycorp (WA) DOTAG 1805449
16 Mar 18	-\$20.00	TRANSFER DEBIT	INTERNET BPAY Baycorp (WA) DOTAG 1805449
09 Mar 18	-\$20.00	TRANSFER DEBIT	INTERNET BPAY Baycorp (WA) DOTAG 1805449
02 Mar 18	-\$30.00	TRANSFER DEBIT	INTERNET BPAY Baycorp (WA) DOTAG 1805449
23 Feb 18	-\$30.00	TRANSFER DEBIT	INTERNET BPAY Baycorp (WA) DOTAG 1805449
16 Feb 18	-\$30.00	TRANSFER DEBIT	INTERNET BPAY Baycorp (WA) DOTAG 1805449
09 Feb 18	-\$30.00	TRANSFER DEBIT	INTERNET BPAY Baycorp (WA) DOTAG 1805449
02 Feb 18	-\$30.00	TRANSFER DEBIT	INTERNET BPAY Baycorp (WA) DOTAG 1805449
29 Jan 18	-\$30.00	TRANSFER DEBIT	INTERNET BPAY Baycorp (WA) DOTAG 1805449
19 Jan 18	-\$30.00	TRANSFER DEBIT	INTERNET BPAY Baycorp (WA) DOTAG 1805449
12 Jan 18	-\$30.00	TRANSFER DEBIT	INTERNET BPAY Baycorp (WA) DOTAG 1805449
05 Jan 18	-\$30.00	TRANSFER DEBIT	INTERNET BPAY Baycorp (WA) DOTAG 1805449
29 Dec 17	-\$30.00	TRANSFER DEBIT	INTERNET BPAY Baycorp (WA) DOTAG 1805449
22 Dec 17	-\$30.00	TRANSFER DEBIT	INTERNET BPAY Baycorp (WA) DOTAG 1805449
15 Dec 17	-\$30.00	TRANSFER DEBIT	INTERNET BPAY Baycorp (WA) DOTAG 1805449
08 Dec 17	-\$30.00	TRANSFER DEBIT	INTERNET BPAY Baycorp (WA) DOTAG 1805449
27 Nov 17	-\$2,300.00	TRANSFER DEBIT	INTERNET BPAY Baycorp (WA) DOTAG 1805449
24 Nov 17	-\$100.00	TRANSFER DEBIT	INTERNET BPAY Baycorp (WA) DOTAG 1805449
17 Nov 17	-\$100.00	TRANSFER DEBIT	INTERNET BPAY Baycorp (WA) DOTAG 1805449
10 Nov 17	-\$50.00	TRANSFER DEBIT	INTERNET BPAY Baycorp (WA) DOTAG 1805449
03 Nov 17	-\$50.00	TRANSFER DEBIT	INTERNET BPAY Baycorp (WA) DOTAG 1805449
27 Oct 17	-\$50.00	TRANSFER DEBIT	INTERNET BPAY Baycorp (WA) DOTAG 1805449
20 Oct 17	-\$50.00	TRANSFER DEBIT	INTERNET BPAY Baycorp (WA) DOTAG 1805449
13 Oct 17	-\$50.00	TRANSFER DEBIT	INTERNET BPAY Baycorp (WA) DOTAG 1805449
06 Oct 17	-\$50.00	TRANSFER DEBIT	INTERNET BPAY Baycorp (WA) DOTAG 1805449
29 Sep 17	-\$50.00	TRANSFER DEBIT	INTERNET BPAY Baycorp (WA) DOTAG 1805449
22 Sep 17	-\$50.00	TRANSFER DEBIT	INTERNET BPAY Baycorp (WA) DOTAG 1805449
20 Sep 17	-\$100.00	TRANSFER DEBIT	INTERNET BPAY Baycorp (WA) DOTAG 1805449
30 Aug 17	-\$10,000.00	TRANSFER DEBIT	INTERNET BPAY Baycorp (WA) DOTAG 1805449
Total	-\$26,054.44		

18. **Delays in the legal process.** The vast majority of the delays in this case, and arguably all of the delays have been caused directly by the defense.
- 18.1. The defense had not prepared for the original pretrial conference, and as a result I ended up spending most of this conference out of the room while “confidential” discussions were held.
- a) It was agreed at this conference that the Marshes would get a cheaper quote to fix the retaining wall as they had been told it could be done for much less than the quote I had.
- 18.2. After a 3 month delay, a second pretrial conference was held.
- a) The defense asked for an additional pretrial conference as they had not done anything in the delay between the first two, despite email reminders.
 - b) I refused additional delays as these delays were costing me a lot of money, as I had explained to them in detail.
 - c) The quote for a cheaper repair to the boundary retaining wall has still not been received, and if they had of tried to do as they agreed they would have known the quote I had was very reasonable, and a lot of court time would have been saved.
- 18.3. The defense refused all my attempts to establish any agreed set of facts.
- a) Having an agreed set of facts could have made the original court hearing much shorter.
 - b) Because of this longer hearing the delay to any available time slot was much bigger.
- 18.4. The defense missed deadlines for a number of documents by over 40 days, and a default ruling was made.
- a) This default ruling was appealed against, and won, on the grounds that the defense was busy.
 - b) If I had of been aware that I could appeal against this I would have, and saved everybody a lot of time.
- 18.5. The defense withheld a number of documents and all of the photos, which were shown to me for the first time during the hearing.
- a) This is the biggest cause of why this drama has been dragging out for over 6 years.
- 18.6. I have made numerous offers of settlement, both informal and formal, which were all declined.
- a) The defense have made no offers of settlement at all, and the most they have ever offered is approx 25% of the cost to replace the dividing fence that they damaged.
- 18.7. If my original appeal had not been appealed against, this drama would be over before now.
- 18.8. A part of the District court logic regards my accepting the delays caused by needing to provide an additional \$13,000 security deposit as being my preference. As I explained in court this was certainly not my preference. I would much prefer to spend this money on a lawyer and get this ordeal over with sooner rather than later.
- a) This is what was recommended to me by my lawyer.
 - b) These delays are what has been forced upon me by the defense.
- 18.9. The defense are not seeking closure, they are sending me letters demanding that I raise the level of the boundary retaining wall to the new ground level at my own expense.
- a) These letters have been removed at the direction of the Court of Appeal Registrar.

19. **Regarding the email received from the defense on 23 May 2018, stating that the matter had been settled.**

- 19.1. I took this to mean that the hearing on 24 May had been settled and was not going ahead.
- 19.2. Ian Morrison has used tricks like this before to delay and frustrate my case, and I made myself available at the appointed time regardless.
- 19.3. I received no phone call, did not have any missed calls and did not have any SMS messages during this time.
- 19.4. As I understand it, the time that the court attempted to contact me was not recorded.
- 19.5. As I have previously been instructed, and with every other telephone hearing I have attended that involved the court ringing me, is that I should not try to ring the court.

20. **Regarding the decision of the District court registrar on 24 May 2018.**

- 20.1. The Registrar stated at the directions hearing on 11 October 2018 that it was a verbal decision. Stated at 17min:50 sec into the hearing.
- 20.2. The written decision was given to me for the first time on 21 November 2018, but did not have the date it was written.
- 20.3. It is very difficult to appeal a verbal decision that occurred without me being present, and without knowing the reasons for that decision, and at the time I did not even know the date of that decision.

21. **District court payment attempts.**

- 21.1. I was expecting communication from the court regarding the 24 May 2018 hearing. After a delay to allow it to arrive I tried to chase it up.
- 21.2. On 11 and 12 June 2018 I contacted the court attempting to pay a filing fee for my form 9 that was submitted on 9 August 2017.
- 21.3. On 13 June 2018 I contacted the court attempting to pay the \$13,000 security to the District court.
 - a) Tracy from the Bunbury court contacted the principle registrar in Perth, and rang me back telling me it was too late to make this payment.
- 21.4. The first I knew that the court payments that I had made were not acceptable was after the court would accept those payments.
- 21.5. This was well within 28 days of the 24 May 2018 decision.

This affidavit is *affirmed* by Andrew Laughton in the presence of an authorised witness on 26 February 2019

[Signature of person making the affidavit]

[Signature of authorised witness]

Authorised witness

[Name of authorised witness]

[Qualification of authorised witness]⁵