

**In the Local Court  
(Civil Claims)  
Holden at Cooma  
In the State of  
New South Wales**

**No. 70 of 2000**

**Cooma Monaro Shire Council**

**Plaintiff**

**David Barry Bridges**

**Defendant**

**Action:** Recovery of Fees and Expenses incurred by the Plaintiff under the  
Noxious Weeds Act

**Appearances:** Mr C Wall Solicitor appears for the Plaintiff  
Ms P E Grace Solicitor appears for the Defendant

Evidence received at Cooma on 22<sup>nd</sup> and 23<sup>rd</sup> November 2001

Written Decision delivered in the absence of the parties on 19<sup>th</sup> December 2001

**DECISION**

The plaintiff, **Cooma Monaro Shire Council**, in its amended statement of liquidated claim, claims the sum of \$9,218.79, plus interest and costs, being for noxious weed spray charges owed by the defendant, **David Barry Bridges**, to the plaintiff in respect of property lots 140 and 141 in DP 750531.

The defendant's amended notice of defence specified a number of grounds of defence, including:

- denying the plaintiff's right to carry out weed control
- the plaintiff breached an implied duty to:
  - . adequately supervise the work carried out
  - . to ensure the work was of good and workmanlike standard
  - . to provide the defendant with an estimate of costs that would be incurred
- the plaintiff breached an implied duty to ensure the costs were reasonable
- The plaintiff failed to apply the principles of natural justice in respect of a section 18 notice and in respect of a section 20 notice.

The matter came before the Cooma Local Court on 22<sup>nd</sup> and 23<sup>rd</sup> November, 2001, with written submissions to be filed on or before 28<sup>th</sup> November, 2000 and submissions in reply by 5<sup>th</sup> December, 2001.

The onus is upon the Plaintiff to establish its claim, on a balance of probabilities. From the evidence presented to the court, the following facts are either not in dispute or are found on the balance of probabilities.

1. The plaintiff was, at the relevant time, the local control authority for Cooma Monaro Shire under the Noxious Weeds Act 1993
2. The defendant was the occupier of portions of 140 and 141 in deposited plan 750531, which is within the Cooma Monaro Shire.
3. The defendant has occupied that land since 1996.
4. Robert John Brooks, the senior weeds officer with the plaintiff council, has a delegated authority to administer the Noxious Weeds Act 1993.

5. Robert Brooks, after duly notifying the defendant in writing, inspected the defendant's property on 18 August 1999. Due to infestation of African Lovegrass (which is a category W3 noxious weed under the Act), he issued a notice under the provisions of section 18 of the Noxious Weeds Act.
6. After receipt of the notice, the defendant spoke to an officer of the council and outlined his plans to eradicate the noxious weeds.
7. Mr. Brooks returned to the property on 15 November 1999 and noticed that the noxious weeds had not been eradicated.
8. The plaintiff issued a notice under the provisions of section 20 of the Act on 17 November 1999.
9. The plaintiff arranged for a contractor Kenneth Ian Macintosh to spray the noxious weeds, this took place on 24, 25, 29, 30 November 1999 and the 1 and 2 December 1999.

The relevant legislation is the Noxious Weeds Act 1993. Pertinent sections are:

**9 Effect of control categories**

**The action required to be taken under this Act to control a noxious weed for which a particular control category is specified is the action set out below in relation to that control category:**

- **For a W1 noxious weed, the presence of the weed on land must be notified to the local control authority and the weed must be fully and continuously suppressed and destroyed**
- **For a W2 noxious weed, the weed must be fully and continuously suppressed and destroyed**
- **For a W3 noxious weed, the weed must be prevented from spreading and its numbers and distribution reduced**
- **For a W4 noxious weed, the action specified in the declaration must be taken in respect of the weed.**

**10 Who is responsible for carrying out noxious weed control?**

- (1) **Part 3 provides that occupiers of land (this includes owners of land) have responsibility for controlling noxious weeds on the land they occupy.**
- (2) **Part 3 provides that this obligation applies to both private and public occupiers of land, including local control authorities, and can be enforced by the issue of weed control notices by the Minister and Local control authorities.**

**18 Local control authority may require occupiers of land (other than public authorities or other local control authorities) to control noxious weeds**

- (1) A local control authority may, by notice (a *weed control notice*) given to an occupier of land (other than a public authority or a local control authority), require the occupier to carry out any of the occupier's obligation to control noxious weeds on the land, as required under the specified control category or categories, in the manner specified in the notice.**
- (2) The notice may specify the time within which action is to be taken.**
- (3) The local control authority may give a weed control notice only if satisfied that an occupier has failed to carry out any of the occupier's obligations under this Act to control noxious weeds.**
- (4) A local control authority or the Minister may by notice revoke or amend a weed control notice given by the authority.**

**20 Noxious weed control by local control authority after notice not complied with**

- (1) A local control authority may control noxious weeds on land, as required under the control category or categories specified in relation to the weeds concerned, if the occupier fails, or a predecessor in title to the occupier has failed, to comply with a weed control notice given by the authority in accordance with section 18.**
- (2) Persons authorised in writing by a local control authority may control noxious weeds on behalf of the local control authority under this section and may enter premises for that purpose**
- (3) A local control authority must give 24 hours' notice of any proposed control of noxious weeds under this section to the occupier of the land concerned.**

**26 Expenses**

- (1) Liability for expenses. Any reasonable expense incurred by or on behalf of the Minister or a local control authority in ascertaining whether a weed control notice given to an occupier, or a predecessor in title to the occupier, is being or has been complied with, and in taking action if it is not being or has not been complied with (including charges for any inspections of land), is payable by the occupier of the land concerned, on demand by the Minister or authority.**
- (4) Interest. Interest on the amount of any unpaid expense, charged at the rate currently prescribed by the Supreme Court rules in respect of unpaid judgment debts, may be recovered by the Minister or local control authority from the occupier of land or**

**authority liable to comply with the weed control notice concerned as a debt in a court of competent jurisdiction.**

**50 Recovery of charges and fees**

**Any charge or fee due and payable under this Act and which remains unpaid may be recovered as a debt in a court of competent jurisdiction.**

**68 Delegation by local control authorities**

**A local control authority may delegate to a person any of the local control authority's functions under this Act other than this power of delegation.**

**69 Arrangements by local control authorities**

**A local control authority may make arrangements with another person or body to assist in the exercise of any of the local control authority's functions under this Act.**

There is not a great deal of dispute concerning the factual situation that exists in this claim. The dispute is more about the manner in which the Plaintiff exercised its obligations under the Noxious Weeds Act 1993. The defendant submitted that the process adopted by the Plaintiff "*is inherently flawed*".

The defendant has claimed that he has been denied natural justice. Submissions have cited passages from *Kioa v. West* 1985 CLR 550 at 584; *Annetts v. McCann* (1990) 170 CLR 596 at 598; *Russell v. The Duke of Norfolk* (1949) 1 All ER at 188; *Pett v. Greyhound Racing Association Limited* [1969] 1 QB 125 (CA). In *Russell v. The Duke of Norfolk*, Tucker L.J. stated:

*The requirements of natural justice must depend on the circumstances of the case, the nature of the enquiry, the rules under which the tribunal is acting, the subject matter being dealt with and so forth.*

In other words, each case must be considered on its own merits, when determining whether the rules of natural justice have been breached.

The defendant's submission appear to be suggesting that the issue of the S.18 notice by the plaintiff has deprived the defendant of rights to natural justice in that

- No correspondence was entered into by the council prior to the initial inspection and the issue of the S.18 notice
- An oral hearing of the issues was not conducted by the plaintiff
- A inspection took place without the presence of the defendant
- The defendant was not afforded an opportunity to put his case to the plaintiff prior to the issuing of the S.18 notice.

There is no dispute that the defendant was well aware of the noxious weed problem on his land in 1996 and he had been in communication with the plaintiff about it. Exhibit 11 contains a copy of a letter dated 7 February 2000 in which the plaintiff invited the defendant to attend a Weeds Committee Meeting.

Following upon the communication with Mr. Grimm after he received the S.18 notice, there was no other communication by the defendant to the plaintiff. The Section 20 notice clearly places beyond any doubt what the plaintiff intended to do with the noxious weeds on the property. If there had been a misunderstanding by the defendant as to his communication with Mr. Grimm, surely the section 20 notice would immediately put beyond any doubt where the defendant stood concerning the eradication of the weeds.

I cannot accept that with the defendant's knowledge, since 1996, of the noxious weed problem on his property and the notice of inspection, followed by the Section 18 and 20 notices, that the defendant has been denied natural justice.

I cannot see, on the evidence before the court, that the issuing of the section 18 notice was improper.

The defence relies heavily upon a portion of a covering letter sent with the S.18 notice. It states: *If you have a more significant problem, you should talk to our Weeds Officer about a longer term control program, with some set control objectives and a timetable.*

*So long as our reinspections show you are keeping your part of the bargain, there will be no need for further action.*

There is no dispute that the defendant telephoned Anthony Grimm about his plan to eradicate the noxious weeds. However, there was never any mention about a timetable in respect of the plan. Mr. Grimm informed the court that it was his understanding that the eradication would be done by the date set out in the S.18 notice. The defendant on the other hand, although conceding no dates had been mentioned, assumed that the plaintiff's officers would have been aware that his plan would have to extend beyond the date set by the S.18 notice.

The S.18 notice provided that compliance is to be on or before 1 November 1999 and re-inspection will take place on 15 November 1999. There has been no revocation or amendment of the weed control notice; there has been no appeal lodged against the issuing of the notice.

The defendant gave evidence that he had created a firebreak around the perimeter of the property in preparation for his burning eradication program. There had been delays in him obtaining his fire permit and he was hampered by the strict regulations concerning burning near the Monaro Highway. He also stated that it was best to burn the noxious weed just before it seeded; that is why he delayed until November to obtain the fire permit.

Under cross-examination the defendant conceded that he wrote to the Plaintiff in 1996 concerning the African Lovegrass and outlined a plan to eradicate it. He further conceded that he did nothing towards eradication in 1996, 1997, 1998, generally due to the drought conditions and the ground being too hard to plough.

The defendant has denied that the plaintiff has the right to carry out weed control on the property. Clearly Section 20 of the Noxious Weeds Act expressly provides the right of the plaintiff to enter and control the noxious weeds on the defendant's property.

Some small areas of the spraying missed the African Lovegrass. The defendant is relying upon that, together with admissions from the plaintiff that an officer of the council was not supervising the spraying on a full time basis, to support a submission that the plaintiff breached an implied duty to adequately supervise the work and a duty to ensure the work was of good and workmanlike standard.

Kenneth McIntosh, who sprayed the property for the plaintiff, gave evidence of what he considered an insignificant amount of weed that was missed by the spraying. He said if it had been brought to his attention, he would have re-sprayed that area for nothing; the cost of doing it would have been less than \$100. Having regard to the difficult terrain involved in the eradication and the overall insignificant amount of weed that was missed, I do not consider the work performed was not of a good and workmanlike standard.

Furthermore, the occasional supervision of the work by the plaintiff's staff was adequate in all of the circumstances.

I do not find that the plaintiff has breached any of its implied duties towards the defendant in the work that was performed to eradicate the weed.

A question arose as to the plaintiff not calling for tenders before the work was done. I accept the plaintiff's submission that with the Act allowing the local authority to give 24 hours notice before entering upon land to eradicate weeds, it is implied the Act does not envisage the calling of tenders. Furthermore, evidence from Mr. McIntosh is that he charges less when spraying for the plaintiff because he is always ensured of payment. The defendant called no evidence to challenge that the fees charged by Mr. McIntosh were anything other than reasonable.

Another issue which needs attention is the area of property which was sprayed. During the evidence of the defendant, he denied that he occupied a portion of the land that was



sprayed by Mr. McIntosh. The plaintiff resolved that matter by giving a concession to the defendant, reducing the claim by 9.2%.

A challenge was made to the right of the plaintiff to charge an administration fee. The fee is outlined in exhibit 9, the draft Management Plan. I accept the submissions by the plaintiff that the fee is an authorised one under the provisions of the Local Government Act.

In conclusion, I find, on the balance of probabilities that the plaintiff has established its claim, to be reduced however by the conceded amount of 9.2%.

ACCORDINGLY, there will be a verdict for the plaintiff.

PLAINTIFF'S COSTS: In giving a verdict for the plaintiff, there is no reason as to why costs in this matter should not follow the event. I propose to make an order that the defendant pays the plaintiff's costs in an amount which is agreed between the parties or if no agreement is reached within 28 days, then costs may be assessed under the provisions of the Legal Profession Act. Provided however, if the parties so desire, I will determine the costs quantum upon receipt of written submissions.

JUDGMENT for the plaintiff in the sum claimed of \$9,218.79 less 9.2%, being \$8,370.67.

Plus, interest under the provisions of Section 26(4) of the Noxious Weeds Act from 30 November 1999 to 16 March 2001.

Plus, issue and service fees of \$107.00

Plus, professional costs to be determined.

Plus, interest on the total amounts above, under the provisions of the Local Court (Civil Claims) Act, from 16 March 2001.