

IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMON LAW DIVISION

No _____ of 2010

IN THE MATTER of an application pursuant to section 84 of the *Property Law Act* 1958 for the discharge of a restrictive covenant.

THE APPLICATION of :

MAUREEN CARMEL PROWSE

Plaintiff

AFFIDAVIT IN SUPPORT


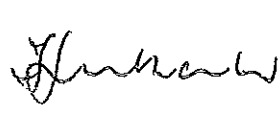
Date of document:	12 March 2010	Solicitors Code:	9344
Filed on behalf of:	The Plaintiff	Telephone:	(03) 9819 5515
Prepared by:		Fax:	(03) 9819 6078
Lukaitis Partners		Ref:	JLL:MC:096185
Solicitors and Notary			
123 Church Street			
HAWTHORN VIC			
3122			

Deponent: Michelle Cupples

Sworn: 12 March 2010

I, MICHELLE CUPPLES of 123 Church Street Hawthorn in the State of Victoria, solicitor, MAKE OATH AND SAY as follows:

- 1 I am an employee solicitor in the firm of Lukaitis Partners Solicitors and Notary. I have the care, conduct and management of this proceeding for and on behalf of the Plaintiff. I am duly authorized by the Plaintiff to make this affidavit on her behalf and do so from my own personal knowledge, save where otherwise stated.
- 2 In or about October 2009 I was retained by the Plaintiff to make this application on her behalf relating to the property situated at and known as 191 - 193

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Wattletree Road Malvern, being the land described in Certificate of Title Volume 3607 Folio 399 ("the property"). The Melway Map reference for the property is page 59 grid reference D9.

3 I caused searches to be made by agents of Lukaitis Partners Solicitors and Notary of the records and dealings in Land Registry Victoria and the Probate Office of the Supreme Court of Victoria and depose to what is stated in this affidavit from information obtained by me from such searches, all of which information I believe to be true and correct.

4 The Plaintiff is the sole registered proprietor of the property. Now produced and shown to me and marked "MC-1" is Land Registry Victoria's Register Search Statement of the title to the property.

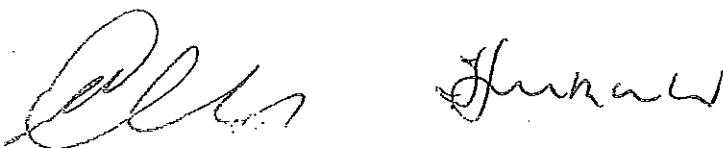
5 An instrument of Transfer in respect of the property dated 11 May 1912 was registered in Land Registry Victoria on 14 May 1912 and numbered 683810 ("the transfer"). Now produced and shown to me and marked "MC-2" is a true copy of the transfer.

6 The transfer included a restrictive covenant ("the covenant"). The covenant is recorded as an encumbrance on the Certificate of Title to the property.

7 Under the terms of the covenant the transferee of the property covenanted for himself and his successors in title with the transferors of the property and their successors in title for the benefit of the transferors successors in title and the registered proprietors for the time being of the untransferred part of the land in Certificate of Title Volume 3442 Folio 352 ("the parent title"). Now produced and shown to me and marked "MC-3" is a true copy of the parent title.

8 The land in the parent title was subdivided into 63 lots by plan of subdivision LP5320 ("the plan of subdivision"). Now produced and shown to me and marked "MC-4" is a true copy of the plan of subdivision.

9 The property comprises lots 7 and 8 on the plan of subdivision.



10 My examination of the parent title discloses that at the time of registration of the transfer and the issue of the Certificate of Title for the property on 14 May 1912 there were 39 lots then remaining untransferred in the parent title and which are therefore entitled to the benefit of the covenant. They are set out in the table below:

Transfer No.	Date and Time	Lot Number(s)
689278	10 July 1912 at 1.50pm	46
692264	10 August 1912 at 10.35am	31
683694	10 August 1912 at 10.35am	54
692263	10 August 1912 at 10.35am	51
694020	4 September 1912 at 2.32 pm	26
694722	9 September 1912 at 3.18pm	58
676748	15 May 1912 at 3.45 pm	13 & 14
730961	20 November 1913 at 2.48pm	16
731001	9 January 1914 at 10.33am	47 & 48
731786	19 January 1914 at 11.35am	55
732121	3 December 1913 at 3.4 pm	56 & 57
735629	20 January 1914 at 2.34 pm	24
731965	2 December 1913 at 3.30pm	40
712362	25 April 1913 at 3.2 pm	39
720331	29 July 1913 at 10.56am	17
721299	7 August 1913 at 3.18pm	49
721352	12 August 1913 12.3 pm	30
729703	8 November 1913 at 11.30am	44
765602	10 December 1914 at 3.26pm	19
772953 (recorded as 772853 on Plan of Subdivision 5320 see page 3)	17 April 1915 at 10.32am	41
774671	12 May 1915 at 12.34pm	42
775485	21 May 1915 at 2.16pm	43

778538	24 June 1915 at 2.23pm	Part of Lot 59
780847	10 July 1915 at 10.35am	52
736945	4 February 1914 at 2.58pm	27
738586	23 February 1914 at 2.24pm	12
748821	13 June 1914 at 10.16am	10
750144	13 June 1914 at 10.16am	25
749242	4 June 1914 at 3.11pm	11
765214	4 December 1914 at 2.48pm	15
796703	9 March 1916 at 11.00am	53
826129	18 May 1917 (time unknown)	Part of Lot 59
834859	10 September 1917 (time unknown)	34
835439	17 September 1917 (time unknown)	33
2146543	Arthur Charles Langmore became the surviving proprietor of the untransferred lots on 9 April 1921 (time unknown)	23, 36 & 37

11 According to the title searches carried out by the title searcher engaged by me, it appears that all 63 lots have been transferred out of the parent title, but some land still remains in the parent title. This consists of (a) the roads shown on the plan of subdivision, and (b) one small triangular piece of land labeled R1 adjacent to the top left hand side of Lot 35 on the plan of subdivision. I am informed by the title searcher engaged by me and believe that this small triangular piece of land is under the control of the local council.

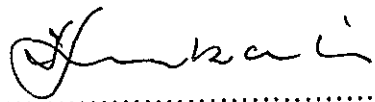
12 For the assistance of this Honourable Court I have coloured a copy of the plan of subdivision to show the lots having the benefit of the covenant. Now produced and shown to me and marked "MC-5" is the coloured copy of the plan of subdivision to which I refer. On the plan of subdivision, the subject lots of the application are coloured red. The lots coloured green were transferred out of the parent title before the subject lots. The lots coloured yellow were transferred out of the parent title after the subject lots.



13 "The Age" is a daily newspaper circulating generally in the area of the property and "The Stonnington Leader" is a weekly newspaper circulating in the Malvern area.

SWORN by MICHELLE CUPPLES
at Hawthorn in the State of Victoria
this 12 day of March 2010

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) 


Before me

JOSEPH LEO LUKAITIS
NOTARY PUBLIC
123 Church Street, Hawthorn
Victoria Australia

IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMON LAW DIVISION

No of 2010

IN THE MATTER of an application pursuant to section 84 of the *Property Law Act*
1958 for the discharge of a restrictive covenant.

THE APPLICATION of :

MAUREEN CARMEL PROWSE

Plaintiff

CERTIFICATE IDENTIFYING EXHIBIT

Date of document: 12 March 2010

Solicitor's Code: 9344

Filed on behalf of: The Plaintiff

DX: Not Applicable

Prepared by:

Tel: (03) 9819 5515

Lukaitis Partners

Fax: (03) 9819 6078

Solicitors and Notary

Ref: JLL:MC:096185

123 Church Street

HAWTHORN VIC 3122

This is the exhibit marked "MC-1" now produced and shown to MICHELLE
CUPPLES at the time of swearing her affidavit on 12th March 2010.



Signature of person taking affidavit

JOSEPH LEO LUKAITIS
NOTARY PUBLIC
123 Church Street, Hawthorn
Victoria Australia

MC-1

Register Search Statement

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 the provisions of the Copyright Act or pursuant to a written
 agreement. The information is only valid at the time and in the form
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REGISTER SEARCH STATEMENT (Title Search) Transfer of Land Act 1958

VOLUME 03607 FOLIO 399

Security no : 124031374825H

Produced 06/10/2009 03:29 pm

LAND DESCRIPTION

 Lots 7 and 8 on Plan of Subdivision 005320.
 PARENT TITLE Volume 03442 Folio 352
 Created by instrument 0683810 14/05/1912

REGISTERED PROPRIETOR

Estate Fee Simple

Sole Proprietor

MAUREEN CARMEL PROWSE of 191 WATTLETREE RD MALVERN 3144
 W212787Q 10/08/1999

ENCUMBRANCES, CAVEATS AND NOTICES

MORTGAGE AF862697F 23/05/2008

ISOBEL BELL ALLAN

DAVID BULLER ALLAN

DIBBLES NOMINEES PTY LTD

PICCHI BROTHERS FOUNDATION INC

VARIATION OF MORTGAGE AG547903F 05/06/2009

COVENANT 0683810

Any encumbrances created by Section 98 Transfer of Land Act 1958 or Section
 24 Subdivision Act 1988 and any other encumbrances shown or entered on the
 plan or imaged folio set out under DIAGRAM LOCATION below.

DIAGRAM LOCATION

SEE LP005320 FOR FURTHER DETAILS AND BOUNDARIES

ACTIVITY IN THE LAST 125 DAYS

NUMBER	STATUS	DATE
AG547903F	VARIATION OF MORTGAGE Registered	05/06/2009

DOCUMENT END

683810

ADDRESS JAMESON and LONIE

RESHOLD



0683810-1-2

VICTORIA

TRANSFER OF LAND



WE, JANE LANGMORE widow and ARTHUR CHARLES LANGMORE Gentlemen both of Wattle Tree Road Malvern being registered as joint proprietors of an estate in fee simple in the land hereinafter described subject to the encumbrances notified hereunder in consideration of the sum of Two hundred and forty pounds paid to us by FREDERICK HAGELTHORN of Coohil Crescent Malvern Member of the Legislative Council and in consideration of the sum of seven hundred and twenty pounds paid to the said Frederick Hagelthorn by WILLIAM DURHAM LESLIE of Park House Malvern *Merchant* DO HEREBY TRANSFER to the said William Durham Leslie at the request and by direction of the said Frederick Hagelthorn testified by his signature hereto All our estate and interest in ALL THAT piece of land delineated and colored red and blue on the plan drawn hereon being Lots seven and eight on Plan of Subdivision No. 5320 lodged in the Office of Titles and being part of Crown Portion Forty-three at Gardiner Parish of Prahran County of Bourke and being part of the land particularly described in Certificate of Title entered in the Register Book Volume 5442 Folio 688362 Reserving to the said Jane Langmore and Arthur Charles Langmore or the registered proprietor or proprietors for the time being of Lot Nineteen on said Plan of Subdivision a right of drainage as to the land colored blue on said plan drawn hereon for surface water only by means of an underground pipe with full and free right and liberty and full power and authority for the registered proprietor or proprietors for the time being of said Lot Nineteen from time to time and at all times hereafter with or without all necessary appliances to enter upon and in through over and along the said land colored blue for the purpose of constructing enlarging or maintaining a drain upon the said land colored blue with full and free right and liberty of ingress egress and regress in through over or along the said land colored blue for the purpose aforesaid or for the purpose of inspecting repairing altering or cleaning the said



Handwritten notes and signatures:
3442-1-2
1352
Underground
Lot 19 Blue
Lot 19 Blue
Lot 19 Blue
12/1/12
12/1/12
12/1/12

Handwritten signature:
C. J. ...

683-810

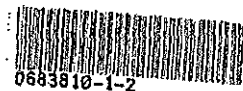
drain and for all or any of the purposes aforesaid to break up
 excavate and remove all or any part of the surface of the said land
 colored blue A N D the said William Durham Leslie doth hereby
 for himself his executors and administrators covenant with the said
 Jane Langmore Arthur Charles Langmore and Frederick Hagelthorn
 their executors and administrators that he the said William Durham
 Leslie his executors administrators or transferees will not at any
 time or times hereafter quarry on the said land or cart or carry
 away any stone gravel soil or sand therefrom or make any excavations
 therein except such as may be necessary for laying the foundation
 of any building on the said land AND FURTHER that he or they will
 not erect more than one house on each of the said Lots and that any
 house so erected shall be of stone or brick or brick and stone with
 roof of slates or tiles on the main portion thereof at a cost of
 not less than Six hundred pounds each exclusive of stables and
 outbuildings and that such building shall not be used for any trade
 or business AND FURTHER that the said William Durham Leslie his
 executors administrators or transferees will not subdivide either
 of the said Lots into smaller allotments nor reduce the frontage
 thereof to a smaller frontage than appears on the said Plan of
 Subdivision A N D the said William Durham Leslie hereby requests
 that the above covenants may appear as an encumbrance on the
 Certificate of Title to be issued in respect of the land hereby
 transferred and run with the land.

D A T E D the 10th day of May One thousand nine hundred and twelve.

SIGNED by the said JANE LANGMORE
 and ARTHUR CHARLES LANGMORE in
 the presence of

Jane Langmore
Arthur Langmore

W. Macdonald
John Leslie



SIGNED by the said FREDERICK
 HAGELTHORN in the presence of

F. Hagelthorn

J. Keay
and 5 hundred pounds for...

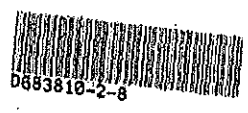
683810

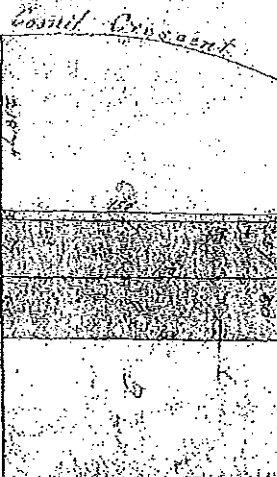
SIGNED by the said WILLIAM
LESLIE in the
presence of

W. D. Leslie

ENCUMBRANCES REFERRED TO

N i l.





COLOUR CODE
 Y=Yellow BR=Brown G=Green
 R=Red BL=Blue P=Purple
 H=Hatched CH=Cross Hatched

W. J. Langmore & Sons

F. R. A. N. S. P. R.

H. D. L. E. S. L. I. E. R. S. C.

MRS. J. LANGMORE and ANCELTIE
 by direction of
 P. H. C. L. E. S. L. I. E. R. S. C.

DATED 1912

MEMORIAL OF INSTRUMENT

INSTRUMENT	TIME OF PROMOTION	NAMES OF THE PARTIES INTERESTED	REMARKS
Transfer as to part	16 th May 1912 at 2.48 CLOCK IN THE AFTER NOON.	Jane Langmore and Arthur Charles Langmore to William Durham Leslie	683810

W. J. Langmore
 ASSISTANT REGISTRAR

I declare that I am a duly qualified and sworn Assessor of the Land Tax of the State of Victoria.

John

W. J. Langmore
 ASSISTANT REGISTRAR

683810

