

**IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COMMON LAW DIVISION**

No. S CI 2011 4691

IN THE MATTER of the Property Law Act 1958, Section 84

and

IN THE MATTER of an application by Mark William Suhr, Elizabeth Alexandra Suhr and Surmar Pty Ltd for the discharge and or modification of the restrictive covenant contained in Instrument of Transfer No. 1656917 registered in the Land Titles Office in the Register Book and imposed upon the land more particularly described in Certificate of Title Volume 6132 Folio 361

IN THE MATTER of an application by:

MARK WILLIAM SUHR and ELIZABETH ALEXANDRA SUHR and SURMAR PTY LTD
(ACN 100 678 831)

Plaintiffs

and

ANDREW GORDON MICHELMORE and others (according to the schedule attached)

Defendants

PROPOSED FURTHER AMENDED ORIGINATING MOTION
Amended pursuant to the order of Associate Justice
dated 1 May 2012

Date of Document:	May 2012
Filed on behalf of:	The Plaintiffs
Prepared by:	
Best Hooper	Solicitor Code: 102840
Solicitors	DX: 38215 Flagstaff
563 Little Lonsdale Street,	Tel: 9670 8951
Melbourne Vic 3000	Ref: TLC:12270104

TAKE NOTICE that the Plaintiffs will apply to the Associate Judge, Court 2, Ground Floor, 436 Lonsdale Street on 1 May 2012 at 10.30 am for the following Orders pursuant to Section 84 of the *Property Law Act* 1958:

1. The Plaintiffs are the purchasers of the land situate at and known as 246 – 256 Walsh Street, South Yarra, in the State of Victoria and being the land more particularly described in Certificate of Title Volume 6132 Folio 361.

- 1A. The Third Plaintiff is a company incorporated pursuant to the Corporations Act 2001 (Cth).
2. The Plaintiffs seek Orders pursuant to section 84(1)(a) or (c):
- (a) that the covenant restricting the development of the land to a building of no greater height than twelve feet above the level of the land as it was on 26 July 1937 and not less than five feet from the southern boundary of the land, be discharged; or in the alternative
 - (b) that the covenant restricting the development of the land to a building of no greater height than twelve feet above the level of the land as it was on 26 July 1937 and not less than five feet from the southern boundary of the land, be modified to enable the erection of dwellings with basement car parks within the building envelope described on the drawings produced by Demaine Partnership dated April 2012 and attached to this amended originating motion and marked AC1.01 to ACI.07 (inclusive).
3. Alternatively, the Plaintiffs seek a declaration pursuant to section 84(2) of the Property Law Act 1958 that the covenant restricting the development of the land to a building of no greater height than twelve feet above the level of the land as it was on 26 July 1937, is void for uncertainty and unenforceable.

FILED: May 2012

Prothonotary

1. Place of Trial: Melbourne
2. This Further Amended Originating Motion was filed for the Plaintiffs by their solicitor:
- Best Hooper
Solicitors
563 Little Lonsdale Street
Melbourne Vic 3000

3. The address of the First and Second Plaintiffs is:

Mark Suhr & Elizabeth Suhr
252 Walsh Street
South Yarra, Victoria 3141

3A. The address of the Third Plaintiffs is:

C/- LCA Partners Pty Ltd
121 Burwood Highway
Burwood, Victoria 3125

4. The address for service of the Plaintiffs is:

Best Hooper
Solicitors
563 Little Lonsdale Street
Melbourne Vic 3000

5. The addresses of the Defendants are:

The address of the First and Second Defendants is:

Andrew & Janet Michelmore
226 Walsh Street,
South Yarra, Victoria 3141

The address for service of the First and Second Defendants is:

C/- JRT Partnership
Level 3
174 Queen Street
Melbourne Vic 3000

The address of the Third Defendant is:

Antro Nominees Pty Ltd
(ACN 005 430 008)
234 Balaclava Road
Caulfield North Vic 3161

The address for service of the Third Defendant is:

Sackville Wilks Pty Ltd, Lawyers
Level 2, 139 Collins Street,
Melbourne, Victoria 3000

SCHEDULE OF PARTIES

BETWEEN:

MARK WILLIAM SUHR and ELIZABETH ALEXANDRA SUHR
and SURMAR PTY LTD

Plaintiffs

AND

ANDREW GORDON MICHELMORE

First Named Defendant

JANET HAILES MICHELMORE

Second Named Defendant

ANTRO NOMINEES PTY LTD (ACN 005 430 008)

Third Named Defendant