

IN THE SUPREME COURT OF VICTORIA AT MELBOURNE  
COMMON LAW DIVISION

S CI 2015 04448

IN THE MATTER of an application under s 84 of the *Property Law Act 1958* (Vic) for the discharge and/or modification of the restrictive covenant contained in Instrument of Transfer No. 2071058 registered in the Land Titles Office in the Register Book and imposed upon the land more particularly described in Certificate of Title Volume 07210 Folio 950, by:

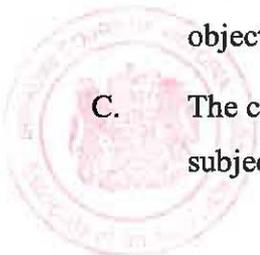
REBEKAH FARRELL and  
ALEXANDER JOEL SHEED-FINCK

Plaintiff

ORDER

JUDGE: The Honourable Associate Justice Mukhtar  
DATE MADE: 20 October 2015  
ORIGINATING PROCESS: Originating Motion  
HOW OBTAINED: On return of the plaintiff's originating motion filed  
25 August 2015 and the Court's order of 7 September 2015  
ATTENDANCE: Mr M Townsend of counsel for the plaintiff  
OTHER MATTERS:

- A. On 7 September 2015 the Court made orders requiring notice of this application to be given to certain landowners and mortgagees in the immediate vicinity of the subject land, who have the benefit of the covenant. The Court also required the plaintiffs to display an enlarged copy of the notice on the property at 68-74 Vasey Concourse, Croydon. Pursuant to rule 52.09(3) of the *Supreme Court (General Civil Procedure) Rules 2005*, the Court declares the notices were given in accordance with those orders.
- B. The Court has considered the affidavits of: Alexander Sheed-Finck, solicitor, sworn on 19 October 2015; Robert Walter Easton, expert town planner, sworn on 25 August 2015; and Kelli Ritchie, solicitor, sworn on 15 August 2015. In particular, the affidavit of Alexander Sheed-Finck states that he or his office received a number of enquiries concerning the application after service of the notices. Those making the enquiries either stated there would be no objection or made no further contact after the initial enquiry. In all cases, the plaintiffs' solicitors were willing to make available all documents to those making the enquiries. No recipient of the notice, or any other person, has expressed any intention to object to the application and no objector has appeared.
- C. The covenant prevents, inter alia, the building of more than one building on any part of the subject land having an area of less than one acre. The Court was unwilling to discharge the



restrictive covenant, but was willing to modify it under s 84(1)(c) of the *Property Law Act*, that is, on the basis that the as made by this order will not substantially injure the persons entitled to the benefit of the restriction.

#### THE COURT ORDERS –

1. Pursuant to section 84(1) of the *Property Law Act 1958* (Vic) the restrictive covenant contained in Transfer of Land no. 2071058 in the Register Book at the Office of Titles be modified to the extent that it affects the land known as 68-74 Vasey Concourse, Croydon — being Lot 11 on Plan of Subdivision 016996 and being the whole of the land in Certificate of Title Volume 07210 Folio 950 — by deleting the words struck through and adding the words underlined in the covenant extracted below, so that the covenant reads:

... DOTH HEREBY for himself his heirs executors administrators and transferees COVENANT with the said Doris Mark York Syme her heirs executors administrators and transferees the registered proprietor or proprietors for the time being of the land comprised of the said certificate of Title Volume 6954 Folio 1390738 other than the land hereby transferred that he and they shall not at any time hereafter in subdividing the land transferred erect permit cause to be erected ~~more than one building except outbuildings appertaining thereto on any part of the said land having an area of less than one acre~~ one building and any outbuildings on any part of the said land having an area of less than two thousand square metres AND further that he and they shall not at any time erect on the said land hereby transferred any building at a cost lower than One thousand two hundred pounds exclusive of out buildings and that no such building shall be erected except by or under the substantial supervision of a registered architect and of which plans and specifications shall have been submitted before commencement of the said building to the said Doris Mary York Syme or her architect appointed in writing and the said Stanley Raymond Dunn and Doris Mary York Syme HEREBY REQUEST AND DIRECT that the foregoing Covenant or Covenants shall be set out as an encumbrance or encumbrances on the Certificate of Title to issue in respect of this transfer and shall run with the land hereby transferred

2. As soon as practicable after the authentication of this Order, the plaintiffs shall lodge a copy with the Registrar of Titles.
3. The plaintiffs have liberty to apply to the Court for any necessary or incidental orders.

DATE AUTHENTICATED: 26 October 2015



ASSOCIATE JUDGE

*M. Mukhtar, A.J.*

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THE HON ASSOCIATE JUSTICE MUKHTAR