

IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COMMON LAW DIVISION

No. S CI 2016 02468

IN THE MATTER of an application pursuant to section 84 of the *Property Law Act* 1958 (Vic.) for the modification a restrictive covenant imposed by Instrument of Transfer No. 11701 registered in the Register Book at the Office of Titles and on Certificate of Title Volume 8112 Folio 582

IN THE APPLICATION OF:

LUCIANO DI GREGORIO

Plaintiff

ORIGINATING MOTION

Date of document:	24 June 2016
Filed on behalf of:	The Applicant
Filed by:	Solicitor code: CR103127
	Tel: 8626 9010
Planning & Property Partners Pty Ltd	Fax: 8626 9001
Duckboard House,	Attn: Tyrone Rath
Level 2, 91-93 Flinders Lane	Email: rath@pppartners.com.au
MELBOURNE VIC 3000	

TAKE NOTICE that the Plaintiff will apply to the Associate Judge, Court 2, Ground Floor, 436 Lonsdale Street on ~~July~~ 2016 at 10:30am for the following Orders pursuant to section 84 of the *Property Law Act* 1958 (Vic):

- 5th August 25th July*
1. That the Plaintiff is the registered proprietor of the land situate at and known as 21 Edna Street, Heathmont in the more particularly described as Certificate of Title Volume 8112 folio 582 and known as Lot 78 on Plan of Subdivision No. 11707.
 2. That the restrictive covenant contained in Instrument of Transfer No.2025694 in the Register kept by the Register of Title under the *Transfer of Land Act* 1958

(Vic.) be modified insofar as it affects the land situate at 21 Edna Street, Heathmont more particularly described as Certificate of Title Volume 8112 folio 582 and also known as Lot 78 on Plan of Subdivision No. 11707 as follows:

FARBURY HENTY & CO PROPRIETARY LIMITED of 499 Little Collins Street, Melbourne being the proprietor of a Mortgage from ARTHUR VAVAU GREENWOOD registered the nineteenth day of March One thousand and nine hundred and twenty six and numbered 537214 upon the land hereinafter described subject to the encumbrances notified hereunder IN CONSIDERATION of the sum of ONE HUNDRED AND SEVENTY POUNDS paid to it by HENRY ROBERT MACKINLAY formerly of 37 Hawson Avenue, Glenhuntly but now of Park Road Park Orchards, Letter Cutter DOTH HEREBY in pursuance of the power of sale conferred by the Transfer of Land Act 1928 TRANSFER to the said Henry Robert Mackinlay All the estate and interest of the said Arthur Vavau Greenwood on the said nineteenth day of March One thousand Nine Hundred and twenty six or which he was then entitled or able to transfer or dispose of in All those pieces of land being Lots 70 and 84 (both Lots inclusive) on Plan of Subdivision Number 11701 lodged in the Office of Titles being part of Crown Portion Sixteen Parish of Ringwood County of Mornington and being part of the land now comprised in Certificate of Title entered in the Register Books Volume 5173 Folio 1034443 and the said Henry Robert Mackinlay DOTH HEREBY for himself his heirs executors administrations and transferees COVENANT with the said Parbury Henty & Co. Proprietary Limited and its successors and transferees registered proprietor or proprietors for the time being of the land described in the said Certificate of Title other than the land hereby transferred that the said Henry Robert Mackinlay his heirs executors administrations and transferees will not any time hereafter carry on or conduct quarrying operations on the land hereby transferred or any part thereof or dig carry away or remove any

soil sand clay stone or gravel there-from except for the purpose of laying the foundation of any building to be erected on such land for use in such building or the lay-out of gardens to be occupied therewith and no bricks tiles clay or cement shall be manufactured or burnt or be allowed to be manufactured or burnt upon the said land or any part thereof AND WILL not use or permit to be used the said land or any portion thereof for any dangerous noisy or offensive trade or business or so as to be a grievance or annoyance to the said Parbury Henty & Co. Proprietary Limited or its successors and transferees AND ALSO will not place or allow to be placed on the said land any buildings or erections removed from elsewhere nor erect build or construct or allow to be erected built or constructed more than ~~one~~ three dwelling houses on any of the Lots hereby transferred and such dwelling houses shall (including fences and out-buildings) cost not less than Seven hundred pounds ~~and shall not have its front elevation facing to any other road than the road which the said Lots sold are shown to have frontages on the said Plan of Subdivision~~ and the foregoing covenant will run with the land hereby transferred and the said Henry Robert Mackinglay hereby consents to the same appearing and any encumbrance on the Certificate of Title to issue for the said land hereby transferred.

3. Such directions pursuant to section 84(3) of the *Property Law Act 1958* (Vic) as to any inquiry to be made by the Plaintiffs and what notices ought to be given by the advertisements.
4. Such further or other orders this Honourable Court deem fit.

FILED: 24 June 2016

A handwritten signature in blue ink is written over a circular stamp. The signature is a stylized, cursive name. The stamp is faint and circular, with some illegible text around the perimeter.

Prothonotary

1. Place of trial – Melbourne.
2. This originating motion was filed by Planning & Property Partners Pty Ltd.
3. The address of the Plaintiff is Planning & Property Partners Pty Ltd,
Duckboard House, Level 2, 91-93 Flinders Lane, Melbourne, Victoria 3000.

