

IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMON LAW DIVISION
PROPERTY LIST

No. S CI 2018 02512

IN THE MATTER of an application under section 84 of the *Property Law Act 1958*
(Vic)

- and-

IN THE MATTER of an application for the discharge or modification of a restriction arising under a covenant in a transfer of land registered no. P998775J affecting the land at 28 John Hunter Drive, Endeavour Hills, being the land in Certificate of Title Volume 9924 Folio 494 by:

DANIA HAMDAN

Plaintiff

GENERAL FORM OF ORDER

JUDGE: The Honourable Associate Justice Derham

DATE MADE: 11 September 2018

ORIGINATING PROCESS: Originating motion filed 29 June 2018

HOW OBTAINED: Pursuant to the originating motion and pursuant to the Orders of the Court made on 31 July 2018

ATTENDANCE: Mr M Townsend of Counsel for the plaintiff

OTHER MATTERS:

- A. On 31 July 2018 the Court ordered the plaintiff to give notice of this application to Development Victoria, which has the benefit of the Covenant.
- B. Compliance with the orders concerning the giving of notice has been established by the affidavits of the plaintiff's solicitor, Myles Patrick Watson, sworn 4 and 11 September 2018.
- C. Pursuant to rule 52.09(3) of the *Supreme Court (General Civil Procedure) Rules 2015* ('the Rules') the Court declares the plaintiff has given notice as required.
- D. The plaintiff's solicitors received no written objections to the application from persons entitled to the benefit of the covenant and none have appeared in Court.



- E. The Court has acted on the evidence of the plaintiff's expert Mr Robert Easton as contained within his planning report dated May 2018, and on the submissions of Mr. M. Townsend, Counsel for the plaintiff. The Court has concluded that the proposed modification of the covenant will not substantially injure the persons entitled to its benefit.
- F. This Order is authenticated by the Associate Judge pursuant to Rule 60.02(1)(b) of the Rules.

THE COURT ORDERS THAT:

1. Pursuant to section 84(1)(c) of the Property Law Act 1958 the restrictive covenant contained in Instrument of Transfer No. P998775J recorded in the Register Book at the Office of Titles affecting the land at 28 John Hunter Drive, Endeavour Hills, being the land described in Certificate of Title Volume 9924 Folio 494, be modified as shown in the relevant parts of the transfer so that the covenant reads:

The Transferee HEREBY for himself his heirs executors administrators and transferees the registered proprietor or proprietors for the time being of the land hereby transferred COVENANTS with URBAN LAND AUTHORITY pursuant to the provisions of Section 14 of the Urban Land Authority Act 1979 that

- i. there will not be erected on the land hereby transferred any building other than two one houses and usual outbuildings; and*
- ii. ~~such house will not have less than seventy five percent (75%) of all external walls (save for provisions of windows, doors, fascias and gables) of brick or brick veneer; and~~*
- iii. ~~such house will be for his own occupation; and~~*
- iv. ~~he shall occupy the said house as his home for a period of at least five years~~*

*and it is intended that this covenant shall appear as an encumbrance affecting the same and every part thereof on the Certificate of Title to be issued in respect of the land hereby transferred and FURTHER that this covenant shall forever run at Law.
Date 21/7/90*

2. As soon as practicable after the authentication of this order, the plaintiff shall lodge an authenticated copy with the Registrar of Titles.

DATE AUTHENTICATED: 11 September 2018




THE HONOURABLE ASSOCIATE JUSTICE DERHAM