

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

S ECI 2018 02665

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

- and -

IN THE MATTER of an application for the modification of a restriction arising under a covenant in a transfer of land registered no. E432033 affecting the land at 204 Hawthorn Road, Vermont South in Victoria, being the land in certificate of title volume 08937 folio 234 by:

ROOZBEH IZADI, ARMITA CHALABI,

ALAN ORANGI and ELLY ORANGI

Plaintiffs

ORDER

JUDGE: The Honourable Associate Justice Mukhtar

DATE MADE: 6 March 2019

ORIGINATING PROCESS: Originating motion filed 10 December 2018

HOW OBTAINED: On the hearing of the motion

ATTENDANCE: Mr M Townsend of counsel for the plaintiff  
No appearance by or on behalf of any affected person

OTHER MATTERS: The Court heard submissions on 4 March 2019 and granted the application for reasons to be published with the making of final orders.  
The Court's reasons for these orders were published on 6 March in [2019] VSC 137

THE COURT DECLARES pursuant to rule 52.09(3) of the *Supreme Court (General Civil Procedure) Rules 2015* –

1. The plaintiff has given notice of this application as was required by the Court's orders dated 4 February 2019.



THE COURT ORDERS –

2. Pursuant to section 84(1) (c) of the *Property Law Act 1958* the restrictive covenant contained in transfer of land no. E432033 dated 11 April 1972 affecting the land at 204 Hawthorn Road, Vermont South, Victoria, being the land in certificate of title volume 08937 folio 234, shall be modified by deletion of the words struck through in the relevant part of the covenant shown below and the insertion of the words and punctuation in bold text and double underlined, so that the covenant as modified reads:

... COVENANT ... that it will not erect ... any building other than a private dwelling house **(but no more than three)** with the usual outbuildings and that ~~no~~ **any** such building shall be constructed **substantially** of ~~materials other than~~ brick **or** brick veneer **or** stone or concrete ...

3. The plaintiff shall lodge an authenticated copy with the Registrar of Titles as soon as practicable.
4. The plaintiff has liberty to apply to the Court for any further or other orders necessary or incidental for the effectuation of this order.

AND THE COURT ALSO DECLARES –

5. The materials already used by the plaintiffs in the construction of the three dwellings on the subject land as described in the evidence before the Court (and in particular the use of a polystyrene foam cladding with a rendered finish on the external walls of the second level of the dwellings) is not in breach of the covenant as modified by the Court.

DATE AUTHENTICATED: 6 March 2019



ASSOCIATE JUDGE

*Mukhtar*

THE HON ASSOCIATE JUSTICE MUKHTAR