

IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMON LAW DIVISION
VALUATION COMPENSATION AND PLANNING LIST

No. S CI 2017 00226

BETWEEN

GLEN ORA ESTATE PTY LTD (ACN 004 118 674)

First Plaintiff

and

EUGENIA APOSTOLOFF

Second Plaintiff

and

BRIMBANK CITY COUNCIL

Defendant

ORDER

JUDGE:

The Honourable Justice Cavanough

DATE MADE:

14 August 2018

ORIGINATING PROCESS:

Writ filed 25 January 2017

HOW OBTAINED:

On the matter coming on for directions on 14 August 2018 pursuant to the order made by the Honourable Justice Cavanough on 20 July 2018.

ATTENDANCE:

Mr I Percy of counsel for the plaintiffs

Ms M O'Sullivan of counsel for the defendants

OTHER MATTERS:

1. The Defendant has informed the Court that it proposes no longer to participate in the proceeding. If any order for costs is proposed to be made which concerns it, it seeks an opportunity to be heard. Otherwise it seeks to be notified of any decision or order of the Court relating to the matter.
2. The Defendant proposes to file electronically a notice of withdrawal of defence in accordance with the paper notice dated 14 August 2018 a copy of which was handed up in Court this day. The Court is satisfied that an electronic version of that document would be proper in form. The notice would relate to the amended defence dated 13 August 2018 filed pursuant to the leave granted by the order made by the Honourable Justice Cavanough on 20 July 2018.
3. For the purposes of Rule 25.02(5) of the *Supreme Court (General Civil Procedure) Rules 2015*, the defendant does not seek leave to withdraw any admissions or any other matter operating for the



benefit of the plaintiff, and the plaintiff does not consent to any such thing.

4. Present in Court today were two of the persons referred to in paragraph 2 of 'Other Matters' in the order made by the Court on 20 July 2018, namely Mr Tom Servinis and Ms Brigit Straus. Mr Servinis indicated that he did not wish to make any submission or comment today. Ms Straus indicated that she still wished to seek legal advice about her own position. She expressed a willingness to update the Court about her position prior to the next directions hearing scheduled for Tuesday 25 September 2018.
5. The Court indicated that, subject to submissions to the contrary that may hereafter be received, it was inclined to the view that the plaintiff should be permitted to proceed, at trial, by way of witness statements in accordance with s 49(3)(j) of the *Civil Procedure Act 2010*.
6. The Court gave a provisional indication that the trial may be able to be fixed to commence on Monday 19 November 2018 on a provisional estimate, provided by the plaintiff today, of a hearing duration of 2 days.

THE COURT ORDERS THAT:

1. By 28 August 2018, the Defendant shall give notice of the withdrawal of its defence to:
 - a) each person who is the registered proprietor or registered mortgagee or caveator of the land identified in Schedule A to the order made by the Honourable Justice Cavanough on 5 June 2018, by pre-paid priority post at the last recorded address of that person appearing on the register held by Land Victoria (the Office of the Registrar of Titles);
 - b) each person who is the ratepayer of the land identified in Schedule A to the said order, by pre-paid priority post at the last recorded address of that person appearing on the defendant's register of ratepayers.
2. The notice shall be in the form annexed to this order and marked "B".
3. The proceeding be listed for directions at 10:00am on Tuesday 25 September 2018.
4. Costs are reserved.

DATE AUTHENTICATED: 14 August 2018



THE HON. JUSTICE CAVANOUGH



SCHEDULE B

NOTICE OF THE DEFENDANT'S WITHDRAWAL OF ITS DEFENCE TO PROCEEDINGS CONCERNING ROADS WITHIN THE SOUTHERN SECTION OF SOLOMON HEIGHTS ESTATE BEING THE LAND DESCRIBED IN CERTIFICATES OF TITLE VOLUME 11598 FOLIO 596, VOLUME 11686 FOLIO 172, VOLUME 11822 FOLIO 532 AND VOLUME 11832 FOLIO 445 AS DELINEATED IN COLOUR ON THE MAP WITH THIS NOTICE (**THE DISPUTED ROADS**)

This letter is given by order of the Supreme Court of Victoria.

Glen Ora Estate Pty Ltd and Eugenia Apostoloff (**the plaintiffs**) being the registered proprietors as tenants in common of the disputed roads, have brought proceedings in the Court against Brimbank City Council (**the defendant**) seeking declarations that the disputed roads:

- a) are not "public highways" within the meaning of the *Local Government Act 1989* (Vic);
- b) are not "public roads" within the meaning of the *Road Management Act 2004* (Vic);
- c) are not public highways with the meaning of the common law; and
- d) have not vested in the defendant by operation of law.

The defendant has withdrawn its Defence to the proceeding, and accordingly, there is presently no party objecting to the relief sought by the plaintiffs.

Any person who claims to be entitled to the ownership or benefit of the disputed roads or any part of them and who wishes to oppose or support the relief sought by the plaintiffs or who otherwise wishes to be heard or make any submissions to the Court at the trial of the proceeding should:

attend the Supreme Court at a Directions Hearing on **25 September 2018 at 10:00am** at 210 William Street, Melbourne, at a court room to be nominated.

An attendance in person, or by a legal practitioner or other person that the Court permits, is required in order to make an application to be heard or make submissions at the trial of the proceeding. Persons concerned may wish to act as a group. Written communications without an attendance may not be considered. The Court will not decide the proceeding at the Directions Hearing, but will set procedures for the progress of the case which may include fixing a date for trial.

Copies of documents relating to this proceeding and any further information may be obtained on request from the plaintiffs' solicitors RD Silverstein, 4 Coronation Street West Brunswick, Victoria, 3055 or by email liberia@optusnet.com or telephone 0411 471 850.