Andrew John Hanam *v* Lam Vui and another
[2013] SGHC 159

Case Number : Originating Summons No 92 of 2013
Decision Date : 21 August 2013
Tribunal/Court : High Court
Coram : Belinda Ang Saw Ean J
Counsel Name(s) : Andrew Hanam (Andrew LLC) for the plaintiff; Bernard Sahagar s/o Tanggavelu (Lee Bon Leong & Co.) for the defendants
Parties : Andrew John Hanam — Lam Vui and another

Land – Easements – Creation

Land – Easements – Rights of support

21 August 2013

Belinda Ang Saw Ean J:

Introduction

1 This case concerned a pair of semi-detached properties known as No 2 and No 4 Thomson Green, Singapore. The plaintiff is the owner of No 4, which is a three-storey semi-detached house. The defendants' property, No 2 is a two-storey semi-detached house. There is a two-storey dividing wall between No 2 and No 4 ("the party wall"). The party wall does not go fully up to the third storey of No 4. A side wall of the third storey of No 4 (that is exposed to the elements) sits above the plaintiff's side of the party wall ("the extended side wall").

2 The plaintiff had complained of leaks in No 4. According to the plaintiff, his contractor advised that the egress of water was either from the extended side wall, or from the area where the extended side wall meets the party wall. [note: 1] The defendants had refused to permit the plaintiff's contractor access to No 2 in order to inspect the party wall from the side of No 2.

3 The plaintiff commenced Originating Summons No 92 of 2013 ("OS 92") to gain access to No 2 for the following purposes:

(a) to carry out inspection of the party wall including the top of the party wall;

(b) to carry out tests to determine whether the water leakage is coming from the top or any part of the party wall;

(c) to carry out repairs to the party wall; and

(d) to carry out repairs to the extended side wall.

The Arguments

4 Before this court, the plaintiff conceded that the extended side wall was not a "party wall"

within the meaning of s 104 of the Land Titles Act (Cap 157, 2004 Rev Ed) ("LTA").

5 The plaintiff asserted an implied easement "for party wall purposes" that was "necessary for the reasonable enjoyment" of his property pursuant to s 99 of the LTA. As such, the plaintiff claimed to be entitled to the relief sought in OS 92 to enter No 2 to access the roof in order to inspect the party wall to determine the source of the leaks and to carry out the necessary repairs, including waterproofing the extended side wall.

6 The relevant provisions of s 99 of the LTA read:

> **Implied easements for right of way and other rights shown in subdivision plan**
>
> (1) Where the competent authority has approved the development and subdivision of any land comprised in an estate before or after 1st March 1994 and the subdivision plan has been submitted to the competent authority, there shall be implied, in respect of each lot of the estate which is used or intended to be used as a separate tenement, in favour of the registered proprietor of the lot and as appurtenant thereto, all the easements referred to in subsection (1A).
>
> (1A) The easements which shall be implied under subsection (1) are all such easements of way and drainage, for party wall purposes and for the supply of water, gas, electricity, sewerage and telephone and other services to the lot on, over, or under the lands appropriated or set apart for those purposes respectively on the subdivision plan submitted to the competent authority relating to the estate, as may be necessary for the reasonable enjoyment of the lot and of any building or part of a building at any time thereon.
>
> (2) All ancillary rights and obligations reasonably necessary to make the easements referred to in subsection (1A) effective shall be implied.
>
> (3) In respect of all the easements implied by this section, there shall also be implied a covenant binding all registered proprietors enjoying the benefit of such easements to contribute to the cost of maintenance or repair of the subject of the easements as if the easements and the covenant to contribute had been created by an instrument registered under this Act and so long as such easements subsist the covenant to contribute shall bind any successor in title enjoying the benefit of the easements except that in the case of the right to erect and maintain party walls, the implied covenant provided in this subsection shall bind only the registered proprietors of the lots on which party walls have been erected.
>
> ...
>
> (7) The easements implied by this section shall not apply to the lots in an estate where subdivision approval was given by the competent authority prior to 1st March 1994 and satisfactory documentary evidence has been produced to the Registrar of the completion of the transfer of any lot in the estate to a purchaser with easements expressly created in an instrument which has been executed and delivered to the purchaser.
>
> (8) In this section —
>
> "estate" means any land which has been subdivided into lots under the Planning Act (Cap. 232), and includes —

(*a*) land intended for use as easements to be made appurtenant to other lots within the same estate as shown in the subdivision plan submitted to the competent authority; and

(*b*) undeveloped lots, if any, which are shown in the first subdivision plan submitted to the competent authority, each of which is capable of being subdivided as shown in one or more subsequent subdivision plans as and when submitted to or issued by the competent authority;

"lot" means a parcel of land forming part of an estate to which the Chief Surveyor has allotted a Government survey lot number and also described as a "plot" in a subdivision plan submitted to the competent authority.

7 The defendants contended that the plaintiff had not proven that the water egress was from the party wall seeing that there was no water damage on the defendants' side of the party wall. The defendants disagreed with the plaintiff's reading of s 99, and consequently rejected the allegation of an implied easement for party wall purposes in the nature contended by the plaintiff. To the defendants, the leaks in No 4 were possibly due to alterations and/or renovations to the third storey of No 4 rather than caused by a defect in the party wall.

8 On 5 March 2013, counsel for the defendants, Mr Bernard Sahagar ("Mr Sahagar"), informed the court that the defendants would grant access to a registered building surveyor and/or engineer, if one was engaged by the plaintiff, to identify the problem and to propose a permanent solution. The defendants' offer was rejected by the plaintiff, a lawyer who represented himself in OS 92.

9 On 12 May 2013, I dismissed OS 92. The plaintiff has appealed against my decision.

Events leading to OS 92

10 The plaintiff experienced leaks in his home in March 2012. On or before 14 March 2012, the plaintiff's wife explained the problem to the first defendant and requested access to investigate the leaks and carry out repairs to the party wall and/or extended side wall. The first defendant, however, wanted the plaintiff to write to him.

11 On 14 March 2012, the plaintiff wrote to the first defendant. He sought permission for his contractor to enter No 2 and carry out repair works "to the external façade of the boundary wall". [note: 2] The first defendant indicated willingness to grant permission but it was conditional upon the plaintiff and his contractor providing the first defendant with an undertaking to repair any damage caused to the roof of No 2, and a banker's guarantee of $5,000 to secure this undertaking. The first defendant's conditions were precautionary, having had a bad experience with leaks in his roof caused by the previous owner of No 4. [note: 3]

12 On 19 March 2012, the plaintiff replied under the letterhead of his own law firm rejecting the conditions imposed by the first defendant. At the same time, his law firm issued a formal demand for access to No 2. The plaintiff threatened to commence legal proceedings if no favourable response was forthcoming. The defendants did not reply. No proceedings were commenced immediately after the expiry of the plaintiff's deadline.

13 Following this legal demand were some unsuccessful attempts by the plaintiff and his wife to negotiate for access to the defendants' premises. On 22 November 2012, the plaintiff again wrote to the first defendant to request permission to access No 2. When he received no reply, the plaintiff commenced proceedings in the Subordinate Courts.

14 On 25 January 2013, the plaintiff wrote to the first defendant, offering to provide a written undertaking similar to the one set out in the publication "Be Good Neighbours" by the Urban Redevelopment Authority ("URA") and the Building & Construction Authority ("BCA"). [note: 4] The sample undertaking read as follows: [note: 5]

> We, the Owner and Building of construction works at [address], would like to seek your consent to allow access to your land for the following reasons:
>
> …
>
> We will take the necessary precautionary measures to prevent any damage to your property and we undertake to rectify any damage caused to your property in the course of these works as indicated above. Thank you.

15 On 29 January 2012, the defendants' solicitors wrote on behalf of their clients, asking the plaintiff to obtain a registered building engineer's report on the cause and solution to the leaks before the defendants would consider a "suitably worded letter of undertaking as suggested on URA/BCA website". [note: 6]

16 The proceedings in the Subordinate Courts were withdrawn after the plaintiff realised that the Subordinate Courts lacked jurisdiction as the subject matter property was over $250,000. On 30 January 2013, the plaintiff commenced OS 92.

Decision

Registered party wall easements

17 Reference is made to the instruments of transfer of No 2 and No 4 dated 2 August 1974 and 11 November 1974 respectively ("the 1974 Transfer Instruments"). The 1974 Transfer Instruments were registered on 18 September 1974 and 13 January 1975 respectively with the following express easements created over both No 2 and No 4 ("the Registered Easements"): [note: 7]

> …the free right to use the wall/s erected on the boundary between Lot 5179 and Lot 5180 of Mukim XVIII comprised in Volume 131 Folio 24 and Volume 131 Folio 25 of the land-register respectively as a *party wall* reserving unto the Transferor a similar party wall right as foresaid…
>
> (emphasis added)

18 The plaintiff stated in his affidavit that "[t]he Certificates of Title of [No 2 and No 4] are encumbered with an easement for party wall rights over whole of MK18-5179M MK18-5180L" [note: 8] (*ie*, the Registered Easements). He went on to contend that these rights created "cross easements to both No 2 and No 4 over party wall rights". [note: 9] Notably, the plaintiff stopped short of developing this discrete point to the facts of this case. I did not find this surprising as the plaintiff must have realised that the party wall easements created by the execution of the 1974 Transfer Instruments that were subsequently registered did not go beyond what was permitted by the easements. Plainly, the Registered Easements are sufficiently defined to afford assistance in disposing OS 92. For the reasons explained below, the fact that the Registered Easements were registered before 1 March 1994 has an important bearing on the relevance and operation of s 99 of the LTA in relation to the facts of this case.

19 The party wall easements of support in the 1974 Transfer Instruments were created by the execution of the aforesaid transfers and then registered and noted on the Certificates of Title of No 2 and No 4. The relevant portion of section 88 of the Land Titles Act (Cap 276, 1970 Rev Ed) (the predecessor to s 104 of the LTA) which applied to the 1974 Transfer Instruments reads:

> (1) In this section, "conveyance" has the same meaning as it has in section 2 of the Conveyancing and Law of Property Act, and it includes instruments of transfer taking effect under this Act.
>
> (2) Where in a conveyance of land made by a person entitled to convey or to create easements in respect of a wall built on the common boundary of that land and adjoining land so that the boundary passes longitudinally through the wall (whether centrally or otherwise), the wall is described as a "party wall", that expression means (unless a contrary intention appears) a wall severed vertically and longitudinally with separate ownership of the severed portions, and with *cross easements entitling each of the persons entitled to a portion to have the whole wall continue in such a manner that each building supported thereby will have the support of the whole wall*, and the conveyance operates to create such easements accordingly.
>
> …
>
> (6) The words "party wall" shall not be noted on a folio unless—
>
> (a) cross easements have been created pursuant to subsection (2) of this section; and
>
> (b) the words have already been noted, or are about to be noted, on any folio in existence for the adjoining land affected by the cross easements.
>
> (emphasis added)

20 The italicised words of s 88(2) of the L and Titles Act (Cap 276, 1970 Rev Ed) delineated the scope of the Registered Easements. In this respect, I agreed with the defendants that the Registered Easements were only concerned with cross easements of support. The Malaysian case of *K Mahunaran v Osmond Chiang Siang Kuan* [1996] 5 MLJ 293 illustrates the scope of an easement of support. The defendant there was held to have committed an act of trespass by demolishing the original party wall and building an extended new party wall without the consent of his neighbour.

21 In this case, the plaintiff was erroneously seeking to go beyond what was authorised by the cross easements of support to confer a right to enter No 2 to inspect the party wall on the side of No 2 or to carry out repairs from No 2 without the consent of the defendants.

22 As alluded to in [18], the fact that the Registered Easements were previously registered before 1 March 1994 is significant. Easements under s 99(1A) are implied in an "estate" defined in s 99(8). Section 99(7) of the LTA excludes the operation of s 99(1A) if (a) subdivision approval was given *prior* to 1 March 1994 (the date that the LTA first came into force), and (b) satisfactory documentary evidence has been produced to the Registrar of Titles of "the completion of the transfer of any lot in the estate to a purchaser with easements expressly created in an instrument which has been executed and delivered to the purchaser". It cannot be disputed that both requirements have been satisfied.

23 From the copies of the 1974 Transfer Instruments exhibited in the plaintiff's affidavit filed in the

Subordinate Courts, No 2 and No 4 together with other houses in the Thomson Green were developed by United Overseas Land. [note: 10] The housing estate where No 2 and No 4 were located was known as Thomson Hills. It is apparent that the land comprised in the Thomson Hills estate was subdivided into lots in the 1970s. The defendants exhibited a resurvey sheet that suggested that subdivision of the land comprising the Thomson Hills estate occurred in 1974. [note: 11] Furthermore, according to the land title search provided by the plaintiff, No 4 has a lot number, lot area, certified plan number that was approved on 27 February 1975 and then filed in the Chief Surveyor's Office. [note: 12] It is thus clear from the documentary evidence that the approval for subdivision of the land comprised in the Thomson Hills estate was given well *before* 1 March 1994. The 1974 Transfer Instruments also evidenced the completion of the transfer of No 2 and No 4 to the respective purchasers (*ie* the predecessors-in-title of No 2 and No 4) with easements of support expressly created in the 1974 Transfer Instruments which were executed, delivered and registered in favour of them. Consequently, it follows that by virtue of s 99(7), the easements implied pursuant to s 99 of the LTA do not apply to properties (like No 2 and No 4) in the Thomson Hills estate.

24 For these reasons, the plaintiff's application in OS 92 was patently misconceived.

Section 99 of the LTA

25 Notwithstanding the fact that the conclusions reached above necessarily resolved OS 92 in favour of the defendants, since both sides submitted extensively on easements implied pursuant to s 99(1A) of the LTA, I propose to comment on their arguments for completeness.

Two threshold requirements

26 The plaintiff argued that "[e]ven without the benefit of the express covenants of easements granted to both properties in respect of party wall rights", [note: 13] the statutorily implied easements in s 99(1A) of the LTA allowed the plaintiff to access the defendants' property for the purposes of inspecting the party wall and to carry out necessary repairs thereto as this was necessary for the reasonable enjoyment of No 4. However, this argument glossed over two threshold requirements, both of which were important to the question of whether s 99 of the LTA was correctly invoked.

27 The first gloss overlooked the effect of s 99(7) of the LTA to the facts of this case. As I have already ruled in [22] above, the approval for subdivision of the land comprised in the Thomson Hills estate was given *prior* to 1 March 1994, and the party wall easements were created in the 1974 Transfer Instruments which were registered. Accordingly, s 99(7) precludes the operation of any easements implied under s 99(1A).

28 The second gloss was the flawed assumption that s 99(1A) automatically entitles the plaintiff to an implied easement of the nature claimed *as a matter of law*. Section 99(1A) provides for a broad category of implied easements because the provision contemplates that the specific easements would be indicated in the manner "appropriated or set apart" on the plan of subdivision submitted to the competent authority. This point is clear from the Report of the Select Committee on the Land Titles Bill (Parl 3 of 1993) presented to Parliament on 18 August 1993 at [24]-[25]:

> 24. A representor expressed some concern over the lack of description of the type of easements that are to be implied under clause 99 as well as the lack of description of the servient lots. Another representor suggested that the easements to be implied should be set out within clause 99 instead of being set out in a legend endorsed on the approved plan for subdivision. ...

25. The Committee sees some merit in the latter approach. It is however not feasible to imply a common set of easements for all developments. The Committee therefore recommends that clause 99 describe the common easements *and these will be implied where indicated in the approved subdivision plans*.

(emphasis added)

29 At the risk of repetition, the subdivision approval in this case was well before 1 March 1994. However, assuming, for the sake of argument, that this case concerned lots in an estate where the subdivision approval was given on or after 1 March 1994, in my view, the subdivision plan must be tendered in evidence if there is to be any reliance on an easement that is "appropriated or set apart" on the subdivision plan to support a contention that the scope and right conferred by the easements enumerated as implied under s 99(1A) is beyond what are typically authorised by them.

Scope of easements in s 99(1A) of the LTA

30 This leads me to the main dispute, that is, whether s 99 implied, in respect of No 4, an easement to access or to enter the defendants' property for the purposes of inspecting the party wall from the side of No 2 and to carry out necessary repairs thereto. Notably, the complaint is not related to an easement of support in respect of a "party wall". The plaintiff argued that s 99(1A) of the LTA was stated in wide and general terms that would allow him, as the owner of the dominant tenement, to access the servient tenement to inspect the party wall for the source of the water egress into No 4 and to carry out repairs and precautionary maintenance works to the party wall. It is worth bearing in mind that the plaintiff conceded during the hearing that s 99(1A) of the LTA did not imply any easements in respect of the extended side wall (see [4] above).

31 The defendants' counter arguments were that not only was the plaintiff himself unable to articulate the full nature or extent of the easement claimed, any party wall rights that the plaintiff had were merely rights of support and nothing more.

32 I start with the phrase "for party wall purposes" within the context of s 99. The meaning of "party wall" varies according to the context in which it is used. To this end, s 99(3) of the LTA (see [6] above) envisages that the easement "for party wall purposes" concerns the right to "erect and maintain party walls". Section 99(3) of the LTA further obliges the owners of the lots on which the party wall is erected to contribute to the cost of maintaining the portion of the wall not owned by him. This statutory provision reflects the common law position relating to easements of support: that neither party can pull down his side of the wall at will and that both parties need to repair or maintain the wall for support. As stated, the present case is not concerned with the right of support and has nothing to do with ensuring that the support continues. Nothing in the phrase for "party wall purposes" by itself confers by implication under s 99(1A) a right of way over the defendants' land for, *inter alia*, the purpose of inspecting the defendants' side of the party wall to determine the source of the leaks in No 4.

33 This brings me to the next phrase relied on by the plaintiff, *viz*. "as may be necessary for the reasonable enjoyment of the lot". The plaintiff argued that this phrase in s 99(1A) extended the scope of the party wall rights to include the right to enter his neighbour's property to inspect the party wall. This contention is decidedly untenable and without merit. In *Boglari v Steiner School & Kindergarten* [2007] VSCA 58 ("*Boglari*"), the Supreme Court of Victoria Court of Appeal had the opportunity to consider the meaning of the same phrase in Section 98 of the Transfer of Land Act 1958 (Victoria), a provision which is almost identical to s 99 of the LTA. The relevant part of Section 98 of the Transfer of Land Act 1958 (Victoria) reads:

98. Easements arising from plan of subdivision

The proprietor of an allotment of land shown on an approved plan of subdivision or a lot shown on a registered plan shall be entitled to the benefit of the following easements which shall be and shall be deemed at all times to have been appurtenant to the allotment or the lot, namely-

(a) all such easements of way and drainage and for party wall purposes and for the supply of water gas electricity sewerage and telephone and other services to the allotment or the lot on over or under the lands appropriated or set apart for those purposes respectively on the plan of subdivision *as may be necessary for the reasonable enjoyment of the allotment or the lot* and of any building or part of a building at any time thereon...

(b) ...

in all respects as if all such easements had been expressly granted.

(emphasis added)

34 The issue in *Boglari* was whether the construction of a fence and a gate and the occasional locking of the gate constituted an unreasonable interference with an easement of way implied by Section 98 of the Transfer of Land Act 1958 (Victoria). Neave J held (at [30]) that the phrase "as may be necessary for the reasonable enjoyment of the allotment or the lot" in relation to an implied easement of way had a similar effect to the test which applied in determining what amounted to reasonable access where an easement of way created by an express grant did not indicate an access or conclusion point for the easement. It is therefore apparent that the phrase serves a rather limited purpose of determining how the implied easements were to be exercised in light of the circumstances. Contrary to the plaintiff's argument, this phrase cannot be used to confer a right to enter No 2 "for party wall purposes". If anything, in a proper case, the relevant provision is s 99 (2), which provides that ancillary rights and obligations reasonably necessary to make the easements for party wall purposes effective shall be implied.

Comparison with s 98 of the LTA

35 A comparison with the provisions of s 98 of the LTA with s 99 is beneficial. In *Management Corporation Strata Title Plan No 549 v Chew Eu Hock Construction Co Pte Ltd* [1998] 2 SLR(R) 934, the Court of Appeal held at [27] and [39] that the court should have regard to s 98 of the LTA when construing the provisions of s 99 of the LTA since there is a considerable amount of overlap between the two sections. The relevant portions of s 98 of the LTA are set out below:

Implied easements for passage of water, electricity, drainage, gas and sewerage for development

(1) There shall be implied in respect of each lot of land which forms part of the same development (referred to hereinafter as the lot) —

(a) in favour of the proprietor of the lot, and as appurtenant thereto, easements for the passage or provision of water, electricity, drainage, gas and sewerage through or by means of any sewers, pipes, wires, cables or ducts to the extent to which those sewers, pipes, wires, cables or ducts are capable of being used in connection with the enjoyment of the lot;

(b) as against the proprietor of the lot, and to which the lot shall be subject, easements for the

passage or provision of water, electricity, drainage, gas and sewerage through or by means of any sewers, pipes, wires, cables or ducts, as appurtenant to every other lot capable of enjoying such easements.

(2) All ancillary rights and obligations reasonably necessary to make the easements referred to in subsection (1) effective shall be implied.

(3) *The easements implied by this section entitle the proprietor of the dominant tenement to enter on the servient tenement at all reasonable times to repair, renew or restore any sewers, pipes, cables, wires or ducts as shall appear necessary but the proprietor of the dominant tenement shall make good any damage caused to the servient tenement.*

...

(emphasis added)

36 I have two comments to make on s 98 of the LTA. First, like s 99(2) of the LTA, s 98(2) also implies certain ancillary rights and obligations. Second, it is clear that the ancillary rights in s 98(2) of the LTA *do not* include rights of access since s 98(3) of the LTA already expressly states that the easements implied under s 98 of the LTA confer limited rights on the owner of the dominant tenement to enter the servient tenement. In my view, given the similarity of the ancillary rights and obligations provisions in both s 98(2) and s 99(2) of the LTA, Parliament clearly could not have intended the ancillary rights implied under s 99(2) of the LTA to include rights of access and entry. Any interference with the servient tenement proprietor's *prima facie* right to exclusive use of his property by way of rights of entry would have been expressly provided for, as was the case in s 98 of the LTA.

Comparison with LTSA provisions on implied easements

37 The Land Titles (Strata) Act (Cap 158, 2009 Rev Ed) ("the LTSA"), which deals with implied easements in a strata title property further reinforces this. The relevant provisions of the LTSA read as follows:

Easement of support

16(1) In respect of each lot there shall be implied —

(*a*) in favour of the subsidiary proprietor of the lot, and as appurtenant thereto, an easement for the subjacent and lateral support thereof by the common property and by every lot capable of affording support; and

(*b*) as against the subsidiary proprietor of the lot, and to which the lot shall be subject, an easement for the subjacent and lateral support of the common property and to every other lot capable of enjoying support.

(2) *The easement of support created by this section entitles the subsidiary proprietor of the dominant tenement to enter on the servient tenement to replace, renew or restore any support.*

Easement of shelter

17(1) Every subsidiary proprietor is entitled to have his lot sheltered by all other parts of the subdivided building that are capable of affording shelter.

(2) The right created by this section is an easement to which the aforesaid parts of the subdivided building are subject.

(3) *The easement of shelter created by this section entitles the subsidiary proprietor of the dominant tenement to enter on the servient tenement to replace, renew or restore any shelter.*

...

Ancillary rights

20. All ancillary rights and obligations reasonably necessary to make easements effective shall be implied whenever easements are created or implied by and under this Act.

(emphasis added)

38 As was the case with s 98 of the LTA, Parliament thought it necessary here to expressly include rights of entry to the servient tenement in the implied easements of support and shelter in s 16 and 17 of the LTSA, notwithstanding the implied ancillary rights and obligations in s 20 of the LTSA.

39 In light of the above, I rejected the plaintiff's argument that the implied easement "for party wall purposes" in s 99 of the LTA confers a right to enter the defendants' property.

Reference to English Legislation

40 For the sake of completeness, I should add that the plaintiff made several reference to legislation in the England such as the Access to Neighbouring Land Act 1992 and the Party Wall etc. Act 1996. These English statutory provisions entitle an applicant, in certain circumstances, to seek an English court order compelling the applicant's neighbour to grant access to his property in order to, amongst other things, allow the applicant to carry out repairs to the applicant's property or a party wall. However, the plaintiff was not suggesting that these English statutory provisions somehow applied in Singapore in the absence of statutory enactment by Parliament. In fact, as the plaintiff himself conceded, "*[t]here are no similar provision (sic) in Singapore that set out the procedure for applying for an access order*". [note: 14] The English provisions referred to by the plaintiff merely underscored the recognition by the English legislature that there was a lacuna in this area of English land law that could only be properly addressed by detailed statutory enactment and not the courts. While Parliament might wish to consider if similar legislation should be enacted in Singapore, this will be of little comfort to the plaintiff in his present case.

Result

41 For these reasons, I dismissed the plaintiff's application in OS 92 with costs fixed at $2,000, inclusive of disbursements.

[note: 1] Plaintiff's Affidavit dated 30.1.13 at [6]

[note: 2] Plaintiff's Affidavit dated 30.1.13 at [9] & p 18.

[note: 3] Plaintiff's Affidavit dated 30.1.13 at [9] & p19.

[note: 4] Plaintiff's Affidavit dated 30.1.13 at [14].

[note: 5] Plaintiff's Affidavit dated 30.1.13 at p28.

[note: 6] Plaintiff's Affidavit dated 30.1.13 at p30.

[note: 7] First defendant's Affidavit dated 20.2.13, pp 22 & 25.

[note: 8] Plaintiff's Affidavit dated 30.1.13 at pp 12 & 15.

[note: 9] Plaintiff's written submissions dated 1.3.13 at [4]; Plaintiff's Affidavit dated 30.1.13 at [3].

[note: 10] First defendant's Affidavit dated 20.2.13, pp 22 & 25.

[note: 11] First defendant's Affidavit dated 20.2.13 at p 44.

[note: 12] Plaintiff's Affidavit dated 30.1.13 at p 8.

[note: 13] Plaintiff's written submissions dated 1.3.13 at [5].

[note: 14] Plaintiff's written submissions dated 1.3.13 at [11].

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