

IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
PRACTICE COURT DIARY

S ECI 2021 02295

HABIBA RAHIMI

Plaintiff

- and -

MORTAZA RAHIMI

Defendant

ORDER

JUDGE: The Honourable Justice Inceri

DATE MADE: 2 July 2021

ORIGINATING PROCESS: Writ

HOW OBTAINED: On return of the plaintiff's summons filed 29 June 2021

ATTENDANCE: Mr S. Sharify of counsel for the plaintiff
Mr S. Hays of queens counsel and Mr B. Thompson for
the defendant

OTHER MATTERS:

- A. At the hearing the defendant was represented by counsel on a pro bono basis pursuant to a referral under the Victorian Bar Pro Bono Scheme by my order of 1 July 2021.
- B. This is an application for an interim mandatory injunction requiring the defendant to take steps to allow the plaintiff and Mujtaba Rahimi and Nadia Rahimi to enter and reside at his home in Mildura following a relationship breakdown and the defendant having changed the locks on 7 June 2021.
- C. The plaintiff relied on an affidavit of Tabitha O'Shea dated 29 June 2021 and unsworn due to COVID-19. The plaintiff filed a supplementary unsworn affidavit of 2 July 2021 relating to the hearing of the defendant's unsuccessful application to vary a family violence intervention order obtained against the plaintiff to add a no contact condition.
- D. Counsel for the defendant sought, and I granted, with no opposition from the plaintiff, leave to lead viva voce evidence from the defendant on the question of the balance of convenience of the injunction sought.
- E. Counsel for the plaintiff was also granted leave to lead viva voce evidence from the plaintiff, through a Hazaragi interpreter, as to monies paid to the defendant, and any access she had been given to the property since 7 June 2021.



- F. The defendant conceded that there was a serious question to be tried, although opposed the plaintiff's characterisation of the strength of her case. I heard submissions from the parties on the question of the balance of convenience. I determined that there was insufficient evidence before me of the impact on the plaintiff to be satisfied that the balance of convenience favoured the order sought.
- G. I transferred the proceeding to the Property List. I indicated to parties that the proceeding, whilst not warranting an interim injunction of the type sought, did warrant an expedited trial, before the end of 2021.
- H. I referred this proceeding to judicial mediation. The legal practitioners for the parties are reminded of their obligations under section 177 of the Legal Profession Uniform Law, contained in Schedule 1 to the *Legal Profession Uniform Law Application Act 2014* (Vic), alternatively, section 3.4.13 of the *Legal Profession Act 2004* (Vic), whichever is applicable.
- I. I listed the proceeding for a directions hearing in the Property List.
- J. As the defendant is legally unrepresented, I referred him for further assistance through the Victorian Pro Bono Assistance Scheme ('the scheme'), being satisfied that it is in the public interest for the due administration of justice to refer a request for pro bono assistance by a barrister for the preparation of a Defence and appearance at the judicial mediation listed on 21 July 2021.
- K. The defendant consents to the Supreme Court of Victoria Self-Represented Litigants Coordinator providing her name, contact details, information about the proceeding and copies of all relevant documents filed in the proceeding to any member of the scheme that agrees to provide assistance to the Plaintiff.
- L. The Court is satisfied that the defendant:
 - a. meets the eligibility criteria to be provided assistance under the scheme;
 - b. understands that the scheme is a pro bono legal assistance scheme operated by the Victorian Bar separately and independently of the Court; and
 - c. is a one-off service that does not give rise to ongoing assistance.

THE COURT ORDERS THAT:

- 1. The plaintiff's summons filed on 29 June 2021 is dismissed.
- 2. The proceeding is transferred to the Property List.
- 3. The proceeding is listed for a directions hearing in the Property List before Judicial Registrar Keith on 13 July 2021 at 10:00am.
- 4. The proceeding is referred to judicial mediation by Judicial Registrar, such mediation to take place on 21 July 2021.
- 5. The mediation shall be attended by those persons who have ultimate responsibility for deciding whether to settle the dispute and the terms of any settlement, and the legal



practitioners who have ultimate responsibility to advise the parties in relation to the dispute and its settlement.

6. The legal practitioners for the parties shall provide to the mediator and to each other prior to the commencement of the mediation, a reasonable estimate of:
 - a. their costs and disbursements on a standard basis in relation to the proceeding up to and including the mediation;
 - b. the length of the trial; and
 - c. their anticipated costs and disbursements on a standard basis in relation to the trial.
7. The Supreme Court of Victoria's Self-Represented Litigants Coordinator is directed to lodge a request with the scheme for assistance to the defendant as specified in order 8 of these orders.
8. The purpose of the request to the scheme is to assist the defendant with:
 - a. preparing a Defence; and
 - b. appearing at a Judicial Mediation of the proceeding on 21 July 2021.
9. The request to the scheme is limited to providing the assistance as specified in order 8 of these orders, unless the accepting member of the scheme privately agrees to extend the assistance provided, or a further order of the Court is made.
10. The Supreme Court of Victoria's Self-Represented Litigants Coordinator is authorised to liaise with the member of the scheme who accepts the request, and is directed to provide the member with the following documents:
 - a. an authenticated copy of this order;
 - b. the contact details of the defendant; and
 - c. any documents filed in the proceeding.
11. Costs are reserved.

DATE AUTHENTICATED: **2 July 2021**


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The Honourable Justice Incerti