

Claim for 2nd Review on Claim incident 29/8/2019 - SGW 202 735 387

Date: 12/5/2022

Att: Mr Steve Brown, IAL Team Manager [Ph: 03 7025 94 15]

Dear Sir

Your IAL Manager Charlene Clarke wrote to AFCA in case No: 743652 in reply to my claim to AFCA that the cost for fixing the storm damage incident above is enough [just 50% of the value of neighbor's favorite type fence and not my favorite fence. Also, she wrote I have not damaged to any person nor to any building, so the liability of SGIO and IAL was what they wrote in two quotes by Dan and Jay from Western Building.

I wrote to AFCA that at least \$50,000 liability is required for a lawyer to represent me at Civil court for my adjoint owner/landlord, Desai's claim FR/GEN/645/2020. Also fixing the fence, first requires more than what Dan Taylor and Jay Wick wrote in their original building assessment and the review one. The following matters were approved during the court Hearings:

C1. August 2020

C2. January 2021

C3. March 2021

C4. August 2021

C5. April 14, 2022

C6. July 27, 2022

Please See attached files to find all court proceedings in one web page and all my drawings as evidence that The Deed of Release General terms and conditions as well as rule of not claiming for same matters in court during 2005-2008 in court. Desai breached all terms and conditions of Deed of release, Form 23 of the claimants shows this breaching.

Also Hearing date 20/8/2021 orders that we should pay %50 - %50 for the structural engineer to determine if the retaining wall is needed, and if yes, what type? The report of Structerre

Formatted: Header, Centered

Formatted: Header, Right, After: -0.2 cm

Formatted Table

Formatted: Header

Formatted: Normal

Formatted: Font: 16 pt, Bold, Underline, Font color: Dark Blue, Complex Script Font: 16 pt, Bold

Formatted: Font: (Default) +Body (Calibri), Underline, Font color: Dark Blue

Formatted: Header, Indent: Before: -0.2 cm

Formatted: Header, Centered

Formatted Table

Formatted: Footer

engineer written for the Magistrate proves Desai piled sand behind the fence exceeding 100mm high, and Licensed Surveyor drawings data used in my drawings which are in my Form 23 [includes 3 Affidavit Forms 2-A, 2-B, 2-D] are evidence that Desai height of Surfaces in 16.8 meters length of boundary was already changed from natural ground level to the height of 46-53 cm in 2005 by removing a brick wall which kept away the lateral forces of 530mm high sand behind the fence from bending and damaging the dividing fence.

Their intention for demolishing this short brick wall was to get free lawyer [Grey Porter] from RAC for defending against my 4 court claims against Desai [Benaz & Rajendra Desai] in Civil court. Also by not giving access to my licensed surveyor in September 2005 to measure heights of the required Bradford post and panel retaining wall in their side of fence which sand was higher than my side of fence at boundary, they did not disclose their feature and level survey data to me to be able to prove to court easily that their action of demolishing a 16.8m long retaining wall created latera forces of their deviated sand heights at boundary from natural ground level, to be exposed to the Fence.

Fence cracked and bent in 16.8 meters long and SGIO only paid for cracked Fence sheets in boundary #62 & #64, and bent parts were aligned by my sand in Zones 4L, 8L being removed in 2008 from behind the dividing fence, then this made the dividing fence bent by removing that brick wall become straightened. Also, the party incident in July 2005 cracked the fence by 5 young men leaving their elbows over fence while they were standing over that 44cm high brick wall, and bending into my house to look at excavation site in my rear yard. This incident was witnessed by two City of Melville Security rangers who were called by me to watch party goers at #62. Some party goers also crashed my car front wind screen using a Vodka bottle at mid-night. Both reports reference numbers by security rangers of City of Melville and the emergency police exists.

My SGIO Home Policy for the party incident on 9/7/2005 was HOM130 166 428 AND my claim number for damage to the fence caused by malicious act was PTHHH 0511 048

Two rangers of City of Melville report reference number who attended the incident of Party fence damage and witnessed party goers climbed over the dividing fence in Zones 2L, 3L on boundary is: IR # 18518, Rangers: Gary and Mo

Incident of August 2005 for demolishing a brick wall from behind my dividing fence causing 17 meters length of dividing fence becoming cracked and mostly bent. Also, two limestone piers, pergola roof battens, pergola post and gas meter box, and gas pipe were damaged as this fence was connected to those. Three photos and an email exist which I added to Form 23 attachments [Form 2].

Only 6 meters of affected boundary length by removal of that brick wall was fixed in 2008 by Grey Porter lawyer of RAC and Gerard Russell from Shire telling me what to do by removing my sand instead of Desai build retaining wall. That was called: Deed of release agreement terms instead of deception as my house is two years older than Desai and their surfaces were

Formatted: Header, Centered

Formatted: Header, Right, After: -0.2 cm

Formatted Table

Formatted: Header

Formatted: Header, Indent: Before: -0.2 cm

Formatted: Header, Centered

Formatted Table

Formatted: Footer

shorter than the natural ground level at those 6m length and my surfaces were on natural ground level. The other 11 meters length of boundary by breaching the product of "Supersix and Hardie Fence product details" stayed uneven on both side in sand heights with 46-53 cm sand pile at Desai Side above natural ground level and above my Rock limestone retaining wall surfaces of 1986.

I have drawn many drawings to prove above facts in my Form 23 attachments [Form 2].

C = stands for Court Hearing Transcript , P = stands for Page. C1_P1 = Stands for Court Hearing transcript 1_Page 1.

Slight changes to texts of the three transcripts is obvious without changing the content to abbreviate some scattered texts which are relevant or fix grammatical errors. Also, some less important texts were deleted. However, for integrity of the transcripts I add the transcripts with this abstract. Please do not send this document to others without the transcripts.

C1_p1-p2. The application 53 by Desai dated 25/6/2020 IN CASE: FR/GEN/645/2020 was heard on 12/08/2020 including Rajendra & Benaz Desai (Married couple) as claimant and Afsaneh Cooper as defendant.

C1_p2. Only Rajendra Desai was speaking [not Benaz Desai]. Claimants got a quote 4536 for the Dividing Fence [approved by R. Desai].

Comment C1_P2_R1: Quote 4536 is wrong. Refer to Claimant's Form 32A_Attachments 4-12_Quotes D3651 [By WR Fencing for Benaz & Rajendra Desai, for \$4,536 on 5/03/2020] and expired Quote: D3607 [By WR Fencing for Afsaneh Cooper, for \$4,536.40 on 28/01/2020]. Although the price of quotes is the same, but my Quote is

5 weeks sooner than Claimants's Quote. The legal period for responding to a sooner Quote is 14-21 days or 2-3 weeks and not 5 weeks. The **Quote D3651**, includes a tampered Storm damage date of **28/02/2020** in compared to **Quote D3607**, which in original email sent by defendant to real estate agent of the claimant, had a **weather Bureau chart dated 29/8/2019 in it**. That date the storm was reported to SGIO by the defendant A. Cooper, which is 6 months later than first it was reported by me. Claimant has never provided any RAC Building Assessor's report in support of their fake and tapered Quote: **D3651**.

Also, in same Quotes D3651 and D3607 you can see "There is no Hardifence available. [...] A 50% deposit will be required on all jobs over \$2000 before commencement of any work. Please see in same quotes: 26.4mtrs Aluminium retaining plinths in length x 300mm high is quoted for \$1,210 [including GST].

Please see attached Transcripts of C1-C3. Also Attached Files:

Formatted: Header, Centered
Formatted: Header, Right, After: -0.2 cm
Formatted Table
Formatted: Header

Formatted: Header, Indent: Before: -0.2 cm
Formatted: Header, Centered
Formatted Table
Formatted: Footer

C1_p3. Magistrate N. Lemmon to R. Desai: You're asking that she [A.Cooper] pay 1633. R. Desai approved it. Magistrate said \$1,633 is less than 50% of \$4,536.40. Magistrate also said R. Desai should think about and gets legal advice about whether he can claim loss of rent under the Dividing Fences Act.

B.Desai: That is including the retaining wall, I think.

R. Desai: **Plus 960.**

Magistrate N.L.: Plus – **that's for loss of rent.**

R.Desai responded to magistrate that, **that's alright that under the Dividing Fence Act, they get \$1,633 for half of Colorbond fence screens, rails and posts plus \$960 for two weeks loss of rent and they pay all the retaining costs \$1,210for 26.4m long Aluminium retaining plinths as Quotes D3651 says.**

C1_p4. Magistrate N.L. said that the power of the Dividing Fence Act, is basically a power for the court to make orders about where a fence, a dividing fence, will go, what type of fence will be constructed, perhaps timelines for construction and contributions from various parties.

R. Desai agreed.

Magistrate N.L. Said, this is just called a listing conference. [...] the court can only decide the dispute after the parties are given the opportunity to have a trial, to present evidence, [...] today is just about working out whether it's necessary to set a trial date in the future. [...] Because if you can agree on an outcome today, between you, we don't need to have a trial. I can simply make orders consistent with that agreement and that would be the end of it [...]. But if you can't react such an agreement, and it sounds like in this case it's quite possible you won't be able to. Then the only option I have is to set a trial date and then it's about the evidence that's presented at the trial date that really matters, that's what the court will use to determine the dispute. Is that clear to everyone?

Formatted: Header, Centered
Formatted: Header, Right, After: -0.2 cm
Formatted Table
Formatted: Header

Formatted: Header, Indent: Before: -0.2 cm
Formatted: Header, Centered
Formatted Table
Formatted: Footer

R. Desai and A.Cooper said, yes.

Magistrate N.L. asked A.Cooper: Is there any chance that this will be resolved by – are you prepared to pay half for the fence, Ms Cooper?

C1_p5. A. Cooper: No. I need evidence and these people have never provided any evidence since 6 January, that they received my application, in email, with two evidences, they have never provided any evidence. They have written legal costs, legal costs of them in 2008 was \$88,000. That means they want \$88,000, plus half of the fence, plus no evidence.

B. Desai: No, we have not said that

A.Cooper: Okay, then you should have written that.

Magistrate N.L.: Sorry, Mr Desai, I’m getting the very distinct impression that you’re not going to reach an outcome in relation to this application.

A.Cooper: There is a Deed signed in the 2008.

R. Desai: No. You keep quiet. I just want a ...

Magistrate N.L.: [...] I am making a simple enquiry today, and that is, do I need to set this matter down for a trial. That’s it. I think the answer is yes, Isn’t it?

C1_p6. R. Desai: NO. [...]

Magistrate N.L.: So are you going to withdraw your application, Mr Desai?

R. Desai: Sorry.

Magistrate N.L.: Are you intending to withdraw your application?

R. Desai: No, I’m not withdrawing [...]

Formatted: Header, Centered

Formatted: Header, Right, After: -0.2 cm

Formatted Table

Formatted: Header

Formatted: Header, Indent: Before: -0.2 cm

Formatted: Header, Centered

Formatted Table

Formatted: Footer

Magistrate N.L.: So, you've got your application, Ms Cooper is not prepared to pay anything to settle it, or to do anything to settle it. So, the only way it can be resolved is at a trial.

A. Cooper: I can only go to the Criminal Court for this, Because of the fraud inclusion on 4 January.

Magistrate N.L.: All right. Sorry to cut you off, Mr Desai. But there's just no point in you saying anything more, because I've reached that view.

C1_p7. A.Cooper: There is a fraud inclusion, fraud, crime, and bribery.

Magistrate N.L.: Okay. Mr Desai, how many witnesses do you think you might have for the trial? You, perhaps your wife, are there, any other people.

R.Desai: My real estate, and my tenants.

A.Cooper: And they have done fraud as well, I have the evidence.

A.Cooper: His tenant has broken our fence.

R.Desai: The property we have at the moment is a rental property and this fence is not fixed from last eight months. That's very frustrating and we are losing, so, maybe I can request my...

A.Cooper: They need a retaining wall for 17 meters. They do not want to build a retaining wall. They want to install a dangerous fence.

C1_p8. A.Cooper: I am an engineer, with PhD level 92% completed. I am a Mechanical Engineer, I know how the fences balance, I know how the retaining wall works, I can read licensed surveyor's drawing.

Magistrate N.L.: I am **going to list it as a half-day hearing. [...] So, we've taken 13 January, haven't we? The soonest I can do it is 20th January, okay?**

So, I'm simply adjourning this matter to a trial on 20th January next year. [...]

Magistrate N.L.: You need to have all your witnesses present, and all the documents, photos and other things you rely upon as evidence on that date. Because that's the one and only chance you get to present your evidence, okay.

Formatted: Header, Centered

Formatted: Header, Right, After: -0.2 cm

Formatted Table

Formatted: Header

Formatted: Header, Indent: Before: -0.2 cm

Formatted: Header, Centered

Formatted Table

Formatted: Footer

C1_p9. **A.Cooper:** This matter has been in court for four years. The same matters are repeated because they have done crime, they have done fraud and bribery. There is evidence by the licensed surveyor on date 10/6/2020.

Magistrate N.L.: Ms Cooper, you can lodge an application.

At 12.35 PM The matter was adjourned until Wednesday, 20 January 2021.

C2 **FR/GEN/645/2020** **20/1/2021**

Magistrate A. Hills-Wright

R. & B. Desai v A.Cooper

C2_p2. **Magistrate A. Hills-Wright:** This is a dividing Fence matter.

A.Cooper: This is both. This is a General Procedure claim, because it includes retaining wall and retaining wall by itself does not have a legislation.

Magistrate A.H-W: [...] I understand it's a dividing Fences matter, which is a General procedure claim, but no Statements have been lodged; is that correct?

R. Desai: Yes.

Magistrate A.H-W: So there has been no order for any statements of evidence or any order that says you must give a statement to that person or that person must give a statement to you; correct? It has just been listed for a hearing?

C2_p3. **R.Desai:** Nothing was said. But we got the evidence If the matter proceeds, we can provide evidence during the hearing.

Magistrate A.H-W: That's not the point that I'm getting at.

A.Cooper: I have brought all my evidence. In here and in my suitcase. Everything is ready. Expert – expert witnesses.

Magistrate A.H-W: How many witnesses are you calling?

A.Cooper: One is here [drawing D3], because the matter is definitely retaining wall. First, we have to see if you accept what they have given to me, like, the licensed surveyor has given me, his drawing by posting it by registered post. And I brought it.

Magistrate A.H-W: Ms Cooper, this is a general procedure claim, so the laws of evidence apply. Are you calling an expert witness?

Formatted: Header, Centered

Formatted: Header, Right, After: -0.2 cm

Formatted Table

Formatted: Header

Formatted: Header, Indent: Before: -0.2 cm

Formatted: Header, Centered

Formatted Table

Formatted: Footer

A.Cooper: I can if it is necessary, but I went to the Justice of the Peace and got certification that the copy is equal to the original drawing. I brought all the drawing of the past and I am engineer. [...]

Magistrate A.H-W: [...] I can't receive evidence unless it's by agreement in a general procedure claim, where the laws of evidence apply [...].

A.Cooper: My house is insured with the IAL Insurance Australia Limited, trading as SGIO and they have sent four assessors so far and [...] that they contacted the claimants and **they offered my both quotes, for retaining wall and dividing fence, which were rejected.**

C2_p4 Magistrate A.H-W: So, let me understand. This a matter, where the fence hasn't been repaired.

R. Desai: That's correct.

Magistrate A.H-W: So this isn't a matter, where the fence has been repaired and you want half of the payment?

R. Desai: No.

Magistrate A.H-W: The job hasn't yet been done.

R. Desai: Tha's correct.

Magistrate A.H-W: And so, you are seeking from the court a ruling the fence is in need of repair and, if necessary, the nature, degree, scope of the repair and that's what you seek today.

R. Desai: That's correct.

Magistrate A.H-W: it's no criticism of you, there have been no statements lodged. All right. Ms Cooper, is your position that the fence is not in need of repair?

A.Cooper: We have several incidences since 2005 on this fence and the last two was this year. And the first incident happened in 29/8/2019 and I reported it to SGIO in two lots, one when I had to go to emergency section of hospital [...]

C2_p5 Magistrate A.H-W: [...] Ms Cooper, you must try and help me. I don't want to hear about what happened 15 years ago. I appreciate there might be a long and complex history about other matters, but just stay with me ...So there is a fence between where the two of you live, you live at number 64, you're the owner of that land, So that's not in dispute.

A.Cooper: yes, yes, yes, yes

Formatted: Header, Centered
Formatted: Header, Right, After: -0.2 cm
Formatted Table
Formatted: Header

Formatted: Header, Indent: Before: -0.2 cm
Formatted: Header, Centered
Formatted Table
Formatted: Footer

Magistrate A.H-W: And the claimants, you don't live at number 62, but you're the owners; is that correct? And that is not in dispute,

A.Cooper: It is rented.

Magistrate A.H-W: Okay. And there's a fence that divides the two properties. And so, you're side by side are you? 62 is here and 64 is there?

B. Desai: yes, yes

R. Desai: That's correct

A.Cooper: yes

Magistrate A.H-W: And it's a boundary fence going down the sides of your property. Does it go from the back all the way to the front?

R.Desai: Yes.

A.Cooper: It has 10 Zones, all different with issues and there are 18 building problems with that house, because, even if we have the money, we cannot install the fence, because on each side of this fence that is about 28 meters, is a problem in that house. One big problem is that they have recently, in 2014 [...], I can submit everything that it's ready to submit, but you have rejected to accept adjournment, because, I was four days late [...]. I received an order.

C2_p6 Magistrate A.H-W: Some other magistrate might have done something. I have not rejected anything. This was an application to [...], issue summons by you, was it?

A.Cooper: I got legal advice to lodge Form 8 and Form 15 in response to the claimant. But, when I had time to go to lodge it, it was four days after and it was late. They do not want to consider to fix the problem in their property, since 2005, because it costs money more that \$1.

C2_p7

B. Desai: I was just saying this fence has broken. There's no fence at the moment between the two properties and we want to fix it.

Magistrate A.H-W: Was it damaged by a storm?

B.Desai: yes

Magistrate A.H-W: Why don't you just go ahead and fix it and [...]

B.Desai: She won't allow us to go and fix it. A gentleman who gave a quote. She agreed initially. When he went into property to fix it, she won't let him fix it, saying she would be calling [...]

A.Cooper: She has not talked to us.

Formatted: Header, Centered
Formatted: Header, Right, After: -0.2 cm
Formatted Table
Formatted: Header

Formatted: Header, Indent: Before: -0.2 cm
Formatted: Header, Centered
Formatted Table
Formatted: Footer

Magistrate A.H-W: Under the Dividing Fences Act, if Section 15-Subsection 7b, if a fence is destroyed by storm or tempest, is that what your case is, that a storm has blown the fence down?

B.Desai: Yes.

R. Desai: Yes

B. Desai: Yes

A.Cooper: But they have not provided any evidence.

Magistrate A.H-W: You can go and fix it.

B. Desai: But she won't allow us. She [...]

A.Cooper: They have not talked to us.

C2_p8 R.Desai & B. Desai both lie to the Magistrate

See the C2 Transcript, page 8

C2_P9 A.Cooper: But the fence needs retaining wall. And this retaining wall need is created because she has removed three meters of their retaining wall in 2005.

See the C2 Transcript, page 9

Magistrate A.H-W: The issues are clearly more complicated. [...]

See the C2 Transcript, page 10

Magistrate A.H-W: Ms Cooper, if you need to call an engineer or witnesses to give evidence.

Comment C2_P11_R2: See the C2 Transcript, page 11

A.Cooper: Drawings of the Licensed surveyor as evidence that #62 Calley Dr, Leeming surfaces heights curves are distant from natural ground level at boundary. #64 Calley Drive Leeming surfaces heights includes 20.21 meters long limestone retaining walls [Zones 2L-5L] and 3.30 meters long paved side yard, aligned with "natural ground level of 6.8 degrees with horizon". Therefore, in critical Zones 1L to 3L, the deviation from "Natural ground level", for Desai's surfaces heights next to boundary is 530 – 460mm high above the surfaces of

Formatted: Header, Centered
Formatted: Header, Right, After: -0.2 cm
Formatted Table
Formatted: Header

Formatted: Header, Indent: Before: -0.2 cm
Formatted: Header, Centered
Formatted Table
Formatted: Footer

the Registered Rock limestone retaining wall at #64. This length of boundary #62 & #64 Calley Drive, is 8.82 meters long, and in Zone 4L next to the joint point of Zone 8L, Surface of Desai's side yard next to boundary in length of 2.2 meters long in Zone 4L are 260mm below the surface of the garden at #64 and is 700mm below the surface of the constructed remedial Limestone retaining wall 2008 at #64 [which was built to model the height of removed sand at #64 for Deed of Release at the boundary #62 & #64 for future disputes. These proves Desai removed a brick wall, which could keep the deviation of their surfaces in length [1L, 2L, 3L, 4L] Zones, and made the dividing fence in length of 16.8 or 17m unstable during 2005-2008, and 2019-2020. See Attachment D2 [Licensed Surveyor Features and Level Survey drawing, dated 10/8/2020, r4] in Form 2-Affidavit-A-Dividing Fence, as part of Form 23 of the defendant, dated 25/2/2022.

See the C2 Transcript, page 12

Magistrate A.H-W: Whoever is going to give evidence in support of your claim that the fence is in need of repair and what caused it to be in need of repair and the kind of repair that needs to be done, that's appropriate, somebody has got to give evidence about these matters.

See the C2 Transcript, pages 13-20

See the C3 Transcript, pages 1-13

Formatted: Header, Centered
Formatted: Header, Right, After: -0.2 cm
Formatted Table
Formatted: Header

Formatted: Header, Indent: Before: -0.2 cm
Formatted: Header, Centered
Formatted Table
Formatted: Footer