

13/4/2022

Hon. Magistrate T. Darge

# Transcript

C5

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THE MAGISTRATES COURT OF

WESTERN AUSTRALIA

CIVIL

FR GEN 645 of 2020

RAJENDRA DESAI

and

BENAZ DESAI

and

AFSANEH COOPER

MAGISTRATE T. DARGE

TRANSCRIPT OF PROCEEDINGS

AT FREMANTLE ON WEDNESDAY, 13 APRIL 2022, AT 10.57 AM

MR R. DESAI appeared in person.

MR B. DESAI appeared in person.

MR T. DESAI appeared in person.

MR J. WOODFORD appeared for the defendant.

**COURT ORDERLY:** File 645 of 2020. Benaz Desai and Rajendra Desai v Afsaneh Cooper. Mr Woodford represents the respondent.

**HIS HONOUR:** Okay. Okay. So I have Benaz Desai. Yes. Rajendra - - -

**R. DESAI, MR:** Yes, please.

**HIS HONOUR:** Thank you. And your name is - - -

**T. DESAI, MR:** Tyrone Desai.

**HIS HONOUR:** Tyrone. And Mr Woodford.

**WOODFORD, MR:** May it please the court. Woodford, your Honour, appearing for Ms Cooper.

**HIS HONOUR:** For Ms Cooper. Okay.

**WOODFORD, MR:** On a - on a limited basis, I want to say - on a standby basis because Ms Cooper wants to say some things herself.

**HIS HONOUR:** I understand that. I understand that. Okay. So this - this matter comes before me today in a busy list made more busy by the fact that, unfortunately, another magistrate who was doing civil today has fallen ill. So I'm doing that list as well. So our time is - has to be used in a most efficient manner today. The - there are two form 23 applications which have been lodged on the claim and which have been listed for today. They've been listed for today because I've come from Perth to do a civil blitz on various matters and help with these types of claims which is the sort of claims that I and a few other civil magistrates deal with solely rather than dealing also with criminal and other associated matters.

So hence the reason I'm here today and looking at these form 23 applications. I - struggle to follow the applications given that I - if I take it back to Magistrate Hills-Wright's clear intention to work out whether through the independently obtained structural engineer - whether the retaining wall's necessary and then, essentially, what it's going to cost for the dividing fence. There's - there probably needs to be some further clarity in respect of what this matter is about because it is a claim under the Dividing Fences Act.

The Dividing Fences Act which came in in 1961 deals with only two types of situations. The construction of a fence where none existed before and the repair of a damaged fence. The repair of a damaged fence doesn't involve the court in considering other items in the - in the construction such as retaining walls. The retaining walls are to be dealt with by the party whose land it pertains if there's a problem with that retaining wall. The purpose of the Dividing Fences Act is merely to regulate a situation which is almost unique in law which is where two people own half of the same thing and one person owns one side of the fence - the other person owns the other side of the fence.

So that's what - that's what the applicant is about. So that whilst it's important to - to be able to put in a fence that will stand up for reasons of retaining on either property - whoever's needs the retaining - that's not what the Dividing Fences Act application is about nor is it about the long history of the matters between the parties. It's - it's a simple mechanism by which a court can be engaged to determine whether a fence is in need of repair and, if so, what fence is needed to replace it on the basis that both parties will share equally in the cost of that construction of that fence.

So if we take it back to the orders that were made by Magistrate Hills-Wright those orders seem to me to be designed to simply determining whether a fence can be put up by reason of the - of the retaining wall situation and then once that's determined to simply work out what fence should go between the two properties that - where there's - it has been damaged and how much it's going to cost and each party then shares equally in that - in that cost. Does that all make sense?

**R. DESAI, MR:** Yes.

**T. DESAI, MR:** Yes, your Honour.

**HIS HONOUR:** So I've got - your application is a - seems to have been a form 13 lodged.

**R. DESAI, MR:** Yes.

**HIS HONOUR:** For default judgment.

**T. DESAI, MR:** Yes, your Honour.

**HIS HONOUR:** So a form 13 is only to be used where there is a default in the - lodging a statement of defence or a response to the - the claim itself where a response is

required under the rules. So this is an unusual situation because as I understand it - - -

**COOPER, MS:** Form 23 was dismissed.

**HIS HONOUR:** Just wait a sec - for - thanks, Ms Cooper. I will get to you in a moment. What it seems to me to be about is saying that you feel that you've done what you were required to do under the orders. But that the other party hasn't done it. Is that correct?

**R. DESAI, MR:** That's correct.

**HIS HONOUR:** Okay. So we would still find ourselves here today for that purpose. So if you were to make a form 23 application, essentially, seeking an order that another party comply with - with orders. So that's why there's a - it's problematic. But I, kind of, understand where you're coming from. Now, Mr Woodford, Ms Cooper, in respect of your application - your form 23 application - - -

**COOPER, MS:** My form 23 was lodged because I put - they told me because his were - his form 23 was dismissed by the magistrate and then he was asked in an order to just lodge the default judgment - - -

**HIS HONOUR:** Is that your - is that your phone, is it?

**COOPER, MS:** Default judgment. Yes. On the - - -

**HIS HONOUR:** Ms Cooper, is that your phone?

**COOPER, MS:** On the - I - - -

**HIS HONOUR:** Sorry, Ms Cooper, can you - is that your phone?

**COOPER, MS:** No. His - - -

**HIS HONOUR:** That. Yes, that's your phone. If you could turn it off. If you wouldn't mind turning it off so - just so it doesn't - - -

**COOPER, MS:** No, I am just turning it off. Then I have been told that I was to - on the 5<sup>th</sup> - on 4 January I received an application in the yard - in the front yard.

**HIS HONOUR:** Yes. But I - I'm not concerned about how the applications have been received - - -

**COOPER, MS:** No. But there really was a procedure - - -

**HIS HONOUR:** - - - or anything like that.

**COOPER, MS:** There was a procedure.

**HIS HONOUR:** Yes.

**COOPER, MS:** They - they gave us an order from the magistrate - send it to us - - -

**HIS HONOUR:** Yes.

**COOPER, MS:** That the form 23 of the claimant was dismissed. And it was dismissed on 9 February.

**HIS HONOUR:** 9 February.

**COOPER, MS:** Yes.

**HIS HONOUR:** Okay.

**COOPER, MS:** 9 February there was an order. They said we were supposed to bring this to the chamber. But because he has done it - - -

**HIS HONOUR:** No, no. On 9 February - - -

**COOPER, MS:** He has gone further than the orders of the  
- - -

**HIS HONOUR:** Magistrate Malone on 10 February of last year - is that last year or this year?

**COOPER, MS:** This year.

**HIS HONOUR:** 9 February Magistrate Lennon dismissed a form 23 application - - -

**COOPER, MS:** Of the claimant.

**HIS HONOUR:** - - - seeking various orders. Yes, correct.

**COOPER, MS:** Yes. And then I called the court and said  
- - -

**HIS HONOUR:** He did that ex parte, I think. I don't think you were here.

**COOPER, MS:** No, I called the court that is it necessary still that I lodge a form - they said, "No, it is dismissed. It is gone. It doesn't exist."

**HIS HONOUR:** Yes, that application doesn't. Yes.

**COOPER, MS:** So I said, "What should I do?" They said, "You can lodge now your form - you have to go and lodge him based on the orders of the" - I made it silent. Now, they - they said that, "It is - if you go to the - the orders of 20 August" - - -

**HIS HONOUR:** Yes.

**COOPER, MS:** - - - "last year you see there is an order that within 28 days after you had the invoice of the structural engineer" - - -

**HIS HONOUR:** Yes.

**COOPER, MS:** - - - "you have to serve the other party your quotes. So you go right now" - - -

**HIS HONOUR:** So you've both got the structural engineer, haven't you?

**COOPER, MS:** Yes.

**HIS HONOUR:** You've got Structerre involved - - -

**COOPER, MS:** On the - on the 20<sup>th</sup> - - -

**HIS HONOUR:** - - - and they have provided a report.

**COOPER, MS:** On 20 August - because I have said to the magistrate for two - one and a half year that they need 11 metre retaining wall - - -

**HIS HONOUR:** Yes. But a retaining wall is not - - -

**COOPER, MS:** - - - and they do not want to build it - - -

**HIS HONOUR:** A retaining wall is only barely relevant to a Dividing Fence Act - - -

**COOPER, MS:** Yes. But - but the - - -

**HIS HONOUR:** - - - because this is about a dividing fence.

**COOPER, MS:** I know. But we - - -

**HIS HONOUR:** Yes.

**COOPER, MS:** We were trying to fix this problem of retaining wall for six months with him.

**HIS HONOUR:** Yes.

**COOPER, MS:** He disagreed to do anything between the two insurance company of me and themselves. There were a lot of legal things. They disagree. So he said he just want to go to court. He came to court with written things that he did not mention in his affidavit.

**HIS HONOUR:** Yes.

**COOPER, MS:** There is a need for retaining wall. When I got the form 53 I came to court. They didn't let me to lodge anything until - - -

**HIS HONOUR:** Yes. So I'm - - -

**COOPER, MS:** - - - 3 March.

**HIS HONOUR:** - - - not concerned about - about any of those - - -

**COOPER, MS:** 3 March. They only told - - -

**HIS HONOUR:** - - - those issues that - - -

**COOPER, MS:** Yes.

**HIS HONOUR:** - - - you've had because I think we can fix - - -

**COOPER, MS:** I was not able to respond.

**HIS HONOUR:** - - - all those. We can fix those.

**COOPER, MS:** I was not able to respond until - - -

**HIS HONOUR:** Yes.

**COOPER, MS:** - - - 3 March when Magistrate allowed me to write form 32A. Form 32A - - -

**HIS HONOUR:** Yes. Got that.

**COOPER, MS:** - - - is this March. I wrote it. But they said, "You are not allowed to write any counterclaim yet until they let you."

**HIS HONOUR:** No, no. It's not - not yet, Ms Cooper. You're not - - -

**COOPER, MS:** Yes.



- HIS HONOUR:** There is no possibility - - -
- COOPER, MS:** And then they said there is a trial.
- HIS HONOUR:** - - - of a counterclaim at all.
- COOPER, MS:** There is a trial. We went to the trial of  
- - -
- HIS HONOUR:** Yes.
- COOPER, MS:** - - - 20 August.
- HIS HONOUR:** Yes.
- COOPER, MS:** Magistrate accepted that we need a retaining wall or not. They said, "Get a structural engineer - 50/50" - - -
- HIS HONOUR:** Yes.
- COOPER, MS:** - - - "and a structural engineer says what type of retaining wall is needed" - - -
- HIS HONOUR:** Yes.
- COOPER, MS:** - - - "and whether there is a need for a retaining wall." He said, "Yes, there is a need for a retaining wall" and the type of retaining wall he has recommended for one part is porcelain panel. So I went and got a structural engineer - - -
- HIS HONOUR:** So it has got nothing to do - is the retaining wall on their property?
- T. DESAI, MR:** No.
- COOPER, MS:** No, it is retaining wall - - -
- HIS HONOUR:** Well, who - whose land is being retained by the wall?
- COOPER, MS:** I - have you seen my form 23?
- HIS HONOUR:** How - yes, I have. Yes.
- COOPER, MS:** My form 23 has got three applications right now. Application A is for dividing fence. Application B is for the retaining wall - - -

**HIS HONOUR:** But only application A - the dividing fence - is what you can deal with under a Dividing Fence Act claim.

**COOPER, MS:** This was not what we were told in the - - -

**HIS HONOUR:** Yes. So - so the point the - Magistrate Hills-Wright was trying to, I would imagine, assist the parties through this process by saying, "We don't want to get into - selves into a situation where there is an order for a fence to be put up but the - the fence is unable to be put up because there isn't a retained surface to do that."

**COOPER, MS:** He does not want to deal with the - anything outside the court.

**HIS HONOUR:** So who - whose land is being retained?

**COOPER, MS:** He has gone to the court.

**HIS HONOUR:** Whose land is being retained?

**COOPER, MS:** Pardon?

**HIS HONOUR:** Who built the retaining wall in the first place?

**COOPER, MS:** No, we had - - -

**HIS HONOUR:** Whose is - whose is it?

**COOPER, MS:** - - - a 34 metre boundary - - -

**HIS HONOUR:** Whose is the retaining wall?

**COOPER, MS:** No, it is 10 section - 10 zones - - -

**HIS HONOUR:** Yes. But whose is it?

**COOPER, MS:** No, we say - our boundary is 10 - - -

**HIS HONOUR:** Whose - no, you're not answering my question, Ms Cooper.

**COOPER, MS:** - - - zone. Which zone - which zone are you talking - - -

**HIS HONOUR:** Mr Woodford, do you know the answer to this question? Whose land is actually being retained by the retaining wall? Who has the responsibility for it?

**WOODFORD, MR:** The history of that matter, your Honour, is that when 64 Kelly was built - - -

**HIS HONOUR:** Yes.

**WOODFORD, MR:** - - - they had to cut into the hill - - -

**HIS HONOUR:** Yes.

**WOODFORD, MR:** - - - and they put the sand on 62 Kelly Drive.

**HIS HONOUR:** Yes.

**WOODFORD, MR:** So 64 is Ms Cooper's place.

**HIS HONOUR:** Yes.

**WOODFORD, MR:** So there is a difference in height. She - - -

**HIS HONOUR:** Yes.

**WOODFORD, MR:** She's lower than 62 - 62 because of the building. So - - -

**HIS HONOUR:** Yes.

**WOODFORD, MR:** - - - her land - - -

**HIS HONOUR:** So whose - - -

**WOODFORD, MR:** - - - for the 62 has been - - -

**HIS HONOUR:** Whose side of the - of the dividing line is the retaining wall on?

**WOODFORD, MR:** The retaining wall runs along the boundary.

**HIS HONOUR:** So it's on the boundary.

**WOODFORD, MR:** Yes.

**HIS HONOUR:** Okay.

**COOPER, MS:** They need the retaining wall because the retaining wall was already there (indistinct)

**HIS HONOUR:** But you both need it, otherwise, sand - soil will fall - - -

**COOPER, MS:** A retaining wall was built - - -

**HIS HONOUR:** - - - into the property.

**COOPER, MS:** - - - in 1986 in my land. The retaining wall belongs to me. It's all in my land.

**HIS HONOUR:** But if it - if the retaining wall belongs to you then it's your responsibility to make sure that it's fixed.

**COOPER, MS:** I have asked for the Shire to give an application. I have employed a structural engineer. But they have added sand to my land when they wanted to build their land or later because there is a - I have seen that there was a retaining wall there before 11 - between two to three metre or - - -

**HIS HONOUR:** Okay.

**COOPER, MS:** - - - or 11 metre. Whatever. We didn't see it.

**HIS HONOUR:** Okay.

**COOPER, MS:** But they have removed that retaining wall in 2005 and then when they had removed this one we go to the Shire. The Shire does not have any record of any retaining wall in that house. You mean, they have got a short brick wall of 3.8 metre. There is no record for that one. No drawing. Nothing. We go to their building company because they do not talk to me and I went to their building company, "Where is their retaining wall drawing?" They say, "It is your duty to build a retaining wall" and shout at me.

**HIS HONOUR:** Yes. Well - - -

**COOPER, MS:** They don't have one. I send my building company lawyer to them last - two years ago and they do not want accept anything they say.

**HIS HONOUR:** Yes. Okay.

**COOPER, MS:** So, therefore, he said - she said that, "I only want to go to court" and came to court on the - - -

**HIS HONOUR:** Okay. So what we're trying to do today - - -

**COOPER, MS:** I have written everything - - -

**HIS HONOUR:** - - - is to - we can - just stop. What we're trying to do today is not to dwell on the past - which you seem to do a lot because you're concerned about what has happened in 2005 and things like that.

**COOPER, MS:** Because of the cost.

**HIS HONOUR:** Yes, yes. But that's not - that won't help us. All we can work on is how to solve the problem that we have now.

**COOPER, MS:** They just pay me the money. I will fix it. Because this is what happened to me. That I had to build everything in my cost and then I go to court and - and ask the court to pay me the money back but became very, very sick as a result of too much abuse because of the victimisation they did it with me.

**HIS HONOUR:** Yes.

**COOPER, MS:** Then it went to Criminal Court with Shire that I proved it and everything in Criminal Court - - -

**HIS HONOUR:** Yes. That doesn't help me. That doesn't help me. All I need to know is how we are - - -

**COOPER, MS:** I know. But - - -

**HIS HONOUR:** - - - going to sort it out - - -

**COOPER, MS:** - - - their victimisation - - -

**HIS HONOUR:** - - - and how we can sort it out today.

**COOPER, MS:** - - - cause me sick and - - -

**HIS HONOUR:** Yes. I can't deal - - -

**COOPER, MS:** - - - and because I have - - -

**HIS HONOUR:** - - - with that. I can't deal with that  
- - -

**COOPER, MS:** I know. Because I have - - -

**HIS HONOUR:** It's a criminal matter - - -

**COOPER, MS:** - - - 10 cases - - -

**HIS HONOUR:** - - - and I can't deal with the victimisation.

**COOPER, MS:** I have 10 cases - - -

**HIS HONOUR:** Yes.

**COOPER, MS:** - - - in court, Magistrate.

**HIS HONOUR:** Okay.

**COOPER, MS:** So we - we could be resolving all of this problem 2005. But because they went and did victimisation Shire came and said - - -

**HIS HONOUR:** Yes.

**COOPER, MS:** - - - "You should build the retaining wall right now - the second one." Two retaining wall - because these people do not agree - - -

**HIS HONOUR:** Okay.

**COOPER, MS:** - - - to pay for a new fence that the new fence could solve the problem that - - -

**HIS HONOUR:** See, the fence is pretty simple, it seems to me, because a fence is a fence and you just put it up between the two properties - - -

**COOPER, MS:** Yes. But - - -

**HIS HONOUR:** - - - under the Dividing Fences Act - - -

**COOPER, MS:** - - - you are not allowed to put the fence on unstable. They install the fence on unstable. They order that the fence has to be installed quickly. We - we have to agree with each other and the magistrate said, "If you don't agree with each other - because she is sick in the hospital" - I was in hospital for two or three months.

**HIS HONOUR:** Yes. Again, I can't help you with that.

**COOPER, MS:** Because of the 10 cases because the - - -

**HIS HONOUR:** So - okay. Take a seat now.

**COOPER, MS:** None of the - - -

**HIS HONOUR:** Thanks - thanks, Ms Cooper.

**COOPER, MS:** Yes.

**HIS HONOUR:** Thank you for that. Take a seat.

**COOPER, MS:** So I want to - - -

**HIS HONOUR:** Thanks. Thanks. Take a seat.

**COOPER, MS:** - - - be treated the same.

**HIS HONOUR:** So take a seat - - -

**COOPER, MS:** I do not pay anything - - -

**HIS HONOUR:** Take a seat.

**COOPER, MS:** They pay.

**HIS HONOUR:** Take a seat. Take a seat.

**COOPER, MS:** Yes.

**HIS HONOUR:** Okay.

**COOPER, MS:** After everything is finished - - -

**HIS HONOUR:** Take a seat.

**COOPER, MS:** - - - they (indistinct)

**HIS HONOUR:** Take a seat.

**COOPER, MS:** Yes.

**HIS HONOUR:** Thank you. Okay. So from the point of view of the claimant here what do you see as the path to resolution now?

**T. DESAI, MR:** Your Honour, I think everything has - all the facts have been highlighted in terms of what the court can actually deal with under the Dividing Fences Act and that's pretty clear. My resolution for the matter would be to go ahead with the town and fencing quote which has been provided. I do know that probably has to be updated as it expired on 24 March. But that, essentially, facilitates the dividing fence the whole way down which needs to be repaired.

**HIS HONOUR:** But is there - I - it was, obviously, Magistrate Hills-Wright's concern that if, indeed, the land is unstable - - -

**T. DESAI, MR:** Yes.

**HIS HONOUR:** - - - then an order to put up the dividing fence is going to be ineffective if the fencing contractor says, "I'm not putting it there because it's going to just fall over."

**T. DESAI, MR:** Sure. I acknowledge that. All the contractors have actually come through and, obviously, measured the site to see what's required. All of them have said, "Why is the retaining wall, obviously, being replaced given it's providing a function as it is now?" The small sections of, you know, retaining can be provided by aluminium plinths which provide a retaining function and I have the engineering drawings to, you know, back that claim.

**HIS HONOUR:** So what did - what did the engineer - - -

**T. DESAI, MR:** Structerre.

**HIS HONOUR:** Structerre say about the need for - - -

**T. DESAI, MR:** So Structerre did mention in their report that a retaining wall is required.

**HIS HONOUR:** Yes.

**T. DESAI, MR:** They didn't go into any in-depth analysis to determine the structure of that wall. It's just done through a visual inspection. That wall is on her side of Ms Afsaneh Cooper's side of the boundary as you can tell by the surveys that have been provided by the defendant.

**HIS HONOUR:** Yes.

**T. DESAI, MR:** So the fence, obviously, existed on top of that retaining wall previously as well and that wasn't as structurally sound as this new fence would be which will be going on top of that.

**HIS HONOUR:** Okay.

**COOPER, MS:** Can I talk about the - what you said? There is a problem that the Shire told me. I have brought the Shire wrote.

**HIS HONOUR:** Yes. But there's - there's - - -

**COOPER, MS:** The Shire - there is a restriction. Can I tell because form 23 says that he wants to become an owner builder. I went to the Shire. The Shire say, "If the retaining wall" - - -



**HIS HONOUR:** Where was this?

**COOPER, MS:** - - - "is in your land" - - -

**HIS HONOUR:** The owner builder.

**COOPER, MS:** - - - "you cannot apply if you - your retaining wall. Is your retaining wall is in your land they cannot get an application for building of that." I am the only person - - -

**HIS HONOUR:** You mean, it's on your land.

**COOPER, MS:** Yes.

**HIS HONOUR:** Yes.

**COOPER, MS:** They said because the retaining wall - they (indistinct) there is two section that - three section we need to put a retaining wall that is distance from each other. One, is only one (indistinct) at the front yard that is next to my garage and next to their front yard and side yard and then in that section that is about 3.8 metres - about - - -

**HIS HONOUR:** Yes.

**COOPER, MS:** - - - three and a half metre - we need a limestone wall and the structural engineer, John Tick - it is here. I can give it to you. John Tick has come to our house and said, "You have to get the rock limestone wall, cut it on the sides of it and put the rocks into that - and make a ditch next to their building at the zone 1 because it is only one metre away from the boundary and their building might collapse." So, therefore, the said - the structural engineer said, "I will supervise this one because this is not as easy job." It has to be done by a structural engineer and there is only one (indistinct) that is marked on the licensed surveyor - I employed the licensed surveyor. They did not pay even one dollar.

**HIS HONOUR:** So - - -

**COOPER, MS:** And now they are using my licensed surveyor drawing as if it is theirs.

**HIS HONOUR:** Yes.

**COOPER, MS:** They have not paid my - - -

**HIS HONOUR:** So the - the relevance of a surveyor is - - -

**COOPER, MS:** No, they have to pay - - -

**HIS HONOUR:** - - - sometimes if there's a dispute about where the - where the boundary - - -

**COOPER, MS:** They have to pay me theirs.

**HIS HONOUR:** - - - is. But, again, there's no - there's no requirement to put a dividing fence on a boundary. It - - -

**COOPER, MS:** No, I know.

**HIS HONOUR:** - - - helps if it is. But there - - -

**COOPER, MS:** But - - -

**HIS HONOUR:** - - - is no requirement to do that.

**COOPER, MS:** But they can put it in their land because - - -

**HIS HONOUR:** They can put it on your land. They can put it on anyone's land.

**COOPER, MS:** Well, my land is right now - 1.70 metre is taken - is taken room in my land to just keep their land as a retaining wall and 1.7 metre wide - their side, your Honour, is only 164 at that side. So, therefore, my land is even wider next to them because I have a double storey side (indistinct) that is a retaining wall of 45 centimetre wide.

**HIS HONOUR:** Yes.

**COOPER, MS:** One metre high. Then on top of that there is another set of retaining wall limestone - - -

**HIS HONOUR:** Yes.

**COOPER, MS:** - - - that is 90 centimetre wide. Is double storey - double storey (indistinct)

**HIS HONOUR:** So I asked the claimant how they felt that the matter could be resolved - - -

**COOPER, MS:** The matter could be - - -

**HIS HONOUR:** - - - today.

**COOPER, MS:** - - - only resolved by Shire. The Shire has to give us the application. I have an application. I have put - - -

**HIS HONOUR:** Well, that's for you - for your retaining wall.

**COOPER, MS:** I have put the application there. I have applied and I got the structural engineer, John Tick, came to our house - - -

**HIS HONOUR:** Yes. John Tick. Yes, I know.

**COOPER, MS:** - - - and he has got a bachelor degree and master degree. He has lots of experience - senior - - -

**HIS HONOUR:** Yes.

**COOPER, MS:** - - - and he said everything that is required to me. But we have to pay him \$590. He does not want to give even one dollar.

**HIS HONOUR:** Well, why would he want to give it if it's your retaining wall?

**COOPER, MS:** No. Because I haven't done anything wrong. He has added sand on top of our retaining wall because their land - their (indistinct) the slab - - -

**HIS HONOUR:** But - but - - -

**COOPER, MS:** - - - that is the floor of their land - - -

**HIS HONOUR:** - - - retaining walls - - -

**COOPER, MS:** - - - is about 97 - - -

**HIS HONOUR:** - - - are going - - -

**COOPER, MS:** - - - centimetre - - -

**HIS HONOUR:** Retaining walls, after a certain period of time, exhibit some rotation and - - -

**COOPER, MS:** No. No, no. This retaining wall is made of very heavy rocks. Very natural heavy rocks of one tonne each.

**HIS HONOUR:** Yes.

**COOPER, MS:** You cannot even carry by hand. They have to cut it by saw.

**HIS HONOUR:** Okay.

**COOPER, MS:** It doesn't move. It hasn't moved. It is  
- - -

**HIS HONOUR:** All right.

**COOPER, MS:** - - - very good. But they have - I have proved it into that drawing - that drawing at DS6. If you look at it in the affidavit - - -

**HIS HONOUR:** Yes.

**COOPER, MS:** - - - B it is showing that they have added  
- - -

**HIS HONOUR:** So - - -

**COOPER, MS:** - - - 53 centimetre on top - - -

**HIS HONOUR:** Yes.

**COOPER, MS:** - - - of a natural ground level. There is a natural ground level line of 6.8 degree.

**HIS HONOUR:** So - so if - - -

**COOPER, MS:** They had added - they have changed the natural ground level.

**HIS HONOUR:** Yes. If you want to have a fight about whose responsibility it is to do the - - -

**COOPER, MS:** John - John and - - -

**HIS HONOUR:** - - - retaining wall - - -

**COOPER, MS:** John and - - -

**HIS HONOUR:** - - - that's not in this - that's not in this application.

**COOPER, MS:** No. John and - - -

**HIS HONOUR:** All this application - - -

**COOPER, MS:** John and - - -

**HIS HONOUR:** - - - is about - just hang on a sec. All this application is about is whether a dividing fence is in need of repair and if it's in need of repair then I can make an order saying a new dividing fence has to go up.

**COOPER, MS:** Okay. Now, we want to get the John - I have written - have you read the form 23 of me?

**HIS HONOUR:** Yes. But it's - it doesn't - - -

**COOPER, MS:** One of the - one of the orders - - -

**HIS HONOUR:** It doesn't deal with the issues that I can deal with - - -

**COOPER, MS:** Magistrate - - -

**HIS HONOUR:** - - - in this case.

**COOPER, MS:** There is an order that I ask that - - -

**HIS HONOUR:** If you're asking me to make orders for \$10,000 for building licenses in 2005 and things like that.

**COOPER, MS:** Yes, because - - -

**HIS HONOUR:** Well, I'm not going to do that. It's - no one is going to do that. Okay. No one's going to do that in a Dividing Fences Act claim because it has got nothing to do with - - -

**COOPER, MS:** So which court we have to go?

**HIS HONOUR:** Well, I'm not going to give you advice about where you have to go.

**COOPER, MS:** So we just - - -

**HIS HONOUR:** All I am going to tell you as - as you've been told before is that this is about the fence that goes between the property. Not - - -

**COOPER, MS:** Okay. If - - -

**HIS HONOUR:** - - - the retaining walls.

**COOPER, MS:** If we go to the - - -

**HIS HONOUR:** The fence.

**COOPER, MS:** If - even if you calculate the fence they - because they had a - there is a natural ground level - I have drawn it - - -

**HIS HONOUR:** No - - -

**COOPER, MS:** - - - and you can check it with engineer - engineer, John Tick. He said he does these works if you pay him \$205 an hour.

**HIS HONOUR:** Well, you can - you can get him to do that - - -

**COOPER, MS:** But you can - - -

**HIS HONOUR:** - - - if you want to. But you - - -

**COOPER, MS:** You can issue - - -

**HIS HONOUR:** - - - have to pay for it.

**COOPER, MS:** - - - an order because these people never listen and we will be - - -

**HIS HONOUR:** But - but they don't have to listen, do they, because it's - - -

**COOPER, MS:** So they cannot put a - - -

**HIS HONOUR:** If it's your retaining wall and you say - - -

**COOPER, MS:** - - - fence - - -

**HIS HONOUR:** - - - that there's extra sand - - -

**COOPER, MS:** I cannot pay for - - -

**HIS HONOUR:** - - - being put in and whatever.

**COOPER, MS:** - - - an unstable fence.

**HIS HONOUR:** Well - - -

**COOPER, MS:** They have paid for - they have charged us - they said, "You pay for the fence" in 2005. I - my - my building company paid for the - - -

**HIS HONOUR:** Yes.

**COOPER, MS:** - - - fence to just stop the matter because - - -

**HIS HONOUR:** Yes.

**COOPER, MS:** - - - we could go forever and I wanted three hundred - - -

**HIS HONOUR:** Well, you have gone forever because - - -

**COOPER, MS:** I wanted 350,000 loss of income.

**HIS HONOUR:** Surprisingly, no one sold their - you haven't sold and you haven't sold your house and - - -

**COOPER, MS:** Your know, I am a mechanical engineer.

**HIS HONOUR:** - - - you still live next to each other after all these years which is - - -

**COOPER, MS:** I am a mechanical engineer. I could go to work five years. Five years I have spent my time because there was an old lady that (indistinct) - - -

**HIS HONOUR:** Yes. I don't - sorry, I don't want to hear anymore about that. So, Mr Woodford, thank you. Take a seat. So, Mr Woodford, is there anything - - -

**COOPER, MS:** There is an engineer. But they - - -

**HIS HONOUR:** Just wait a sec.

**COOPER, MS:** - - - don't want to pay for it.

**HIS HONOUR:** Yes.

**WOODFORD, MR:** Your Honour, there seems to be something - - -

**HIS HONOUR:** Is there anything that - - -

**WOODFORD, MR:** - - - that has been missed and with all respect to everybody there is a proposal - there is a quote which would - which appears to solve the retaining wall and the fence problem.

**HIS HONOUR:** Yes.

**WOODFORD, MR:** That quote was sent to Structerre. I sent it to Structerre and said to them, "Would this be adequate to retain and be a fence?" and they said, "Yes, provided it meets the manufacturer's recommendations" because the extent - the part of the boundary which needs retaining is something like half a metre high.

**HIS HONOUR:** Yes.

**WOODFORD, MR:** And, as I understand it, the manufacturer's recommendation is that it can retain 600 millimetres high.

**HIS HONOUR:** Yes.

**WOODFORD, MR:** So - but that wouldn't need a retaining wall as such. It's - - -

**HIS HONOUR:** It said just plinths - - -

**WOODFORD, MR:** Yes, it's a - it's quite a thick plinth with - - -

**HIS HONOUR:** Yes.

**WOODFORD, MR:** - - - some solid posts - - -

**HIS HONOUR:** Yes.

**WOODFORD, MR:** - - - and those sorts of things. So that would - that would solve our quandary or our conundrum about a retaining wall as well as put a fence there, and it seems to fit with Structerre's - - -

**HIS HONOUR:** Yes. But what - - -

**WOODFORD, MR:** Yes.

**HIS HONOUR:** - - - is the cost of the - the retaining aspect of that then?

**WOODFORD, MR:** I'm not sure. It's not - - -

**HIS HONOUR:** Sorry. So - - -

**T. DESAI, MR:** I can - well, we will have to - I can have the contractor separate it out in the quote.

**HIS HONOUR:** Yes. Because the - the answer is, again, I could just - - -

**COOPER, MS:** Can you please give it - - -

**HIS HONOUR:** Wait a sec, Ms Cooper. Thanks. Just - just let your lawyer talk. The answer is, again, I can make an order for this - for the fence and it's a pretty easy process. But I can't order you to build a retaining wall or - etcetera, etcetera. I can't order that under these and the last thing anyone wants to do is be spending more



years and years and years caught up in - in neighbourhood disputes.

**COOPER, MS:** And they do not pay even one dollar. I spend about \$46,000 next to their boundary. They have not paid me five cents and I fell into the hospital because I had to look after three children.

**HIS HONOUR:** Yes.

**COOPER, MS:** I lost my PhD that was only eight per cent left over. I had to deal with the problem of the old lady who had burned my house and we have to pay (indistinct)

**HIS HONOUR:** Yes. That - but that was - that was back in 2005, wasn't it?

**COOPER, MS:** Whatever it is - - -

**HIS HONOUR:** That was the old dispute of things.

**COOPER, MS:** Whether it was a cost - - -

**HIS HONOUR:** Yes.

**COOPER, MS:** - - - that their retaining - - -

**HIS HONOUR:** So take - take a seat.

**COOPER, MS:** They're building insurance - - -

**HIS HONOUR:** Take a seat, again. Thank you.

**COOPER, MS:** - - - is the same as that lady.

**HIS HONOUR:** So - have you seen if - how much is the quote, then, that has been - - -

**T. DESAI, MR:** So the quote is around - - -

**COOPER, MS:** Can you give me that for me (indistinct)  
- - -

**T. DESAI, MR:** - - - 5800.

**HIS HONOUR:** Because, again, there is a couple of - there's a couple of issues here and one of them is that  
- - -

**T. DESAI, MR:** Sorry, go. I'm - - -

**HIS HONOUR:** Yes.

**T. DESAI, MR:** - - - listening.

**HIS HONOUR:** There's a couple of issues. Of course, I - as I said, I - my limitations under the Act and jurisdiction are one thing. But in terms of what the parties want to agree to I can record what the parties might agree to and the question is whether there is any - any value today in the parties having a discussion about what you might agree to in relation to that because the way I see it I - the - the court can't just keep trying to manage the - the dispute in this in the fashion that it has been doing.

Now, essentially, what would happen is that it would have to be allocated a hearing which will go ahead but which will go ahead solely as to the dividing fence issue and the last thing that we want to do is have you involved in fresh litigation because that's a waste of everybody's time and effort. Now, if Mr Woodford and yourself are capable of having a - a discussion - Ms Cooper, you're very emotionally involved in it. I understand that. I get that. I respect that. But it makes it difficult for you to - to try to reach a resolution when you're caught up in the past - - -

**COOPER, MS:** This is my resolution for you today.

**HIS HONOUR:** No, is that your form 23?

**COOPER, MS:** No. Can you give it the - - -

**HIS HONOUR:** Sure. Have you seen this, Mr Woodford? Have you seen this?

**COOPER, MS:** I have given it today.

**WOODFORD, MR:** Yes, it's - it's the - - -

**HIS HONOUR:** Have you seen this? What is that thing? I will have a look at - - -

**COOPER, MS:** We gave it to them this morning.

**WOODFORD, MR:** It's Ms Cooper's quotes for the work.

**COOPER, MS:** Yes.

**T. DESAI, MR:** I would like to add I only received this before walking into the courtroom this morning.

**COOPER, MS:** We gave it to you. That is my resolution.  
We have an engineer - - -

**HIS HONOUR:** Yes. But it's - it's, like, about 10  
different pages of - - -

**COOPER, MS:** Because the retaining wall - - -

**HIS HONOUR:** - - - of estimates. What does it amount to  
- - -

**COOPER, MS:** The - - -

**HIS HONOUR:** - - - in dollar terms?

**COOPER, MS:** Pardon?

**HIS HONOUR:** What does it amount to in dollar terms?

**COOPER, MS:** We - the structural engineer wants \$589. I  
have done the drawing of the retaining wall because I have  
done 20 years full time structural - full time engineering  
education at the best university. So my qualification is  
equal to Australian qualification. I can prove it to you.

**HIS HONOUR:** No, I don't need to be - - -

**COOPER, MS:** Then - - -

**HIS HONOUR:** - - - proved that.

**COOPER, MS:** - - - it has been assessed and then I have  
done the drawing. The drawing - I gave it to the engineer,  
John Tick.

**HIS HONOUR:** Yes.

**COOPER, MS:** It is cheaper. And he said he - it is good.

**HIS HONOUR:** And he said - - -

**COOPER, MS:** He can certify - - -

**HIS HONOUR:** So - thank you for that. Thank you for that.

**COOPER, MS:** - - - it. But \$590 and for - - -

**HIS HONOUR:** Mr Woodford - I just want to ask - - -

**COOPER, MS:** - - - every - - -

**HIS HONOUR:** - - - Mr Woodford a question. Thank you, Ms Cooper.

**COOPER, MS:** Yes.

**HIS HONOUR:** Thanks. Take a seat.

**COOPER, MS:** Yes.

**HIS HONOUR:** I just want to ask - you've seen this?

**WOODFORD, MR:** Yes, your Honour.

**HIS HONOUR:** Have you - have you been able to work out a dollar sum from what this - all this means?

**WOODFORD, MR:** No, your Honour. I literally only received it before - - -

**HIS HONOUR:** Well, I'm just wondering - - -

**COOPER, MS:** About \$6000.

**HIS HONOUR:** I'm just - sorry?

**COOPER, MS:** \$6000 for the fence.

**HIS HONOUR:** And in total for everything?

**COOPER, MS:** If you want to know - there is only two things to add it. I have a calculator - - -

**HIS HONOUR:** No, no. I don't want it to - - -

**COOPER, MS:** I brought my calculator.

**HIS HONOUR:** I don't want to do that. All I want to know - - -

**COOPER, MS:** There's two things (indistinct)

**HIS HONOUR:** - - - is what - do we have any meeting rooms that are available?

**WOODFORD, MR:** There are - there is a meeting room directly outside the door. So - - -

**HIS HONOUR:** Yes. I just wanted - I just thought before we finalise this whether - because you're all here today whether you want to take the opportunity to have a look through this. Have a discussion with Mr Woodford and Ms

Cooper to the extent that you're able to to try and see whether there is something in here that represents a solution.

**T. DESAI, MR:** I'm more than happy to.

**HIS HONOUR:** Yes.

**T. DESAI, MR:** Just that - - -

**COOPER, MS:** They do not want to do anything.

**HIS HONOUR:** Just wait a sec. Thank you.

**T. DESAI, MR:** I would just like to preface that with the quote that we have provided includes - - -

**COOPER, MS:** That was dismissed.

**T. DESAI, MR:** - - - rubbish disposal - includes disposal of the old damaged - complete package. These ones don't because they - I believe the defendant would like to dispose that herself - - -

**COOPER, MS:** It was dismissed.

**HIS HONOUR:** Yes.

**T. DESAI, MR:** - - - which was covered in the - - -

**HIS HONOUR:** Well - - -

**T. DESAI, MR:** A form 23.

**COOPER, MS:** It was dismissed. Everything was dismissed.

**HIS HONOUR:** Yes.

**T. DESAI, MR:** So to that - - -

**COOPER, MS:** They wouldn't - - -

**T. DESAI, MR:** To that extent - - -

**HIS HONOUR:** Yes.

**T. DESAI, MR:** That's why I believe I - we will just cover everything and have this - - -

**HIS HONOUR:** Yes. But I think you need to - - -

**T. DESAI, MR:** I'm happy to - - -

**COOPER, MS:** His application was - - -

**HIS HONOUR:** I think you need to have a - - -

**COOPER, MS:** - - - dismissed.

**HIS HONOUR:** Perhaps, have a look through - - -

**COOPER, MS:** He gave all the (indistinct) Magistrate  
- - -

**HIS HONOUR:** - - - and a discussion - - -

**COOPER, MS:** It was dismissed.

**HIS HONOUR:** Ms Cooper, it won't - this will never settle and you will go through the rest of your life disputing this unless you take a deep breath and try and work out what the best resolution is. Okay. Otherwise, you don't want to be in court in the next 20 years still fighting over this fence. So let us see if we can - - -

**COOPER, MS:** Because there is a writing - - -

**HIS HONOUR:** You can have a chat about it.

**COOPER, MS:** - - - that - - -

**HIS HONOUR:** What I would like you to do is, perhaps, go to a conference room. Whether you have - who you have in the room's a question for - for yourself as far as how you're going to best work through it. But I will give you that back. Thank you. Mr Orderly. There is a - there is a room out - which is available out there. I'm going to stand the matter down so that you can have a chat in there about - and go through these points because as - as the matter's - as I face it today neither of those form 23 applications have any merit. But we need to advance the matter. Okay.

**T. DESAI, MR:** Yes, your Honour.

**HIS HONOUR:** All right.

**T. DESAI, MR:** Thank you.

**HIS HONOUR:** Okay. So if you pop out there and then when you've had a discussion - if you - if you reach some sort of resolution, excellent, and then we can talk about what

that's going to be and how we see it. Most likely, we would be adjourning this over so that you can continue your - see where it gets to and then come back and we will keep monitoring that as to where we are. Okay.

**WOODFORD, MR:** Please the court.

**COOPER, MS:** Can I ask you a question? It is important.

**HIS HONOUR:** Well, it might be important - - -

**COOPER, MS:** Because I received the letter - - -

**HIS HONOUR:** - - - to you, Ms Cooper.

**COOPER, MS:** - - - from the court.

**HIS HONOUR:** Yes.

**COOPER, MS:** I received a letter from the court when I  
- - -

**HIS HONOUR:** You can - you can pop out - - -

**COOPER, MS:** When I send the form 23 to that neighbour  
- - -

**HIS HONOUR:** Yes.

**COOPER, MS:** - - - and to the court I received a letter from the - the court that the registrar says that, "You - this is a form 24. You serve is to the" - - -

**HIS HONOUR:** Yes. Yes.

**COOPER, MS:** - - - "claimant" - - -

**HIS HONOUR:** Yes.

**COOPER, MS:** - - - "and he only has the right to say whether he agrees with the (indistinct) "- - -

**HIS HONOUR:** Yes.

**COOPER, MS:** - - - "orders you requested. Yes or no"  
- - -

**HIS HONOUR:** Yes.

**COOPER, MS:** Because his form 23 was dismissed. So, therefore, that was clear that - - -

**HIS HONOUR:** That has got nothing to do with the form 23.

**COOPER, MS:** No (indistinct) - - -

**HIS HONOUR:** No, it's different - different one.

**COOPER, MS:** He can - the form 23 that was response to my  
- - -

**HIS HONOUR:** Yes, yes.

**COOPER, MS:** - - - application - it is written - the  
guideline with it - - -

**HIS HONOUR:** Yes.

**COOPER, MS:** With the letter - I have that letter - - -

**HIS HONOUR:** Okay. I can't - - -

**COOPER, MS:** - - - that says - - -

**HIS HONOUR:** I can't help you anymore. If you pop outside  
and have that chat.

**COOPER, MS:** Yes. He can only say yes or no. He cannot  
discuss - - -

**HIS HONOUR:** Yes. Yes. Thank you.

**COOPER, MS:** Because his form - - -

**HIS HONOUR:** Thank you.

**COOPER, MS:** - - - 23 was dismissed.

**HIS HONOUR:** Excellent. Okay.

**WOODFORD, MR:** Your Honour, if I may. I sent a minute of  
proposal - it was on the email last night.

**HIS HONOUR:** Did you?

**WOODFORD, MR:** It tidies up a couple of other aspects.  
But - - -

**HIS HONOUR:** Okay. Well, I will have a look at - - -

**WOODFORD, MR:** You will need to take your computer and  
stuff with you.



**COOPER, MS:** (indistinct)

**HIS HONOUR:** To the extent I can have a look at it. I will just see if I've - I - no, I don't seem to have those. Mr Woodford, I don't seem to have that.

**WOODFORD, MR:** I see, your Honour.

**HIS HONOUR:** I've got an email - another email from Ms Cooper last night.

**WOODFORD, MR:** I see.

**HIS HONOUR:** Today. Let us see. Maybe I did - maybe it came in last night.

**COOPER, MS:** I have written an email for you.

**HIS HONOUR:** Yes. And then I've got those attachments that Ms Cooper was talking about. But I don't have any proposed orders. But - - -

**WOODFORD, MR:** All right.

**HIS HONOUR:** - - - perhaps you can chat - chat to them about - about that.

**WOODFORD, MR:** Please the court. Yes.

**HIS HONOUR:** Okay. Take the - this is the - may well be the final opportunity to - - -

**WOODFORD, MR:** Yes.

**HIS HONOUR:** - - - work through this one.

**WOODFORD, MR:** Indeed.

**HIS HONOUR:** So - - -

**COOPER, MS:** I do (indistinct)

**HIS HONOUR:** All right. Thank you.

(Short adjournment)

**HIS HONOUR:** Okay. What - where have we got to. I will ask you to be as direct as possible, Mr Woodford, as you can.

**WOODFORD, MR:** Yes. Thank you, your Honour.

**HIS HONOUR:** Thank you. And we've got another four matters to deal with before lunch.

**WOODFORD, MR:** Well, pursuant to your Honour's direction that negotiations commence on the basis that the retaining aspect of the quote 3590C be paid by agreement Ms Cooper's view is that the claimants want a metal retaining wall. She doesn't agree with a metal retaining wall. Structerre, I have to say, don't share that view. But she says her form - her options in her form 23 should prevail. Her calculation is that the cost is \$13,000 which should be paid to her by the claimants. The offer from the claimants is that the retaining aspect of 3590C be shared equally.

**HIS HONOUR:** Right. Okay.

**WOODFORD, MR:** There's no submission I can make in opposition to that position.

**HIS HONOUR:** So the - I understand where - where - - -

**COOPER, MS:** I want magistrate read my form 23 (indistinct) orders and respond.

**HIS HONOUR:** I - I've read - - -

**COOPER, MS:** Magistrate - - -

**HIS HONOUR:** I've read them. But I can't assist - - -

**COOPER, MS:** I want magistrate decide because - - -

**HIS HONOUR:** - - - you with what you're seeking.

**COOPER, MS:** - - - he has said to - - -

**HIS HONOUR:** Yes. I can't assist you - - -

**COOPER, MS:** He has said - - -

**HIS HONOUR:** - - - with that. I would be - - -

**COOPER, MS:** Magistrate decide.

**HIS HONOUR:** - - - dismissing them because they have no place to - place in the court.

**COOPER, MS:** No, I want magistrate decide based on my order that - - -

**HIS HONOUR:** But that's I'm deciding it.

**COOPER, MS:** That's it.

**HIS HONOUR:** That's - that's who I am - - -

**COOPER, MS:** That's it.

**HIS HONOUR:** - - - when I last checked. Okay.

**COOPER, MS:** That's it.

**HIS HONOUR:** All right. So - thank you. Back to you, Mr Woodford. I don't know where we finished.

**COOPER, MS:** I have written even.

**HIS HONOUR:** I - I just - were there some proposed orders that the parties had today or did we not reach any sort of consensus.

**WOODFORD, MR:** Yes, there is a minute of orders.

**HIS HONOUR:** You've got a minute of orders, have you?

**COOPER, MS:** Yes.

**WOODFORD, MR:** Yes. But I - I sent it by email. It's simply not making it through the system.

**HIS HONOUR:** Okay. Which email did you send it through to?

**WOODFORD, MR:** The Fremantle Court of Justice.

**COOPER, MS:** But I do not - I have not seen those orders.

**WOODFORD, MR:** I went - I went - - -

**COOPER, MS:** I do not agree with something I have not seen and also Mr Woodford has been very busy - has not - I have not read his emails in - since October because I had to write to court. I worked for the magistrate - - -

**HIS HONOUR:** So if - if there's a - just hold on a second.

**COOPER, MS:** Yes.

**HIS HONOUR:** But if - if there's - - -

**COOPER, MS:** He is only a pro bono lawyer. He has only come in August.

**HIS HONOUR:** Yes, I understand. He's - he's helping you out. But the problem is - - -

**COOPER, MS:** He might not even have read all of this.

**HIS HONOUR:** - - - that a lot of what you've done, Ms Cooper, in relation to this application - I've read the other transcripts - - -

**COOPER, MS:** Yes.

**HIS HONOUR:** - - - from the other magistrates who have dealt with the matter and - - -

**COOPER, MS:** Only magistrates - - -

**HIS HONOUR:** - - - they have each - just wait a sec. They have each tried - - -

**COOPER, MS:** (indistinct)

**HIS HONOUR:** - - - to help you with an understanding of the way that this court - - -

**COOPER, MS:** Yes.

**HIS HONOUR:** - - - process works.

**COOPER, MS:** We do not want to negotiate. I have negotiated. I lost 50,000.

**HIS HONOUR:** Yes. So - - -

**COOPER, MS:** Their two - their two insurance - - -

**HIS HONOUR:** But you're - you don't have - - -

**COOPER, MS:** - - - companies cheated.

**HIS HONOUR:** - - - the option of not negotiating - - -

**COOPER, MS:** No, just the magistrate - - -

**HIS HONOUR:** - - - in a matter over a fence.

**COOPER, MS:** - - - read the orders and - - -

**HIS HONOUR:** I can make an order simply for a fence to be - to be put up and - - -

**COOPER, MS:** You just read my orders.

**HIS HONOUR:** I've read your orders and I'm dismissing  
- - -

**COOPER, MS:** Read the affidavit and just - - -

**HIS HONOUR:** - - - your orders, Ms Cooper.

**COOPER, MS:** - - - make the orders.

**HIS HONOUR:** I'm dismissing your orders because - - -

**COOPER, MS:** Then whatever it is - - -

**HIS HONOUR:** - - - they don't make any - - -

**COOPER, MS:** Whatever it is.

**HIS HONOUR:** They don't make any sense. They don't make  
any sense. They're not - - -

**COOPER, MS:** I have asked the magistrate - - -

**HIS HONOUR:** So the - - -

**COOPER, MS:** - - - to read my affidavit.

**HIS HONOUR:** One of the questions is whether - whether -  
if you're not agreeing to what the - - -

**COOPER, MS:** Because I haven't - - -

**HIS HONOUR:** - - - the lawyer has - just wait a sec. The  
lawyer who's assisting you. The question is whether you  
need some representation or - from the Public Advocate  
- - -

**COOPER, MS:** The representation - - -

**HIS HONOUR:** - - - to assist you - - -

**COOPER, MS:** - - - could not be done because the lawyers  
says that the deed of release is - wrote an email to the  
court - - -

**HIS HONOUR:** Yes. The deed of release was - relates to  
matters back in 2005.

**COOPER, MS:** Yes, he wrote - he wrote a letter - - -

**HIS HONOUR:** I'm not going to deal with that either. I'm  
just going to deal with - - -

**COOPER, MS:** He wrote a letter to the court - to the previous magistrate that dismiss the application that the deed of release is a job of a magistrate. So I started writing my affidavit - A, B, C, D - - -

**HIS HONOUR:** Yes. But it - that's not correct. That's - - -

**COOPER, MS:** And the magistrate decide - - -

**HIS HONOUR:** Yes, it's not correct.

**COOPER, MS:** - - - about the deed of - this is what is written in one page - - -

**HIS HONOUR:** Because - - -

**COOPER, MS:** - - - email he sent.

**HIS HONOUR:** Because whatever happened back then doesn't affect the fact of whether - - -

**COOPER, MS:** Okay. Whatever it is.

**HIS HONOUR:** - - - the fence needs fixing now.

**COOPER, MS:** So if you write - - -

**HIS HONOUR:** If the fence needs fixing - - -

**COOPER, MS:** - - - the deed of release - - -

**HIS HONOUR:** - - - now I can make an order that it - - -

**COOPER, MS:** Yes.

**HIS HONOUR:** - - - it's fixed and you each have to put in 50 per cent.

**COOPER, MS:** Because we were in the - - -

**HIS HONOUR:** And that's all I'm going to do - - -

**COOPER, MS:** The deed of release has an option - has an issue that the claimant cannot make any claim against me for the same matter that - - -

**HIS HONOUR:** Yes, that's the matter that - - -

**COOPER, MS:** - - - were in the court - - -

**HIS HONOUR:** - - - was dealt with back in 2005.

**COOPER, MS:** No. That's - - -

**HIS HONOUR:** It's not what has happened to the fence now.

**COOPER, MS:** They cannot claim for the same matters that were in the court in - - -

**HIS HONOUR:** No, that's not a - - -

**COOPER, MS:** - - - 2005 to 2008.

**HIS HONOUR:** - - - correct interpretation. Ms Cooper, it's not - - -

**COOPER, MS:** And also two thousand - - -

**HIS HONOUR:** - - - a correct interpretation - - -

**COOPER, MS:** Yes.

**HIS HONOUR:** - - - because if a fence falls over now or a fence has a problem - - -

**COOPER, MS:** Not fence.

**HIS HONOUR:** - - - with it - - -

**COOPER, MS:** For the retaining wall I'm talking.

**HIS HONOUR:** And - well, it doesn't matter. The - - -

**COOPER, MS:** The retaining wall - - -

**HIS HONOUR:** - - - retaining wall - that's - - -

**COOPER, MS:** They have removed the - - -

**HIS HONOUR:** - - - not relevant to this case.

**COOPER, MS:** - - - brickwork.

**HIS HONOUR:** Yes.

**COOPER, MS:** See, when they removed the - - -

**HIS HONOUR:** So - so - - -

**COOPER, MS:** - - - the brickwork - - -

**HIS HONOUR:** Ms Cooper, just let us - let us - I'm going to be frank about it.

**COOPER, MS:** Why should I pay for a retaining - - -

**HIS HONOUR:** Just wait a sec. Wait a sec - - -

**COOPER, MS:** - - - wall that was already there?

**HIS HONOUR:** Wait a sec. Thank you. Thank you. Okay. Now, I - before you talk I need you to listen to me.

**COOPER, MS:** Yes.

**HIS HONOUR:** Okay. Do you think you can do that?

**COOPER, MS:** Yes. I have written the affidavit for you.

**HIS HONOUR:** Okay. Yes, I know. I've seen it and it - and what it shows me is that you don't understand what the - this court hearing is all about. That you may have some engineering background. But that doesn't help you in relation to - - -

**COOPER, MS:** Do we have to - - -

**HIS HONOUR:** - - - what this case is about.

**COOPER, MS:** - - - throw out the deed of release?

**HIS HONOUR:** Okay. Because what this case is about is simply whether there is a fence which is need of repair.

**COOPER, MS:** Yes.

**HIS HONOUR:** And when it comes to a hearing - whether it's before me or another magistrate - all they will be concerned about is to determine whether is a fence that is in need of repair.

**COOPER, MS:** Okay. I have given a fence - - -

**HIS HONOUR:** Everything that has happened in the past is irrelevant.

**COOPER, MS:** Ekodek. Ekodek fence.

**HIS HONOUR:** Everything in relation to the retaining wall is irrelevant and - - -

**COOPER, MS:** Okay. Ekodek.



**HIS HONOUR:** - - - you will not be able to talk about it.

**COOPER, MS:** Yes. So if you are going to work just on the affidavit there I have asked for a Ekodek or PVC fencing or aluminium fencing. Have you read those ones?

**HIS HONOUR:** I've seen those materials - - -

**COOPER, MS:** Okay. Ekodek.

**HIS HONOUR:** But what's - what's wrong with - - -

**COOPER, MS:** I have given it to you. That is what I want.

**HIS HONOUR:** Standard. What sort of fence are you looking for?

**T. DESAI, MR:** Tanlyn Fencing

**COOPER, MS:** Because my - - -

**HIS HONOUR:** Sorry?

**T. DESAI, MR:** Tanlyn Fencing.

**HIS HONOUR:** Tanlyn?

**T. DESAI, MR:** Yes.

**COOPER, MS:** Whatever it is. They want Colorbond - - -

**HIS HONOUR:** I thought I dealt with every type of fencing and I - - -

**COOPER, MS:** They have asked for Colorbond and I have asked for Ekodek.

**HIS HONOUR:** Colorbond.

**COOPER, MS:** Ekodek is a good plastic composite.

**T. DESAI, MR:** Colorbond. Thank you.

**HIS HONOUR:** Colorbond. Yes. Yes. Okay.

**COOPER, MS:** Yes. They want Colorbond - - -

**HIS HONOUR:** So, in other words - - -

**COOPER, MS:** Excuse me - - -

**HIS HONOUR:** So that I can deal with - - -

**COOPER, MS:** No.

**HIS HONOUR:** At a trial I can deal with the question of whether it should be Colorbond or whether it should be - - -

**COOPER, MS:** I have gone through the Minister - - -

**HIS HONOUR:** - - - some other type of thing.

**COOPER, MS:** I have gone through the Minister. Six months we were dealing with Minister Quigley before - - -

**HIS HONOUR:** Okay.

**COOPER, MS:** - - - and they agreed that - they agreed and they said that if the material - the matter of the retaining wall has to go through the structural engineer and there is Australian code for it. They send me the code number and they said, "The costs of the retaining wall - you should go for the (indistinct) of it. Who has - has the need for a retaining wall." They have the need for a retaining wall. They had a pile of 530 - 30 millimetre sand - - -

**HIS HONOUR:** Yes.

**COOPER, MS:** - - - on top of a natural ground level. They say everyone who changes - the owner that changes the natural ground level - - -

**HIS HONOUR:** Yes.

**COOPER, MS:** - - - should give support to the owner that is on the natural ground level. In the zone 1 (indistinct) I have done a drawing. The drawing is in D5 attachment - - -

**HIS HONOUR:** Yes. I'm not going to look at it. No.

**COOPER, MS:** You can read it - - -

**HIS HONOUR:** No.

**COOPER, MS:** - - - or you can ask for a structural engineer, John Tick - John Tick - - -

**HIS HONOUR:** Yes. Yes.

**COOPER, MS:** - - - to look at it and charge him. If he is not accepting (indistinct)

**HIS HONOUR:** No, no. Well, I'm - that's not going to be dealt with in this case.

**COOPER, MS:** Whatever it is. The - - -

**HIS HONOUR:** Okay.

**COOPER, MS:** They have changed the natural ground level. So a person who has changed the natural ground level - - -

**HIS HONOUR:** Yes.

**COOPER, MS:** My side is right on the natural ground level. It is only one (indistinct) they have 530 millimetres sand on top of that that I believe that they - when they removed the retaining wall that was already there because they wanted to victimise me.

**HIS HONOUR:** The only question that the other magistrate was interested in - Magistrate Hills-Wright - was whether there would be an effective order for putting up a fence if the fence that's put up couldn't stand. We can't make orders in these matters in relation to - - -

**COOPER, MS:** Okay. They type of fence - - -

**HIS HONOUR:** - - - who builds a retaining - retaining wall  
- - -

**COOPER, MS:** - - - that I want is wood.

**HIS HONOUR:** Wait a sec.

**COOPER, MS:** Like picket fencing. But it is called Ekodek. Is wood plastic composite. It doesn't rot. It doesn't rust.

**HIS HONOUR:** Yes. But that's only dealing with the fencing. Again, I can deal with the fencing. I've got no problem - - -

**COOPER, MS:** Okay. Fencing - I'm talking about Ekodek. Ekodek - we brought it to the Shire - - -

**HIS HONOUR:** So - yes. So I can have a - - -

**COOPER, MS:** They said it is sufficient - - -

**HIS HONOUR:** I can have a hearing as to which is the better - better for the - to be put up in this location.

**COOPER, MS:** No, you see, what I have said - - -

**HIS HONOUR:** Whether it's Ekodek or whether it's - - -

**COOPER, MS:** No, what I have said as there is two reports from SGIO. They haven't brought any report of fence assessment from RAC and they said it is illegal. If they have insurance company they should give the assessment of the insurance company.

**HIS HONOUR:** Yes.

**COOPER, MS:** And my insurance company has given - the assessment is here - that the fence was bent due to the - the fence was cracked in 2012 because of the - - -

**HIS HONOUR:** It doesn't - it doesn't matter why it's cracked.

**COOPER, MS:** No, but it says in 2012 - - -

**HIS HONOUR:** It makes no difference to my orders.

**COOPER, MS:** - - - the building assessor - - -

**HIS HONOUR:** My orders are everybody pays 50 per cent - - -

**COOPER, MS:** No. No, I am talking - - -

**HIS HONOUR:** - - - of the fence.

**COOPER, MS:** - - - about 2012 assessment.

**HIS HONOUR:** I don't care about 2012. It doesn't make any difference to me.

**COOPER, MS:** 2012 there is a - - -

**HIS HONOUR:** No.

**COOPER, MS:** - - - there is a - - -

**HIS HONOUR:** 2005. It doesn't make any difference.

**COOPER, MS:** No, not for that. They said - - -

**HIS HONOUR:** 2012 doesn't make any difference.

**COOPER, MS:** - - - this fence has got a minor crack - - -

**HIS HONOUR:** None of them except for 2022. That's the only one that makes any difference.

**COOPER, MS:** Yes. But when the minor cracks came it started in - - -

**HIS HONOUR:** It doesn't matter why they cracked - why they cracked.

**COOPER, MS:** They said that this is because of - - -

**HIS HONOUR:** It's 50 per cent each - - -

**COOPER, MS:** - - - the structural fault.

**HIS HONOUR:** - - - for the fixing - thanks.

**COOPER, MS:** We didn't know because we could not see the other side. But in two - - -

**HIS HONOUR:** It doesn't matter why.

**COOPER, MS:** Seven years after - - -

**HIS HONOUR:** It doesn't matter, Ms Cooper.

**COOPER, MS:** Seven yeas - - -

**HIS HONOUR:** It doesn't matter.

**COOPER, MS:** Seven years after the same place - - -

**HIS HONOUR:** Yes. Sit down. Thank you.

**COOPER, MS:** The fence broke.

**HIS HONOUR:** You can't - no, no. No, don't sit down and talk. Just sit down. Sit down and stop talking.

**COOPER, MS:** I cannot afford to pay for two fences - - -

**HIS HONOUR:** Well - - -

**COOPER, MS:** - - - every three months.

**HIS HONOUR:** Okay. So, Mr Woodford, the situation that we have - if you want - if there needs to be - if there are orders that we can do by consent I can do those. But if you do not have the consent of - - -

**COOPER, MS:** No, they don't a consent.

**HIS HONOUR:** - - - person that you're assisting then what can I - what can I do?

**WOODFORD, MR:** Yes. It is difficult. There is authority that the court can recognise a standby counsel that - - -

**HIS HONOUR:** I'm not - I'm not suggesting you've got no right to be here. I don't have any issue with that. But in any situation where there's a counsel who says, "I have these orders that we've agreed" and the client says, "I don't agree with these" then there's only two options there. Either they're not agreed or that the client is requiring the assistance of the Public Advocate due to mental health issues and the like which are - - -

**COOPER, MS:** But mental health issue - I have a letter from my doctor - - -

**HIS HONOUR:** I appreciate that. But - - -

**COOPER, MS:** I said to the university - - -

**HIS HONOUR:** Yes.

**COOPER, MS:** - - - it doesn't affect my work.

**HIS HONOUR:** Okay. Well, the - maybe - - -

**COOPER, MS:** It only affects - - -

**HIS HONOUR:** Maybe that it affects your ability to - - -

**COOPER, MS:** - - - if there's too much stress on me - - -

**HIS HONOUR:** - - - resolve this matter. That's the problem.

**COOPER, MS:** Yes, it doesn't affect my work. My work is good. You can read it.

**HIS HONOUR:** No. I'm not going to read your work. Okay. So - so that's the problem that we face. If you - if you don't have the - if you don't have consent or agreement on what your proposed orders are then - then we can't go any further with - - -

**COOPER, MS:** They pay me the money.

**WOODFORD, MR:** For the - - -

**COOPER, MS:** They pay me money I have the (indistinct) they cannot just come and - - -

**HIS HONOUR:** Well, I think there's a proposal that - - -

**COOPER, MS:** No, so that you cannot pass over - - -

**HIS HONOUR:** - - - there be a shared cost, Ms Cooper.

**COOPER, MS:** - - - all the law because I have a mental problem.

**HIS HONOUR:** That they - that the claimant thinks that it's your cost for the retaining wall. But they're prepared to pay half to resolve this dispute.

**COOPER, MS:** Okay. Can you make the previous retaining wall - I paid two retaining wall - - -

**HIS HONOUR:** No. No.

**COOPER, MS:** Half as well.

**HIS HONOUR:** No. No.

**COOPER, MS:** No.

**HIS HONOUR:** No.

**COOPER, MS:** So there's - that is unfair then.

**HIS HONOUR:** But it doesn't matter whether it's unfair or not. It's not going to happen. I'm not going to - - -

**COOPER, MS:** You just make a decision yourself - - -

**HIS HONOUR:** No court's going to make - - -

**COOPER, MS:** Magistrate, you make any decision - - -

**HIS HONOUR:** No court's going to make an order - - -

**COOPER, MS:** - - - you want as long as you have read my affidavit.

**WOODFORD, MR:** You - - -

**COOPER, MS:** If you have ignored the affidavit you should call my doctor and then all the doctor will tell you I can still go back to the PhD. My brain works very well.

**HIS HONOUR:** Yes. But that doesn't matter - - -

**COOPER, MS:** The last certificate - - -

**HIS HONOUR:** That - - -

**COOPER, MS:** The last certificate I have - - -

**HIS HONOUR:** - - - doesn't effect whether I - - -

**COOPER, MS:** - - - is 2016.

**HIS HONOUR:** - - - consider your application should succeed.

**COOPER, MS:** 2016 I had a certificate - - -

**HIS HONOUR:** And your application can't succeed. Okay.

**COOPER, MS:** No, I got a certificate for - - -

**HIS HONOUR:** Yes. That's a different question. Okay.

**COOPER, MS:** In training and assessment. I was a lecturer at college.

**HIS HONOUR:** Yes.

**COOPER, MS:** In 2016 they gave me the certificate. How did they give it to me?

**HIS HONOUR:** Did they? Good.

**WOODFORD, MR:** Your Honour, the - - -

**COOPER, MS:** My brain works well.

**HIS HONOUR:** Okay.

**WOODFORD, MR:** There could be an order that the Tanlyn quote be the - be the fence and the costs be shared equally between the two neighbours.

**COOPER, MS:** And why not Ekodek? Why not Ekodek?

**WOODFORD, MR:** Because - - -

**HIS HONOUR:** See, that's the problem. If we - if we don't have an agreement on - - -



**COOPER, MS:** Yes, why not Ekodek. You are not supporting him.

**WOODFORD, MR:** Well - - -

**COOPER, MS:** You are supporting me.

**WOODFORD, MR:** If - subject to - subject to that matter  
- - -

**COOPER, MS:** No, I disagree. I disagree. It has - - -

**HIS HONOUR:** So - - -

**WOODFORD, MR:** Then the only - - -

**COOPER, MS:** Because my side is all garden.

**HIS HONOUR:** All I can really do - - -

**WOODFORD, MR:** Then the only issue - - -

**COOPER, MS:** My side is all garden. His fence is only last 10 years - - -

**HIS HONOUR:** Yes.

**COOPER, MS:** 10 years warranty and it get lost. He said if it get a scratch it is powder coated. Powder coat means you can put your nail there. It gets a scratch. It get rust.

**HIS HONOUR:** Yes.

**COOPER, MS:** The warranty is even not 10 years and I have put a powder coat cost next to the (indistinct)

**HIS HONOUR:** Ms Cooper, I don't need to - - -

**WOODFORD, MR:** And - - -

**HIS HONOUR:** I don't need to hear from you anymore. Okay.

**WOODFORD, MR:** The - and - - -

**HIS HONOUR:** There's - - -

**WOODFORD, MR:** - - - subject to that, your Honour, the only issue that would go forward for dispute is whether or not the fence should be Ekodek or Colorbond.

**HIS HONOUR:** But that's all that I've - confident that I  
- - -

**WOODFORD, MR:** That would be the only issue - - -

**HIS HONOUR:** - - - can decide upon.

**WOODFORD, MR:** That would be the only issue left from  
today and - - -

**HIS HONOUR:** But - but I may be in a position where I - if  
the suggestion is that the - the fence - the fencing  
contractor won't build it because it's not going to stand  
up then can I make that order?

**WOODFORD, MR:** The problem with Ekodek is it needs a  
separate retaining wall apparatus that the advantage of the  
Tanlyn quote is it incorporates the retaining - - -

**COOPER, MS:** No, we do not want cheap - - -

**WOODFORD, MR:** - - - with the - - -

**COOPER, MS:** - - - because they charge me 50,000,  
Magistrate.

**WOODFORD, MR:** - - - fence.

**COOPER, MS:** They did not accept these options in 2006.

**WOODFORD, MR:** That's the difficulty.

**COOPER, MS:** They didn't - we offer the different type of  
fence to decrease my cost. But they all brought all them  
together. We want two retaining wall.

**WOODFORD, MR:** And it - - -

**COOPER, MS:** We do not accept your offer to have a change  
in fence. That was in deed of release.

**HIS HONOUR:** Yes.

**WOODFORD, MR:** And - - -

**COOPER, MS:** So if they have accepted that the change to  
different fence solving the problem - this is against the  
deed of release because this was resolved.

**HIS HONOUR:** Yes. So - - -

**WOODFORD, MR:** And as I - - -

**HIS HONOUR:** Thank you.

**COOPER, MS:** (indistinct)

**HIS HONOUR:** No, I don't need to hear from you anymore.  
Thank you.

**WOODFORD, MR:** As I understand it, your Honour, that quote will come in under \$13,000. So there's - in my respectful opinion, your Honour, the Ekodek Colorbond question could be decided today.

**HIS HONOUR:** Well, it could be agreed today. But your client's not agreeing.

**COOPER, MS:** I do not agree.

**WOODFORD, MR:** But the - - -

**HIS HONOUR:** So how can I resolve it?

**WOODFORD, MR:** The issue could be decided today.

**COOPER, MS:** I want you to read it.

**HIS HONOUR:** Sorry?

**WOODFORD, MR:** The issue could - it's a decidual issue which whether or not - - -

**HIS HONOUR:** Yes. But I've got - as I said, I've got four matters to deal with before - - -

**WOODFORD, MR:** I see.

**HIS HONOUR:** - - - 1 o'clock and I've got a 2.15 matter as well.

**WOODFORD, MR:** I see.

**HIS HONOUR:** So I can't - I can't deal with it as a - as a - effectively, a trial of the issue today.

**WOODFORD, MR:** Yes.

**COOPER, MS:** If this matter has been resolved by Mr Quigley. I have the letter of him.

**HIS HONOUR:** Yes, I don't - - -

**WOODFORD, MR:** Well, then - - -

**HIS HONOUR:** It hasn't - it hasn't been because - - -

**COOPER, MS:** Minister Quigley has resolved this matter.

**HIS HONOUR:** - - - Mr Quigley doesn't - Mr Quigley - - -

**COOPER, MS:** I have given it to him.

**HIS HONOUR:** - - - doesn't decide what the appropriate fence is between two people in a Dividing Fences Act. I wish he would - - -

**COOPER, MS:** No, Mr Quigley - - -

**HIS HONOUR:** But he doesn't.

**COOPER, MS:** - - - decided about the retaining wall.

**HIS HONOUR:** Well, again, I don't - I don't think that's true.

**COOPER, MS:** He has said that the retaining wall has a very long Australian court number. It has to be designed by a structural engineer. It is in this suitcase.

**HIS HONOUR:** Yes.

**COOPER, MS:** And I saw - - -

**HIS HONOUR:** Yes. But that's - that's not an issue I'm going to - - -

**COOPER, MS:** And the (indistinct) the person who - - -

**HIS HONOUR:** - - - decide, Ms Cooper. Do you understand that? Do - - -

**COOPER, MS:** - - - houses the need for a retaining has to pay for a retaining wall.

**HIS HONOUR:** Yes. So that's not - - -

**COOPER, MS:** They have added five hundred and - - -

**HIS HONOUR:** I'm not going to decide that in my - in this case. Do you understand that?

**COOPER, MS:** Sorry?

**HIS HONOUR:** Can you understand that I'm not going to decide whose responsibility it is to pay for the retaining wall.

**COOPER, MS:** Your Magistrate, if you read my affidavit you read - - -

**HIS HONOUR:** Yes. But I don't - your affidavit deals with retaining walls and history. I'm not going to deal with those.

**COOPER, MS:** No, there is four - three affidavits.

**HIS HONOUR:** It doesn't matter how many - - -

**COOPER, MS:** A, B, C - - -

**HIS HONOUR:** It doesn't matter how many affidavits they are - - -

**COOPER, MS:** Yes.

**HIS HONOUR:** - - - they're not - they're not relevant to the case.

**COOPER, MS:** Yes. A - affidavit A is - - -

**HIS HONOUR:** They're not relevant.

**COOPER, MS:** - - - written for dividing fence.

**HIS HONOUR:** Yes. There's only one that's relevant.

**COOPER, MS:** Affidavit B is for payment.

**HIS HONOUR:** So - - -

**WOODFORD, MR:** The only issue then, your Honour, is Ekodek or Colorbond.

**COOPER, MS:** Ekodek.

**WOODFORD, MR:** It could - I understand my friend wants to say something.

**COOPER, MS:** Because my - my side is all garden.

**HIS HONOUR:** I don't want you telling me why you think Colorbond is better than Ekodek. I can't - because I'm not going to decide it today.

**T. DESAI, MR:** No, your Honour.

**HIS HONOUR:** Okay.

**T. DESAI, MR:** I was just going to say - - -

**COOPER, MS:** His form is dismissed.

**HIS HONOUR:** Just wait. Thank you.

**T. DESAI, MR:** The Tanlyn Fencing quote which contains the Colorbond fence - - -

**HIS HONOUR:** Yes.

**T. DESAI, MR:** - - - covers disposal - - -

**HIS HONOUR:** Yes, yes. Yes.

**T. DESAI, MR:** Covers every aspect. The Ekodek one, as I believe, is permeable.

**COOPER, MS:** What?

**T. DESAI, MR:** So there's - it's - there's no privacy in that function.

**COOPER, MS:** No, there is a - there is privacy net for it.

**T. DESAI, MR:** That's all I wanted to say.

**COOPER, MS:** No, this is lie. This is lie. There is a privacy net.

**HIS HONOUR:** Yes. And that doesn't matter.

**COOPER, MS:** I have added to the catalogue.

**HIS HONOUR:** Because I'm not going to decide it today.

**COOPER, MS:** I have added to the catalogue. I can show it to you.

**HIS HONOUR:** I don't want to see it.

**COOPER, MS:** Okay.

**HIS HONOUR:** Yes. Good.

**COOPER, MS:** There is a privacy net. They can put it there. It's cheap and they can buy it online.

**HIS HONOUR:** So - - -

**COOPER, MS:** And Bunnings also sell it.

**HIS HONOUR:** All right.

**COOPER, MS:** It's a privacy net like I said to you.

**HIS HONOUR:** All right. So all we're going to be able to do is to - if that remains as our issue of dispute - is that that's all I'm going to determine.

**COOPER, MS:** Yes.

**HIS HONOUR:** Okay.

**COOPER, MS:** Yes.

**HIS HONOUR:** That's all we're going to determine - is the - between Ekodek and the - - -

**COOPER, MS:** Yes.

**HIS HONOUR:** - - - Colorbond. I'm not going to decide who has to pay for a retaining wall.

**COOPER, MS:** It doesn't matter. Retaining wall has to be done by a structural engineer. You can choose - - -

**HIS HONOUR:** Yes. But it's not going to be done in this case.

**COOPER, MS:** - - - whether Mr John Tick - - -

**HIS HONOUR:** I'm not going to do that.

**COOPER, MS:** Should Mr John Tick be an engineer of me  
- - -

**HIS HONOUR:** Yes. But he's not - that doesn't - it's not relevant to this case.

**COOPER, MS:** No, the Shire have told me we do not let you to apply and him unless the magistrate decide which one of these owners should be owner builder.

**HIS HONOUR:** Yes. So I'm not going to decide that.

**COOPER, MS:** Okay.

**HIS HONOUR:** Okay. That's - a magistrate is not going to decide that in this case.

**COOPER, MS:** So that - could you please write this - - -

**HIS HONOUR:** So your best option is to try and resolve it between yourselves - - -

**COOPER, MS:** There is all - Magistrate, Ekodek is very good because Ekodek has got aluminium tube at three sections of it at the back. So it is - a panel is already made. Quickly put it there and there is two installers. One is a carpenter. He can come. And one is a non-carpenter but experience - they just screw trees - screw on this side - - -

**HIS HONOUR:** Yes.

**COOPER, MS:** (indistinct) screw quickly install it. It's not the - - -

**HIS HONOUR:** Yes.

**COOPER, MS:** - - - difficulty of cutting metals.

**HIS HONOUR:** Well, you might want to have a think about - - -

**COOPER, MS:** These people charge \$4000 just to cut the metals.

**HIS HONOUR:** Yes.

**COOPER, MS:** And then \$500 is the cost of - - -

**HIS HONOUR:** You might want to have a think about whether - - -

**COOPER, MS:** - - - material. It is a cheap material - - -

**HIS HONOUR:** - - - Ekodek is going to be suitable - - -

**COOPER, MS:** - - - in the cost of 4000.

**HIS HONOUR:** It's another approach, I suppose.

**COOPER, MS:** Yes.

**HIS HONOUR:** It has screening faculties to it as well.



**COOPER, MS:** I have a certain mechanical engineering. I know this.

**HIS HONOUR:** Colorbond is more commonly used. But - - -

**T. DESAI, MR:** It's only more reasonable because it contains the retaining aspect which we're happy to, obviously, pay - - -

**HIS HONOUR:** Yes.

**T. DESAI, MR:** - - - 50 per cent.

**COOPER, MS:** 450 - cheap material.

**T. DESAI, MR:** We're not going to - we're not looking to go buy a privacy screen to attach to a fence. And, obviously - - -

**HIS HONOUR:** But you don't need to on the Ekodek, though, do you?

**T. DESAI, MR:** There have - it has permeable sections. So it's just wood that has a little gap in between it.

**HIS HONOUR:** Yes, it has got a gap in it.

**COOPER, MS:** No, there is no gap. It is a - - -

**HIS HONOUR:** But unless you peep through it - - -

**COOPER, MS:** - - - privacy net - - -

**HIS HONOUR:** - - - you're not going to see.

**COOPER, MS:** - - - on it - - -

**T. DESAI, MR:** Well, in this - - -

**COOPER, MS:** - - - like a (indistinct)

**T. DESAI, MR:** Well, in this - I hope you can appreciate in this situation we would want utmost privacy - - -

**COOPER, MS:** I gave you the catalogue.

**HIS HONOUR:** Yes. But you - yes.

**T. DESAI, MR:** And, plus, the costs. Notwithstanding that, the defendant also has Colorbond on her - her drawing. So - - -

**HIS HONOUR:** Well, that's a factor in - in what I have to decide. If all the fences in the area are Colorbond I'm not going to - likely to do an Ekodek.

**COOPER, MS:** No, the - Magistrate, Ekodek has been in this country seven years.

**HIS HONOUR:** Okay. So what sort of dates are we - yes. That's - - -

**COOPER, MS:** It is an Australian company.

**HIS HONOUR:** - - - a factor that I have to take into account - - -

**COOPER, MS:** Yes.

**HIS HONOUR:** Whether it's suitable. We're just looking at dates.

**COOPER, MS:** And our - our house is all garden. They have no - no trees next to the fence.

**T. DESAI, MR:** I would just like to ask, your Honour. So there's no way for a judgment today given this has been going on since 2019?

**HIS HONOUR:** Well, if you - - -

**COOPER, MS:** They're in - - -

**HIS HONOUR:** - - - reach agreement - - -

**T. DESAI, MR:** Yes.

**COOPER, MS:** No, they're form 23 - - -

**HIS HONOUR:** - - - of course there is.

**COOPER, MS:** - - - was dismissed because they - - -

**HIS HONOUR:** But - - -

**COOPER, MS:** - - - passed the order of the magistrate.

**HIS HONOUR:** But so it yours. So - - -

**COOPER, MS:** They - - -

**HIS HONOUR:** everyone's has been dismissed.

**COOPER, MS:** No, they said - - -

**HIS HONOUR:** I think probably it needs - yes - just to - corralling. So that - we're in - sorry. So we're in agreement that the dividing fence is in need of repair, correct?

**T. DESAI, MR:** Yes, your Honour.

**HIS HONOUR:** So - - -

**COOPER, MS:** Repair, no. It should be a new fence.

**HIS HONOUR:** Yes, repair or a replacement. Yes. And we're - we're agreeing - - -

**COOPER, MS:** No, it means there is no fence.

**HIS HONOUR:** - - - that repair by way of replacement is the appropriate - - -

**COOPER, MS:** It was twice fell down by storm and there is no fence.

**HIS HONOUR:** Yes.

**COOPER, MS:** You only have a three bent panels. The bent panels are 45 degree bent.

**HIS HONOUR:** 5 September.

**WOODFORD, MR:** Your Honour, it may not be a full day.

**HIS HONOUR:** Well, what about half. 27 July.

**WOODFORD, MR:** Yes, it's suitable - - -

**COOPER, MS:** Sorry. Another hearing?

**HIS HONOUR:** The actual hearing to determine which fence is appropriate.

**COOPER, MS:** Is it only for the fence?

**HIS HONOUR:** Correct.

**COOPER, MS:** What about the retaining wall?

**HIS HONOUR:** No.

**COOPER, MS:** Who is the person we have to go? Shire doesn't accept it. They say - - -

**HIS HONOUR:** Well, you need to get some - - -

**COOPER, MS:** - - - "We do not accept anything under five"  
- - -

**HIS HONOUR:** You need to listen to the advice that you get from a lawyer on that. So listen to Mr Woodford's advice on that.

**COOPER, MS:** Okay. Okay.

**HIS HONOUR:** About what do to there.

**COOPER, MS:** Because Mr Quigley said that the - - -

**HIS HONOUR:** Even if his advice is not to do anything  
- - -

**COOPER, MS:** Mr Quigley - - -

**HIS HONOUR:** We will sort it out.

**COOPER, MS:** Mr Quigley - after I complain there is no legislation for the retaining wall he has written that they have started a standard team - - -

**HIS HONOUR:** Yes. But it's - - -

**COOPER, MS:** - - - in - after my complaint went through.

**HIS HONOUR:** The retaining wall is - - -

**COOPER, MS:** A standard team has started. But I don't know whether - - -

**HIS HONOUR:** Okay.

**COOPER, MS:** They said, "You can write to the standard team in the building and engineer department". And Minister Carey is in correspondence with me about this.

**HIS HONOUR:** Okay.

**COOPER, MS:** But I have employed a structural engineer  
- - -

**HIS HONOUR:** What day? On - did you say the 10<sup>th</sup>? 27<sup>th</sup>.

**COOPER, MS:** We have done everything for the retaining wall - - -

**HIS HONOUR:** Yes.

**COOPER, MS:** A drawing and everything as you saw.

**HIS HONOUR:** Yes. So, Ms Cooper, again, you will not be able to talk about and argue about - - -

**COOPER, MS:** Retaining - - -

**HIS HONOUR:** - - - the retaining wall in this case.

**COOPER, MS:** So I should write to the Prime Minister again because I wrote to Prime Minister two years ago in June.

**HIS HONOUR:** Okay.

**COOPER, MS:** He send me to the - - -

**HIS HONOUR:** Well, there's an election on - - -

**COOPER, MS:** - - - Minister Quigley - - -

**HIS HONOUR:** - - - at the moment. So - - -

**COOPER, MS:** Minister Quigley sent me - - -

**HIS HONOUR:** Don't know which one to write to.

**COOPER, MS:** - - - a long letter that duty of the structural engineer is to deal with this. But - - -

**HIS HONOUR:** Yes, it's not this case.

**COOPER, MS:** - - - he does not pay me.

**HIS HONOUR:** This case is to - - -

**COOPER, MS:** He does not pay me for - - -

**HIS HONOUR:** - - - determine which fence is going to be put up - Ekodek or Colorbond.

**COOPER, MS:** Ekodek.

**HIS HONOUR:** Yes. I - I get where you're coming from on that. But that's not - - -

**WOODFORD, MR:** If I - - -

**HIS HONOUR:** - - - what's agreed at the moment.

**WOODFORD, MR:** If I may, your Honour, the time. A 9.30, 10 o'clock or - - -

**HIS HONOUR:** 10 o'clock.

**WOODFORD, MR:** 10 o'clock. Thank you.

**HIS HONOUR:** Okay.

**COOPER, MS:** 10 July?

**WOODFORD, MR:** 27<sup>th</sup>.

**COOPER, MS:** 27.

**HIS HONOUR:** Okay. And nothing about a retaining wall. Okay.

**COOPER, MS:** So do you - so you don't do anything about the retaining wall because the court accepted my application in 2005 to 2009 about the retaining wall.

**HIS HONOUR:** Yes. Well, they might have. But this is a Dividing Fence Act claim. This is all about dividing fences. Okay. Thank you for your time everyone.

**WOODFORD, MR:** Please the court.

**HIS HONOUR:** So do whatever you can, parties, to try and resolve this. But - yes. Do what you can.

**WOODFORD, MR:** One of the decisive considerations is the - the surrounding fences - nature of surrounding fences. If we could - - -

**HIS HONOUR:** Yes, it is. It is.

**WOODFORD, MR:** One of the decisive features.

**HIS HONOUR:** It's whether there's anything in the Shire that has it. Whether there's anything in the area when this thing - what the other fences are. It's not the - the be all and end all. But all of them are factors.

**WOODFORD, MR:** Yes.

**T. DESAI, MR:** I think I - I provided it in the form 24 response which shows the surrounding fences.

**WOODFORD, MR:** Yes. Yes.

**T. DESAI, MR:** Thank you, your Honour.

**WOODFORD, MR:** Thank you.

**HIS HONOUR:** Okay. Thank you.

AT 12.46 PM THE MATTER WAS ADJOURNED UNTIL  
WEDNESDAY, 27 JULY 2022

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