VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

CIVIL DIVISION

BUILDING AND PROPERTY LIST

VCAT REFERENCE: BP1483/2017

CATCHWORDS

Co-ownership of land – applicant seeks an order requiring other co-owner to transfer land to him – the Tribunal's power to make such an order – whether just and fair to make the order – power for principal registrar to execute documents in the name of the respondent – *Property Law Act 1958* ss 228, 232.

APPLICANT:	John Andrew Binns
RESPONDENT:	Stephen Richard Binns
WHERE HELD:	Melbourne
BEFORE:	Senior Member A. Vassie
HEARING TYPE:	Hearing
DATE OF HEARING:	3 April 2018
DATE OF ORDER:	18 May 2018
DATE OF REASONS:	18 May 2018
CITATION:	Binns v Binns (Building and Property) [2018] VCAT 759

ORDERS

1. By 1 July 2018 the applicant must obtain, and serve upon the respondent a copy of, an updated sworn valuation of the land situated at 21 Ronald Street, Sorrento being the land described in Certificate of Title volume 7515 folio 026 ("the land") by Adam Takacs of Insight Property ("the updated sworn valuation") whose sworn valuation is exhibit JAB-17 to the applicant's affidavit sworn on 16 November 2017.

2. By 1 July 2018 the respondent may obtain, and serve upon the applicant a copy of a sworn valuation of the land by another valuer ("the respondent's sworn valuation"). The applicant must, upon having been given reasonable notice of the date and time at which a valuer wishes to enter and inspect the land and the house upon it for the purpose of making the respondent's sworn valuation, permit the valuer to enter and inspect the land and the house.

3. If by 1 July 2018 the respondent has obtained, and served upon the applicant a copy of, the respondent's sworn valuation, the sum which is the median of the updated sworn valuation and the respondent's sworn valuation shall be the value of the land for the purposes of this order.

4. If by 1 July 2018 the respondent has not obtained, and served upon the applicant a copy of, a sworn valuation of the land by a valuer other than Adam Takacs the sum given as the value of the land in the updated sworn valuation shall be the value of the land for the purposes of this order.

5. By 15 July 2018 the applicant must deliver to the respondent, for execution by the respondent, an instrument of transfer, by the applicant and respondent as transferors to the applicant alone as transferee, of the respondent's undivided one third share in the land for a consideration expressed to be one-third of the value of the land for the purposes of this order.

6. By 29 July 2018 the respondent must execute and return to the applicant's solicitors, Weston Lawyers of Level 11, 15 Collins Street, Melbourne 3000 the instrument of transfer referred to in paragraph 5 of this order, and any other document which, in the opinion of the applicant's solicitors, is necessary or convenient for the registration of the applicant as the sole proprietor of the land and which the applicant's solicitors have requested the respondent to execute and return.

7. If by 29 July 2018 the respondent has failed to deliver to the applicant's solicitors the instrument of transfer, and any other document of the kind referred to in paragraph 6 of this order, the principal registrar is authorised to execute the instrument of transfer and the other documents in the name of and on behalf of the respondent.

8. A solicitor's affidavit as to any of the following facts shall be conclusive evidence to the principal registrar of those facts:

   (a) the value of the land for the purposes of this order;

   (b) the delivery, and the date of delivery to the respondent, of the instrument of transfer for execution by the respondent;

   (c) the failure of the respondent to have executed and returned the instrument of transfer, executed by the respondent, by 29 July 2018;

   (d) any other document which the applicant's solicitors have requested the respondent to execute and return, and is in the solicitor's opinion necessary or convenient for the registration of the applicant as the sole proprietor of the land, has not been returned, executed by the respondent, by 29 July 2018.

9. Upon his solicitors having received, executed by the respondent or by the principal registrar on behalf of the respondent, the instrument of transfer and any other document of the kind referred to in paragraph 6 of this order, the applicant by his solicitors must immediately deliver to the respondent's solicitors, Darren Muir Fleiter Lawyers, of Suite 5, Level 1, 670 Canterbury Road, Surrey Hills

2127 a bank cheque for the sum which is one-third of the value of the land for the purposes of this order, by registered post addressed to the respondent's solicitors at that address or in any other manner agreed upon in writing by the applicant's solicitors and the respondent's solicitors.

10. The principal registrar is empowered to give such directions and execute such documents as may be necessary to give effect to these reasons.

11. Each party has liberty to apply for any further directions or orders.

12. The question of the costs of the proceeding is reserved.

A. Vassie
Senior Member

APPEARANCES:

For the Applicant:	Mr. J. Smith of Counsel
For the Respondent:	Mr. N. Jones of Counsel

REASONS FOR DECISION

1. The applicant John Andrew Binns and the respondent Stephen Richard Binns are brothers. The given names by which they are known are "Andrew" and Stephen" respectively. For simplicity that is how I refer to them in these reasons.

2. Andrew and Stephen are co-owners, as tenants in common, of land at 21 Ronald Avenue, Sorrento described in Certificate of Title volume 7515 folio 026 ("the land"). Andrew is registered as proprietor as to 2 of 3 equal undivided shares in the land and Stephen is registered as proprietor of the other one of the 3 equal undivided shares in the land.

3. On the land there is a holiday house.

4. Andrew has applied, in this proceeding, under Part IV Division 2 of the *Property Law Act 1958* ("the Act") for an order for transfer to him of Andrew's one-third share upon payment to Andrew of one-third of the land's value, alternatively for an order for sale of the land by auction and division of the proceeds of sale between them in accordance with their respective shares.

5. Stephen does not oppose the making of an order for sale. He contends that it should be the alternative order that Andrew has sought: an order for sale by auction and for division of the proceeds of sale.

6. Neither party has sought any adjustment of the interests in the land or any compensation, reimbursement or adjustment in relation to the proceeds of sale.

7. There is therefore only one principal issue: whether the Tribunal can and should make an order requiring Stephen to transfer his interest in the land to Andrew, or whether instead the Tribunal should order that the land be sold at auction and the proceeds of sale divided. There are secondary issues about the form that either order should take.

How the Co-Ownership Arose

8. The parties' late father had been the sole registered proprietor of the land. He died on 16 November 2004. By his will dated 1 June 2004, of which probate was granted on 24 May 2005, he disposed of the land as follows:

> 4. I DEVISE AND BEQUEATH the whole of my real and personal estate to any Trustee UPON TRUST to pay therefrom my just debts funeral and testamentary expenses and any Taxes and to stand possessed of the balance then remaining ("my residuary estate") UPON THE FOLLOWING TRUSTS namely:

(a) To transfer the property at 21 Ronald Avenue, Sorrento, Victoria 3943 the title to which is Certificate of Title Volume 7515 Folio 026 to the following to be tenants in common in equal shares:-

(i) My son **STEPHEN RICHARD BINNS** of 182 Union Road, Surrey Hills, Victoria 3122,

(ii) My son **JOHN ANDREW BINNS** of Unit 12, 2 Domain Street, South Yarra, Victoria 3141, and

(iii) My daughter **ANITA MARGARET DAMMERY** of 5 Lynn Ridge Avenue, Gordon, New South Wales 2072

AND I EXPRESS THE WISH that my son **JOHN ANDREW BINNS** shall buy the shares of the other beneficiaries the purchase price of each to be one third of the valuation by a sworn valuer of the property as a whole.

……

9. Andrew acted in accordance with his father's wish and purchased his sister's share. Presumably the trustee then transferred the land to Andrew and to Stephen so that they held in as tenants in common in the shares of 2/3 for Andrew and 1/3 for Stephen.

10. Andrew has sought to purchase Stephen's share but Stephen has not been prepared to sell. Hence Andrew's application in this proceeding.

The Hearing

11. Andrew had sworn an affidavit on 16 November 2017 in support of his application, and filed and served the affidavit. At a directions hearing on 16 February 2018 the proceeding was listed for hearing on 3 April 2018 and there was a direction that Stephen must file and serve any answering affidavit by 16 March 2018.

12. When the hearing began before me on 3 April 2018 Stephen had not filed or served any affidavit. I gave him leave to give evidence orally. That meant that I also gave Andrew a right to give further evidence orally in reply. They were the only two witnesses.

13. Because Mr Smith of Counsel for Andrew and Mr Jones of Counsel for Stephen did not agree upon the form of the order that they respectively asked me to make, at the end of the hearing I reserved my decision, gave the applicant leave to file and serve a form of draft order by 10 April 2018 and gave the respondent leave to file and serve any written objection to the form of order by 17 April 2018.

Andrew did file and serve a form of draft order but accompanied it with additional written submissions on the merits. Following suit, Stephen filed and served written objections to the form of order but also replied to the written submissions. I have considered both written submissions even though I had not given leave for them to be filed.

14. Andrew also filed and served a further affidavit dated 18 April 2018. I had not given him leave to do that. Stephen, through his solicitors, objected to that affidavit, as he was entitled to do. I have ignored the affidavit.

15. The evidence upon which I have relied for these reasons is Andrew's affidavit dated 16 November 2017 and the exhibits to it and the oral evidence of Andrew and of Stephen.

The Power to Order a "Transfer"

16. Section 228 of the Act provides:

> **228 What can VCAT order?**
>
> (1) In any proceeding under this Division, VCAT may make any order it thinks fit to ensure that a just and fair sale or division of land or goods occurs.
>
> (2) Without limiting VCAT's powers, it may order—
>
> (a) the sale of the land or goods and the division of the proceeds of sale among the co-owners; or
>
> (b) the physical division of the land or goods among the co-owners; or
>
> (c) that a combination of the matters specified in paragraphs (a) and (b) occurs.

17. So far as is relevant to my reasons in this proceeding, s 232 of the Act provides:

> **228 Other matters in VCAT orders**
>
> In any proceeding under this Division, VCAT may order—
>
> (a) that the land or goods be sold by private sale or at auction;
>
> (b) that the co-owners may purchase the land or goods at that sale or auction;

(c) in the case of a private sale, that the sale be at fair market price as determined by an independent valuer;

……

(f) that a sale is to be completed within a specified time;

……

(i) in the case of land, that any necessary deed or instrument be executed and documents of title be produced or other things be done that are necessary to enable an order to be carried out effectively;

……

18. Mr Jones for Stephen submitted that VCAT had no power to make the order Andrew sought, that Stephen transfer his interest in the land to Andrew, because the order would be for transfer of part of the land, whereas the power that Part IV of the Act confers is to order the sale or division of "the land" not of part of the land. The submission does not correctly describe the legal effect of the order sought. It is not an order for transfer of part of the land. Stephen is a co-owner of the whole of the land. He holds one equal undivided share in the whole of the land. An order that he transfer it would be an order for the transfer of that equal undivided share in the whole of land from Stephen to Andrew. So I do not accept the submission made in those terms.

19. Nevertheless, the submission has led me to consider whether Part IV Division 2 of the Act confers upon VCAT the power to order the transfer of one equal undivided share in the land from both co-owners to one of them alone. It is an order that it is not uncommon for the Tribunal to make, but the existence of the power to make it is not immediately obvious.

20. Section 228(1) provides that in any proceeding under Part IV Division 2 VCAT "may make any order it thinks fit" to ensure that a "just and fair sale or division of land" occurs, and that, in particular, it may order a "sale" on the one hand, or "physical division" on the other, "[w]ithout limiting VCAT's powers." It does not expressly state whether VCAT may, or may not, make an order for "transfer" of land from two or more co-owners to one of them.

21. The only case of which I am aware in which there was detailed consideration of the issue of the power to make such an order for transfer is *Pavlovich v Pavlovich*,[1] decided in 2012. In that case a mother and her son were registered as

[1] [2012] VCAT 809.

owners of land as joint tenants. The mother claimed that she was the beneficial owner of the whole of the land and sought an order for transfer of the son's interest in the land to her. The Tribunal made the order sought.

22. In that proceeding the mother was represented by Senior Counsel, Mr DJ Williams SC. The son was self-represented. So the contest was unequal. Nevertheless, it is apparent from the reasons for decision given in the proceeding that Mr Williams put his client's case with scrupulous fairness towards the son. He did not ask the presiding Member Dr R French, to assume that the power to order a transfer between co-owners existed; he put forward a detailed argument in favour of the existence of the power.

23. The argument proceeded as follows:

    (a) In *Krsteski v Jovanoski*[2] there was an appeal to the Supreme Court from an order of the Tribunal which dismissed an application under Part IV Division 2 of the Act for an order for transfer of one joint tenant's half interest in land to the other. Macaulay J dismissed the appeal because the factual basis for making such an order was lacking. The issue of VCAT's power to make the order sought was not raised or decided, but both the Tribunal member (Deputy President M. Macnamara, as his Honour then was) and Macaulay J assumed that the power existed.

    (b) In *Edelsten v Burkinshaw*[3] Kaye J. of the Supreme Court, acting upon the jurisdiction conferred on the Supreme Court to hear and determine an application under Part IV Division 2 of the Act when special circumstances exist which in the Court's opinion justify its hearing the application[4], granted the plaintiff's application for an order for a physical division of certain parcels of land which the plaintiff and the defendant owned as tenants in common. The orders made were for the division of the parcels of land (including the subdivision of one of them) and for the "transfer" of various lands from one of the co-owners to the other with a monetary adjustment to be made in accordance with the value of land transferred. Kaye J would not have made such an order had he not considered that the Act conferred such a power.

    (c) There have been decisions of the Tribunal for orders that one co-owner transfer land to another co-owner[5], on the consistent assumption that the power to make the order exists, even though those decisions have not examined whether, and if so how, the power exists.

[2] [2011] VSC 166.
[3] [2011] VSC 362.
[4] S 234c(4) of the Act.
[5] Mr Williams SC cited *Moll v Nobless* [2009] VCAT, another decision of Deputy President M Macnamara (as his Honour then was) as an example.

(d) The power conferred by s 228 to make an order to ensure that a "just and fair sale or division of land" occurs is wide enough to empower VCAT to order the transfer of one co-owner's interest in land to another co-owner. In particular, the word "division" is wide enough to include such a transfer. Otherwise there would be "a huge practical gap in the power to resolve co-ownership disputes in Part IV."[6]

24. Member Dr R French accepted Mr Williams's submissions, decided that she had the power to make the order sought, went on to make findings that led to the conclusion that the mother was the beneficial owner of the whole of the land, and made the order that the mother sought. The order was that the son must execute an instrument of transfer of the land which described the mother and son as transferors and the mother as transferee, she being "entitled in equity" to be the transferee.

25. I too am persuaded by Mr Williams's argument and will follow the decision of Member Dr R French. But I do so for an additional reason.

26. Part IV Division 2 of the Act empowers VCAT to order a "physical division" of co-owned land – what used to be called "partition" – when it is just and fair to do so, even though there is a statutory policy of preference for an order for sale.[7] Registration of a change of ownership following an order for physical division of land can be achieved only by registration of an instrument of transfer of ownership. As s 232(2) empowers VCAT to order that any necessary instrument be executed to enable an order to be carried out effectively, it follows that VCAT may order co-owners to execute a transfer or transfers of land physically divided pursuant to a VCAT order. If that power exists in relation to a proceeding in which a physical division of land is ordered, it would be anomalous if the power did not exist in relation to some other kind of order concerning co-owned land that VCAT considers to be just and fair. That is why, as Mr Williams argued, there would be a huge practical gap in the power to resolve co-ownership disputes in VCAT if the general power to order the execution of a transfer did not exist.

27. In the supplementary written submission filed on Andrew's behalf Mr Smith argued that the power conferred by s 232 to order that co-owned land "be sold by private sale", and that co-owners may purchase the land, was the source of the power to make the order that Andrew seeks. He argued that a recommendation

[6] [2012] VCAT 809 at [36].
[7] S 229(1) of the Act.

of a Victorian Law Reform Commission report, that VCAT be given the power "to permit the other co-owners to buy the property"[8] found expression in s 232(a), (b) and (c). That may be so, but I do not accept the argument that s 232 is the source of the power to make an order that one co-owner transfer an interest in land to another co-owner.

28. To my mind, the word "sale" in s 232 and elsewhere within Part IV Division 2 of the Act connotes a contractual relationship between two willing parties, one willing to sell and the other willing to buy. They may agree upon a sale price, but if they do not VCAT may under s 232(c) order that the sale be at a fair market price as determined by an independent valuer. The word "sale" does not, to my mind, fit the present case of a co-owner who resists the wish of another co-owner to purchase the first co-owner's interest in land. The Tribunal cannot force persons to enter into contractual relations against their will. It may, I have concluded, compel a co-owner to execute an instrument of transfer and may in the order it makes require a payment to the transferor. That is not a "sale". Rather, the effect of the order comes within the meaning of "division" which, as Mr Williams argued and I have accepted, is wide: wider than "physical division."

29. In the same supplementary written submission Mr Smith referred to and relied upon another Tribunal decision[9], but, as Mr Jones correctly stated in the written submission in reply, it was merely an example of the Tribunal making an order requiring a co-owner to execute a transfer of an interest in land to another co-owner while assuming, but not deciding, that the power exists to make such an order.

30. Having concluded that the Tribunal has the power to make the order that Andrew has sought, for a transfer to him by Stephen's one-third share in the land, I proceed to consider whether it would be just and fair to make that order.

The Evidence

31. *Valuation*. Andrew has obtained a sworn valuation of the land dated 6 September 2017 from Adam Takacs of Insight Property. The valuation of the current market value of the land was $925,000.00. It was exhibited[10] to Andrew's affidavit sworn on 16 November 2017.

32. Stephen has not provided any valuation evidence.

[8] Victorian Law Commission Disputes Between Co-Owners Report, recommendation 48. Evidently the report led to the introduction into the Act of what is now Part IV Division 2 by the Property (Co-ownership) Act 2005, No. 71/2005.
[9] *Kery v Smith* [2011] VCAT 1691.
[10] Exhibit "JAB 17" to the affidavit.

33. *Outgoings and maintenance*. Andrew's evidence was that since his father's death in 2004 he had paid all rates and land tax payable for the land, and that Stephen had not paid anything towards maintenance of the house or the land except for something to do with a television antenna.

34. When asked during cross-examination whether he conceded that Andrew had paid all rates and taxes and he had paid none since their father's death or all, Stephen at first said that he disputed Andrew's evidence, then said that he would have to check whether Andrew had paid all rates and taxes because it was possible that his mother had paid some. Stephen had known since November 2017, when Andrew's affidavit was served upon him, what Andrew's evidence was in that regard. He had had ample opportunity before the hearing to investigate whether Andrew's evidence in the affidavit was correct. I was not impressed by his reluctance to concede that Andrew had paid all rates and taxes since their father's death. I find that Andrew had.

35. As to money spent on maintenance of the house, Stephen gave evidence about having purchased materials from a hardware store but his evidence was vague. Andrew gave evidence that during his father's lifetime he had contributed towards the cost of external painting and gardening, but was equally vague. I have concluded that payment of maintenance costs by the parties, such as it was, is of no importance for the purpose of considering what is a just and fair order to make.

36. *Attachment to, and use of the house*. There was conflicting evidence about the extent to which either Andrew or Stephen had formed an attachment to the land and had used the holiday house. Andrew's evidence was that in the late 1990's his parents were using it, and Stephen's visits became infrequent, whereas he (Andrew) spent holidays and weekends there as often as he could. In the past four years he and his family had used the house on approximately 14 occasions, for the summer holidays, Easter holidays and weekends. During the last six years Stephen, to his knowledge, had used it only once for a single night. He could tell because things inside the house had been disturbed, between his visits, on only one occasion. Stephen had, however, lived in the house in the early 2000's for several months while he was ill.

37. As to his attachment to the land, Andrew's evidence was that he and his children had formed good relationships with neighbours and their children at Sorrento which he wished to preserve, and that he was willing to meet the cost of needed renovations to the house but only if he became the sole owner of the land.

38. Stephen's evidence was that he had occupied the house several times in the past few years: once every month or six weeks. He preferred to use the house in the winter months whereas Andrew's preference was for the summer, which was why Andrew would not know how frequently he (Stephen) used it. He suffers from encephalitis and, at his doctor's suggestion, had moved to live in the house in 2002 for about nine months.

39. It seems to me that neither brother has really been in a position to know how frequently the other brother has used the house in the past few years. I accept Andrew's evidence as to the frequency of his own use of the house. As to Stephen's use, the probability seems to me to be that he has used it more often than Andrew had asserted but less often that he (Stephen) asserted. I do accept that Stephen occupied it for about nine months in 2002.

40. *Antagonism*. The evidence revealed that there has been antagonism between the brothers and/or their wives in recent years. Understandably, the parties did not go into detail about it. There have been proceedings in the Magistrates' Court and elsewhere that have related, somehow or other, to an enduring power of attorney given by the parties' mother and to medical treatment for one or both of their parents.

Decision

41. For four reasons, I have decided that the just and fair order to make in this proceeding is the order that Andrew has sought: an order requiring Stephen to effect a transfer of his interest in the land to Andrew upon payment of one-third of the market value of the land. The reasons are in descending order of importance.

42. First, it fulfils the father's wish, expressed in his will, that Andrew should "buy" the shares of Stephen and of his sister. Andrew had purchased his sister's share in accordance with his father's wish. Mr Jones submitted that I should place no weight at all upon the father's wish: a testator should not be able to "control from the grave." But the father did not attempt any irresponsible or irrational interference in the lives of family members who survived him. The wish expressed in his will was for the Sorrento land to be dealt with in a way that would preserve it as an asset within the family and in a way that financially benefited all three children equally. I consider that it is just and fair to give effect to such a rational wish, so far as a Tribunal order can.

43. Secondly, the fact that Andrew alone has borne the responsibility for paying rates and land tax on the land since the father's death demonstrates that, to that extent, his brother and his sister were content for him to treat the land as if it were his own or would become his own. In view of their father's wish expressed in his will, it is understandable that they did so.

44. Thirdly, the making of that order rather than an order for sale by auction, would achieve a saving of agent's commission, advertising costs, legal costs for the preparation of a contract and a vendors' statement in accordance with s 32 of the *Sale of Land Act 1962*, and the cost of preparing the house and land for sale.

45. Finally, there is the matter of the antagonism between the parties. If there were to be an order for sale at auction, it could provide that Andrew (and Stephen, if he wished) were able to bid at the auction. If the sale was to Andrew, the father's wish would be fulfilled; but the sale might not be to Andrew. To achieve a proper price at an auction, the parties would both have to co-operate and each not seek actively to undermine the interests of the other. In view of the antagonism between them I am not satisfied that they would co-operate.

46. I do not regard Andrew as having demonstrated such an attachment to the house and the land as would justify the making of the order he has sought. However, the reasons I have given above do justify it, in my opinion.

The Form of the Order

47. The order that has preceded these reasons is intended to require Stephen to transfer to Andrew the undivided one-third share of Stephen in the land, in return for receiving one-third of the value of the land.

48. Andrew has already obtained a sworn valuation of the land but it is now six months old. Mr Smith sought an order that would require Andrew to obtain an updated valuation. I have prepared the orders accordingly. Mr Jones submitted, in his written submission in reply to the form of order that Mr Smith proposed, that the valuation of the land should be by an "independent" valuer appointed, if need be, by the Tribunal or by the Australian Property Institute. There is no reason not to regard Mr Takacs, who had valued the land for the applicant, as being independent.

49. Although, on one view of the matter, Stephen has had ample time since having been served with Andrew's affidavit to have obtained a valuation of his own, I consider it would be fair to allow him the opportunity now of doing that if he wishes. In the above orders I have stipulated 1 July 2018 as the date by which Andrew must obtain and serve an updated valuation and by which Stephen, if he wishes, may obtain and serve his own valuations. I have gone on to stipulate that the value of the land, the consideration expressed in the transfer, is to be the median of the two valuations or, if Stephen does not obtain his own valuation, the sum identified in the updated valuation.

50. Should 1 July 2018, or any other date fixed in the above orders, be impractical or inconvenient the parties are at liberty to apply for an order varying dates.

51. I have included an order of the kind that the Tribunal customarily makes, for the principal registrar to execute in the name of and on behalf of Stephen any transfer or other document that he fails to execute and deliver in time. In my view the power conferred upon the Tribunal by s 232(c) of the Act to order "that any necessary deed or instrument be executed…that are necessary to enable an order to be carried out effectively" is a sound legal basis for making the order.

Costs

52. During his opening of Andrew's case Mr Smith produced to me a written outline which ended with a statement of intention to make an application for costs, but with little elaboration. In the written submissions that they made after I had reserved my decision neither party mentioned the question of costs. So it has not yet been argued. I reserve that question. A party may make a written application for costs if he wishes, upon paying any appropriate fee, and the application will be listed for hearing in due course. It may assist the parties if I say that my tentative view is that there should be no order as to costs, but if I were to be persuaded to make an order it would be for the respondent to pay one-third of the costs of the proceeding, he having received only one-third of the benefit of it. By expressing that tentative view I do not encourage either party to make an application for costs.

A. Vassie
Senior Member

18 May 2018