

**IN THE HIGH COURT OF NEW ZEALAND  
AUCKLAND REGISTRY**

**CIV-2007-404-296**

BETWEEN	BRUCE LESLIE DUNCAN ALISON LESLEY DUNCAN BRUCE CYRIL MCNIECE AS TRUSTEES OF THE BL AND AL DUNCAN FAMILY TRUST Plaintiffs
AND	ALICIA JEAN TAYLOR First Defendant
AND	PHILIP SHAW SCOTHERN Second Defendant
AND	RAYMOND FREDERICK DEN OTTER SONIA EDWARDS Third Defendants
AND	THE AUCKLAND CITY COUNCIL Fourth Defendant
AND	THE REGISTRAR GENERAL OF LANDS Fifth Defendant

Hearing: 5 October 2011

Counsel: KF Gould for Plaintiffs  
SA Grant and K Dawson for Defendants

Judgment: 5 October 2011

---

**ORAL JUDGMENT OF RODNEY HANSEN J**

---

Solicitors: Bruce C McNiece, P O Box 99, Shortland Street, Auckland for Plaintiffs  
Barrie Hopkins, P O Box 106-027, Auckland for Defendants

[1] In this proceeding the plaintiffs sought orders under the Property Law Act 2007 for the creation of a new plan that accurately reflects the structures of flats on land at Baddeley Avenue, Kohimaramara in which the plaintiffs and the first, second and third defendants each had an interest in the fee simple and were parties to a registered cross-lease. The plaintiffs also sought a contribution from the defendants to the cost of repairing a failed retaining wall on common property.

[2] The defendants, in opposing the plaintiffs' claim, sought removal of encroaching parts of the plaintiffs' building and compensation for their unlawful occupation. They also sought compensation and costs from the plaintiffs and damages for trespass to common property.

[3] In my judgment delivered on 31 May 2010, I held that the plaintiffs were entitled to orders which would permit a new flats plan to be created and correct certificates of title issued for all flats. I also made orders for the payment of compensation in accordance with findings made in the judgment. I left the precise terms of orders for future determination, concluding my judgment in the following terms:

I will consider a consent memorandum if agreement is reached on the terms of the orders. Otherwise, the Registrar should arrange a telephone conference for the purpose of making directions necessary to dispose of all remaining issues. These include the costs of implementing the orders and of this proceeding.

[4] A new flats plan has now been prepared and the defendants wish to proceed to have new titles issued. However, an issue has arisen as to whether the consent of the Auckland Council is required under Part 10 of the Resource Management Act 1991 (RMA). The defendants say that consent is not required as the Court order was made under s 325(1) of the Property Law Act and s 325(4) of that Act provides that Part 10 of the RMA does not apply to a transfer or other disposition of land giving effect to an order under s 325(1).

[5] The Registrar General of Lands has accepted that Part 10 of the RMA does not apply to a disposition pursuant to the Court order but has advised the defendants

that it requires further orders which will permit the existing titles to be cancelled and new composite computer registers issued. The defendants seek orders accordingly.

[6] Their application is opposed by the plaintiffs. Mr Gould submits that supplementary orders are not necessary and are designed to enable the defendants to avoid compliance with the Auckland Council's Code Compliance Rules. Mrs Grant had contended that the Court is able to make the orders sought pursuant to its jurisdiction to make supplemental orders as discussed in *Caboolture Park Shopping Centre Pty Ltd (In Liquidation) v White Industries (Qld) Pty Ltd*<sup>1</sup> and *Taylor Bros Ltd v Taylors Group Ltd*.<sup>2</sup> Mr Gould sought to distinguish those cases as, he submitted, the order made in the original judgment can be implemented without recourse to any supplemental jurisdiction.

[7] In my view, it is unnecessary to resort to any supplemental jurisdiction for the purpose of making the orders sought by the defendants. In my judgment I expressly reserved leave for the parties to seek further orders in anticipation that some more precise directions may be required. The orders now sought are of the kind that I envisaged may well be necessary in order to give effect to the broad terms of the judgment.

[8] Contrary to Mr Gould's submissions, I do not accept that the defendants are seeking to avoid compliance with the Auckland Council's Code Compliance Rules. They are specifically exempt by the provisions of s 325 of the Property Law Act from complying with those rules in cases such as the present. Accordingly, there is no possible basis on which they could be denied the orders now sought, a position which I understand Mr Gould to have responsibly and realistically conceded at the conclusion of his submissions.

[9] Accordingly, I make the following orders in accordance with the draft orders annexed to the affidavit of Mr Hopkins, sworn on 26 July 2011:

(a) This Order affects the following pieces of land:

---

<sup>1</sup> *Caboolture Park Shopping Centre Pty Ltd (In Liquidation) v White Industries (Qld) Pty Ltd* (1993) 45 FCR 224.

<sup>2</sup> *Taylor Bros Ltd v Taylors Group Ltd* (1990) 1 NZLR 19.

Flat 1 Deposited Plan 80295 current Composite Computer Register NA37C/101  
Flat 2 Deposited Plan 80295 current Composite Computer Register NA37C/102  
Flat 3 Deposited Plan 80295 current Composite Computer Register NA37C/103  
Flat 4 Deposited Plan 80295 current Composite Computer Register NA37C/104

- (b) That new flats plans, No. 435634 affecting Flat 4 and No. 435753 affecting Flats 1, 2 and 3, be deposited with Land Information New Zealand.
- (c) That all the composite computer registers be corrected to show legal ownership of the structures depicted on the above plans 435634 and 435753 by registration of dealings to:
  - (i) Withdraw the charging orders,
  - (ii) Surrender the leases of all flats and regrant new leases,
  - (iii) Discharge all existing mortgages and register replacement mortgages over the new composite computer registers,

In accordance with the requirements of mortgagees and Land Information New Zealand.

- (d) Leave is reserved for the parties to seek further orders from the Court if necessary.

[10] As requested by Mrs Grant, I reserve leave to the parties to apply for further orders, if required, in relation to the costs of implementing the terms of the judgment.