

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

CIV 2007-404-006349

BETWEEN BODY CORPORATE 188430
 First Plaintiff

AND GARNET PROPERTIES LTD & ORS
 Second Plaintiffs

AND AUCKLAND CITY COUNCIL
 First Defendant

AND LAYNE STEPHENS PROPERTIES LTD
 Second Defendant

Hearing: 12 February 2009

Appearances: A Parlane for Plaintiff
 F McGregor for First Defendant
 K Pearson for Second Defendant

Judgment: 12 February 2009

JUDGMENT OF ASSOCIATE JUDGE ROBINSON

This judgment was delivered by me on 12 February 2009 at 5 pm,
Pursuant to Rule 11.5 of the High Court Rules

Registrar/Deputy Registrar

Date.....

Solicitors Heaney & Co, PO Box 105391, Auckland
 Grimshaw & Co, PO Box 6646, Auckland

[1] The Auckland City Council being the above named first defendant applies for an order for non party discovery against Tony Edward Koia. The application has been duly served and an affidavit of service is to be filed. There is no appearance on behalf of Mr Koia.

[2] These proceedings are a leaky building claim relating to eight units at Garnet Road, Westmere. The building work took place between September 1997 and February 1999. The plaintiffs complain that the building work suffers from various defects resulting in the units not being weather tight.

[3] According to the records of the Auckland City Council, Mr Koia practising under the trading name of Koia Architects was the designer of the units. In the application by the second defendant for building consent Mr Koia was given as the contact person. The plans submitted to the council in support of the building consent application were prepared by Mr Koia.

[4] On 29 August 1997, Mr Koia answered certain questions posed by the Auckland City Council in connection with the application for building consent.

[5] In these circumstances, I conclude that Mr Koia has or has had in his possession and control a number of documents relating to the design and construction of the eight units at 19 Garnet Road, Westmere which are the subject of these proceedings. Consequently, I am satisfied that the application for non party discovery by the first defendant against Mr Koia must be granted. There will therefore be an order for non party discovery in terms of paragraph 1 of the application with the requirement that Mr Koia comply with the order within 28 days of service.

[6] I will reserve leave to Mr Koia to apply to the Court for an order as to payment of his expenses incurred in complying with this order for discovery.

[7] The order for discovery is to lie in Court and not to be sealed until such time as the first defendant files an affidavit of service of the application for non party discovery and affidavit in support on Mr Koia.

[8] The costs of an incidental to this application will be reserved.

Associate Judge Robinson