

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

**CIV-2006-485-1228
CIV-2006-485-1229
CIV-2006-485-1230**

UNDER the Tax Administration Act 1994 and the
Income Tax Act 1994

BETWEEN YANDINA INVESTMENTS LIMITED
First Plaintiff

AND DORSET ENTERPRISES LIMITED
Second Plaintiff

AND RAQUEL DEVELOPMENTS LIMITED
Third Plaintiff

AND COMMISSIONER OF INLAND
REVENUE
Defendant

Judgment: 19 February 2009 at 3.00 pm

JUDGMENT OF ASSOCIATE JUDGE D.I. GENDALL

*This judgment was delivered by Associate Judge Gendall on 19 February 2009 at
3.00 p.m. pursuant to r 540(4) of the High Court Rules 1985.*

Solicitors: Thomas Dewar Sziranyi Letts, Solicitors, PO Box 31 240, Wellington
Crown Law, PO Box 2858, Wellington 6140

[1] Before the Court is an application by the plaintiff dated 16 February 2009 for non-party discovery against Westpac Banking Corporation.

[2] This application is made pursuant to r 8.26 *High Court Rules*.

[3] Counsel for Westpac Banking Corporation has filed a memorandum dated 18 February 2009 indicating that Westpac does not object to the application and will abide the decision of the Court. Westpac Banking Corporation nevertheless seeks an order for the costs of and incidental to its compliance with any order for discovery which may be made pursuant to r 8.35 *High Court Rules*. This order for costs is not opposed by the plaintiffs. This is confirmed in a memorandum from counsel for the plaintiffs dated 16 February 2009.

[4] Counsel for the defendant, Commissioner of Inland Revenue, has also filed a memorandum dated 17 February 2009. This indicates that the defendant neither opposes nor supports the plaintiff's non-party discovery application.

[5] That application is supported by affidavits of Daniel David Vincent sworn 16 February 2009 and Stephanie Claire McLean sworn 13 February 2009.

[6] I have now had an opportunity to consider those affidavits and the other material before the Court. Having done so, I am satisfied that in terms of r 8.26(1) Westpac Banking Corporation, a non-party to this proceeding, may have documents in its possession or control that it would have had to discover in this proceeding if it were a party. An order for non-party discovery therefore is to follow.

[7] An order is now made that Westpac Banking Corporation as a former partner in the Maroro Leasing & Co Partnership is to discover all documents relating to this proceeding in its possession and in particular is:

- (a) Within 20 working days of the date of this order to file an affidavit stating:

- (i) whether these documents and in particular the documents noted in paras. 1.1, 1.2, 1.3 and 1.4 of the plaintiff's interlocutory application for non-party discovery dated 16 February 2009 are or have been in Westpac Banking Corporation's control; and
 - (ii) if they have been but are no longer in Westpac Banking Corporation's control, the best knowledge and belief of Westpac Banking Corporation as to when the documents ceased to be in its control and who now has control of them.
- (b) Within 20 working days of today to serve this affidavit on the plaintiffs.
- (c) If the documents are in control of Westpac Banking Corporation to make those documents available for inspection in accordance with r 8.33.

[8] In terms of r 8.35 *High Court Rules* an order is now made that the plaintiffs are to pay to Westpac Banking Corporation its expenses (including solicitor and client costs) in making the documents discovered available for inspection by the parties to the proceeding.

[9] On this basis counsel for the parties have requested that the telephone conference in this matter scheduled for 19 February 2009 is vacated. A direction to this effect is made.

[10] This matter is now to be the subject of a new directions telephone conference at 9.15 am on 1 April 2009.

[11] Leave is reserved for any party to approach the Court further on 48 hours notice if additional directions are required in the mean time.

'Associate Judge D.I. Gendall'