

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

CIV 2009 425 000084

BETWEEN QUEENSTOWN LAKES DISTRICT COUNCIL
 Plaintiff

AND SHANE MCMANUS
 Defendant

Hearing: (Determined on the Papers)

Judgment: 16 October 2009

**JUDGMENT OF ASSOCIATE JUDGE OSBORNE
As to Possession Order**

[1] By my judgment dated 22 May 2009 the defendant was ordered to give up possession of a block of land (“the plaintiff’s land) at Queenstown and to remove the defendant’s chattels from the plaintiff’s land.

[2] The plaintiff, as entitled party, applies for orders:

- (a) Granting leave to commence this proceeding under Part 17 High Court Rules by way of originating application.
- (b) Granting leave to issue a possession order.
- (c) Directing the Registrar to issue a possession order in a particularised form.
- (d) That the entitled party is entitled to the costs and expenses of issuing and effecting the possession order.

[3] The application and the affidavits in support were served on the defendant, who has filed no notice of opposition.

Background

[4] The defendant had been occupying the plaintiff's land prior to judgment. The defendant had there been conducting a firewood business. He had a number of buildings and stored various equipment, materials and other chattels on the land.

[5] Notwithstanding the orders of this Court made on 22 May 2009 the defendant has continued to occupy the land. Many of the chattels, including a shipping container and machinery, remain on the land. The plaintiff, through its solicitors, has responsibly sought from the defendant his co-operation in removing his items from the land. It has been pointed out to the defendant that his refusal to comply with the Court orders is a contempt of Court.

[6] When the proceeding was called in Court on other matters on 23 September 2009 the defendant acknowledged to the Court his awareness of the need to remove his items from the land and indicated that he intended to do so. I explained to the defendant that upon that basis I would not act upon the plaintiff's application until the defendant had had an opportunity, over the coming weekend, to move his goods. I emphasised that he must act with urgency.

[7] Counsel for the plaintiff now confirms that a substantial quantity of items remains on the land and that the plaintiff wishes to obtain the orders applied for.

Decision

[8] Responsibly, the plaintiff has not applied for severe sanctions based on contempt. The fact is, nonetheless, that the defendant is in contempt of the order made on 22 May 2009 as to removal of his chattels from the plaintiff's land.

[9] Orders for possession under High Court Rules 17.80 are appropriate – this Court has previously made an order that the defendant deliver possession of the plaintiff's land to the plaintiff: Rule 17.18 applies.

[10] Accordingly, I grant leave to the plaintiff to commence its proceeding under Part 17 High Court Rules by way of originating application. (As leave to issue a possession order is not required under r 17.9, the enforcement process itself may be issued as of right): see r 17.8.

[11] Mr Cunliffe for the plaintiff has referred me to the judgment of Wild J in *Whyte & Ors v Eriwata* unreported HC New Plymouth, CIV 2006 443 302, 8.8.06. That was similarly a case where the respondent had been occupying the applicant's land. There was an issue also as to the removal of the respondent's chattels.

[12] Wild J gave not only a direction as to a writ of possession in relation to the land but also an order authorising the bailiff or other officer to seize and take possession of chattels remaining on the land.

[13] I order:

- (a) The plaintiff may have a possession order sealed in the following terms:

TO: The Sheriff of the High Court, Invercargill Registry (or other officer named by the Sheriff)

Note: in this possession order, liable party means Shane McManus

[1] This Court orders that you are authorised and required to take possession for the Queenstown Lakes District Council, the entitled party, of:


Land owned by the entitled party legally described as Sections 143, 144, 145 and 152 Block 1 Shotover Survey District, being the balance of the land contained in Certificate of Title/Identifier OT 71/248 (the "entitled party's Land"), ejecting others, in particular the liable party, and to seize and take possession of the liable party's chattels as identified in Schedule "A" to this order from the entitled party's Land as necessary.

[2] This Court further orders that you are authorised to deliver possession of any land seized under this possession order to the entitled party.

[3] This Court further orders that you are authorised to deliver to the liable party possession of any chattels of the liable party which have been seized under the possession order.

- (b) The possession order may be issued forthwith and is to be executed as soon as practicable after issue.
- (c) As between the Court and the plaintiff, the plaintiff shall indemnify the Court for all costs involved in taking possession and holding for the time-being the defendant's chattels as identified in the possession order.
- (d) As between the defendant and the plaintiff, the defendant is to pay to the plaintiff on a 2B basis the costs of and incidental to this application the orders made hereon, and the expenses of issuing and effecting the possession order (including but not limited to the Sheriff's costs referred to above, such costs and expenses to be proved to the reasonable satisfaction of the Registrar.

[14] Leave is reserved to the plaintiff and to the Sheriff to apply for further directions if necessary.



Associate Judge Osborne

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