

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

**CIV 2009-404-1292**

BETWEEN	WARREN ARTHUR WILSON Plaintiff
AND	AUCKLAND CITY COUNCIL First Defendant
AND	THE DISTRICT COURT AT AUCKLAND Second Defendant

Hearing: 16 November 2009

Counsel: W A Wilson, in person, Plaintiff  
B H Dickey for Defendants

Judgment: 16 November 2009

---

**(ORAL) JUDGMENT OF HEATH J**

---

Solicitors:  
Meredith Connell, PO Box 2213, Auckland  
Copy to:  
Plaintiff in person

[1] Mr Wilson has sought judicial review of injunctions issued in the District Court at Auckland on 18 December 2008 and 4 March 2009. The former required demolition of a structure erected at 72 Upper Queen Street, Auckland. In the latter decision, an application to vary or rescind the demolition order was dismissed.

[2] Mr Wilson has also sought a decision that he is entitled to rely on “beneficial undertakings” made by officers of the Auckland City Council that works are [Building] Code compliant. Two specific alleged email representations are referred to in the pleadings: one is from Mr De Leur dated on or about 3 September 2004, and the other from Mr Smeed, dated 22 February 2006.

[3] A dispute between Mr Wilson and the Auckland City Council has been ongoing for in excess of five years. A number of decisions have been given, both in relation to criminal and civil aspects.

[4] Mr Dickey, for the Council, has submitted that the application for review is subject to the doctrine of issue estoppel. Alternatively, he submits that the allegations on which Mr Wilson relies are not justiciable. In particular, Mr Dickey relies on Venning J’s judgment on an appeal against conviction and sentence brought by Mr Wilson as preventing Mr Wilson, from challenging the decisions in issue: see *Wilson v Auckland City Council* (High Court Auckland, CRI 2006-404-126, 5 April 2007).

[5] Today, at a conference for the purposes of s 10 of the Judicature Amendment Act 1972, Mr Wilson seeks an order for discovery and a requirement that interrogatories be answered.

[6] The context of that application is that a substantive hearing is scheduled for 1 June 2010 and an undertaking given by the Council in response to directions made by White J on 5 November 2009 not to take any steps to enforce the injunction obtained in the District Court. The Council reserves its position to apply to be released from that undertaking, as the hearing of the judicial review proceeding has

been allocated for a date beyond that contemplated when the case came before White J.

[7] Having heard from Mr Wilson and Mr Dickey, I am satisfied that there is a basis for limited discovery to be ordered. I make that comment on the assumption that the issue relating to undertakings of Code compliance is a fact that can properly be determined in the context of the judicial review application. In effect, that reserves Mr Dickey's point about issue estoppel and non-justiciability.

[8] Mr Dickey will be at liberty to seek the costs of discovery, as costs in the cause, in the event that he were to succeed in demonstrating that the issues cannot be addressed by the Court on Mr Wilson's application.

[9] The first aspect of the discovery sought relates to correspondence involving Messrs De Leur and Smeed confirming or denying the existence of representations of Code compliance. On the pleading, as it currently stands, and having regard to the specific emails from both of those gentlemen to which reference is made in the Statement of Claim, I consider that such discovery should be ordered.

[10] The Council will be required to provide such discovery, in CD format, with the verified list of documents contained in the CD to be filed and served also. I am not prepared to make an order in similar terms in respect of another Council officer, Mr McCormick, as no reference is made to him specifically in the Statement of Claim.

[11] Mr Wilson also seeks discovery of any aerial photographs depicting the site at 72 Upper Queen Street over the relevant period. Mr Dickey advises those photographs are publicly available and any relevant photographs will be provided. I leave Mr Dickey to deal with that aspect, without making any formal order in that regard.

[12] I am not prepared to make any orders relating to interrogatories. No specific questions have been framed. In any event, if further documentation were to come to light it is likely that Council officers would need to file and serve an additional

affidavit or affidavits, in which case Mr Wilson would obtain the benefit of the statements on oath he seeks.

[13] I make an order that all correspondence between Mr Smeed and any other party and Mr De Leur and any other party in relation to the topics set out in their emails of 3 September 2004 and 22 February 2006 be disclosed to Mr Wilson. An affidavit verifying discovered documents shall be filed and served on or before 4 December 2009 with inspection being completed through provision of a CD to Mr Wilson on the same day. A CD should also be filed in Court.

[14] If any matters were to arise out of the discovery provided, any further affidavits in opposition to the application for judicial review shall be filed and served by the Council on or before 18 December 2009.

[15] The application for judicial review is set down for mention in the Duty Judge List at 10am on 10 February 2010. If any further procedural orders were required they should be made at that conference. Memoranda identifying any issues to be resolved shall be filed and served by each party on or before 3 February 2010.

[16] All costs in relation to today's application are reserved. I emphasise my earlier observations, made in relation to costs should the discovery required not have been justified in law.

---

P R Heath J