

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

CIV 2008-404-8083

BETWEEN	MU NEW ZEALAND LIMITED Plaintiff
AND	FRANK HARRIS BOULGARIS First Defendant
AND	104 BEACHHAVEN LIMITED Second Defendant
AND	JENS HENRIK PETER BOL Third Defendant
AND	ANDREW RUPERT GRIMWOOD Fourth Defendant
AND	JAMES SEOK Fifth Defendant
AND	MICHAEL BLOCK Sixth Defendant
AND	BAYLEYS REAL ESTATE LIMITED Seventh Defendant

Hearing: (on the papers)

Counsel: N Tabb for Plaintiff, in support

Judgment: 19 November 2009

JUDGMENT OF HEATH J

This judgment was delivered by me on 19 November 2009 at 5.15pm pursuant to Rule 11.5 of the High Court Rules

Registrar/Deputy Registrar

Solicitors:

Sorenson Law, PO Box 7029, Wellesley Street, Auckland

Counsel:

N Tabb, PO Box 101972, North Shore Mail Centre, Auckland

Introduction

[1] Mu New Zealand Ltd seeks a freezing order to restrain the fourth defendant, Mr Grimwood, from disposing of two properties, at 24 Scarborough Terrace, Parnell and Apartment 1514 Scene One, Beach Road, Auckland respectively. Both properties are owned jointly with Tina Annalley Grimwood and Trusts Ltd.

[2] Mu also seeks an order for substituted service of the papers relating to the freezing order application and any order. I accept the evidence that Mr Grimwood has departed New Zealand for Guernsey, though it is unknown whether (and if so when) he will return to New Zealand.

[3] I deal with each application in turn.

Freezing order application

[4] Mu purchased a commercial property at 83 West Coast Road, Glen Eden in April 2008. The vendor was the second defendant, 104 Beachhaven Ltd. The property was leased and Kyung Man Kim, a director of Mu, believed the lease was for nine years at a rental of \$100,000 per annum, plus GST.

[5] Mu alleges that 104 Beachhaven Ltd represented, in the course of pre-contractual negotiations, that a valid and enforceable lease was in existence which would provide Mu with all entitlements and benefits as lessor. It is alleged that representation was made by Mr Grimwood, who knew it to be false. On that basis, Mu claims also against Mr Grimwood, both under the Fair Trading Act and in the tort of deceit.

[6] I am satisfied on the evidence that a sufficiently arguable case against Mr Grimwood exists.

[7] I am also satisfied that Mr Grimwood has interests in assets within the jurisdiction, in particular the properties identified in para [1] above. However, any injunction could only be directed at his interest in the property.

[8] Risk of dissipation of the properties has been established by reference to a relatively recent sale of another property at 16 Awatea Road, Parnell and the placement, on 30 October 2009, of the Scarborough Terrace property on the market for sale. I accept that unless Mr Grimwood's interest in those properties was frozen, there is a risk that he will dissipate his property to the detriment of Mu, should it obtain judgment against him.

[9] Given that Mr Grimwood appears to have left New Zealand for Guernsey and there is no immediate prospect of his return, I am satisfied the interests of justice justify the issue of a freezing order.

[10] I am not satisfied at present that the order sought in para 3 of the draft order is sufficiently specific to be made at this time. There are other aspects of an order of that type that need to be incorporated into the order. In particular, mortgagees of each property should be served with the order and their interests protected. Further, the order will need to be directed only to Mr Grimwood's interest in each property. Counsel's attention is directed to r 32.6 of the High Court Rules and the form of freezing order set out in Form G 38.

[11] Having regard to the observations I have made, counsel should submit a draft order for approval. Unless that draft is filed by 4pm tomorrow, the Registrar is directed to refer it to the Duty Judge next week, as I will be out of Auckland. Also, if I were unavailable tomorrow (though being in Court), the terms of the order may be referred to another Judge for approval.

Substituted service

[12] The evidence establishes that Mr Grimwood has left New Zealand. I accept the evidence of Mu's solicitor, Hak Jun Lee that Mr Madden-Smith of Auckland, solicitor, should be served, on the basis that he is likely to be in contact with

Mr Grimwood or, at least, know his present address or contact details. There is evidence that Mr Madden-Smith was acting for Mr Grimwood in March 2009.

[13] I also agree that service should be made by leaving copies of the documents at the two properties identified in para [1] above together, with a letter to the occupant asking for the documents to be forwarded to Mr Grimwood. In addition, copies of the documents should be left at the registered office of Trusts Ltd, with a similar letter.

[14] An order for substituted service is made in accordance with para 1 of the without notice application dated 19 November 2009.

P R Heath J

Delivered at 5.15pm on 19 November 2009