

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

CIV-2009-404-007712

UNDER the Trustee Act 1956 and Declaratory
Judgments Act 1908

BETWEEN ELIZABETH BEATRICE MARY
KARAM
Plaintiff

AND CHRISTOPHER MISI SWANN AND
D.G. TRUSTEE CO LIMITED AS
TRUSTEES OF THE SWANN FAMILY
TRUST
Defendant

Hearing: 27 November 2009
(On the Papers)

Appearances: C M Earl for the Plaintiff

Judgment: 27 November 2009

JUDGMENT OF DUFFY J

This judgment was delivered by Justice Duffy
on 27 November 2009 at 2.30 pm, pursuant to
r 11.5 of the High Court Rules

Registrar/Deputy Registrar
Date:

Counsel: C M Earl P O Box 9337 Waikato Mail Centre Hamilton 3240

Copy To: Till and Clarke (E D Clarke) P O Box 3 Cambridge 3450

[1] The plaintiff in these proceedings makes two interlocutory applications without notice. The first is for an interim injunction restraining the defendants from taking any steps to remove the plaintiff from the property situated at 1 Lindsay Place, Hillsborough, Auckland 1042 (the property) until further order of the Court. The second is for directions as to service of the notice of proceeding, statement of claim, without notice applications and the affidavits filed in support. The plaintiff seeks an order directing service on Christopher Misi Swann in his personal capacity. The named defendants in the proceedings are trustees who hold legal ownership of the property on trust for the benefit of beneficiaries in a deed of trust, a copy of which is annexed as exhibit B to the affidavit of the plaintiff filed in support of the interlocutory applications.

[2] I have read the pleadings, application, evidence and memorandum filed in support of the application for an interim injunction. The defendants have given the plaintiff notice that she is required to vacate the property by 31 January 2010. The information available to me is insufficient to persuade me that the application for an interim injunction needs to be without notice. Accordingly, if the plaintiff wishes to pursue the application for an interim injunction, it must be done on notice.

[3] I am prepared to deal with the application for directions as to service on a without notice basis. I am not satisfied that service can be effected by directing that Christopher Misi Swann alone be served with the proceedings. I see no reason why the trustees of the trust, as the legal owners of the property and named defendants in the proceedings, should not also be served. Since one of the trustees is Mr Swann, to require all defendants to be served will only require service on an additional person; namely, the D.G. Trustee Company Limited. Since this is a limited liability company, there should be no difficulty effecting service on it.

[4] The present without notice application for an interlocutory interim injunction is adjourned to the Duty Judge List for mention at 10.00 am on Wednesday, 9 December 2009. By that time I would expect that the application (in its present form) and all the associated documents will have been served on the defendants,

along with a copy of this Minute. I see no need for the plaintiff to file a fresh application in the form of an on notice application for an interim injunction.

Duffy J