

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

CIV 2004-409-001596

BETWEEN	CHESTERFIELDS PRESCHOOLS LTD First Plaintiff
AND	DAVID JOHN HAMPTON Second Plaintiff
AND	CHESTERFIELDS PARTNERSHIP Third Plaintiff
AND	THE COMMISSIONER OF INLAND REVENUE Defendant

Hearing: 21 October 2009

Appearances: D J Hampton and T Sisson (In Person)
R J Wallace for Commissioner of Inland Revenue

Judgment: 21 October 2009

JUDGMENT OF FOGARTY J

[1] This is an application made by the plaintiffs to vary or rescind the stay orders made by this Court in a judgment delivered by me on 30 September 2009. This application is made relying on r 7.49.

[2] I have from the outset advised Mr Hampton, who appears for the plaintiffs, that I think I cannot entertain this application; that the purpose of the rule is to

enable orders of the Court of a truly interlocutory character to be re-examined by the Court without the need for the matter to go off to the Court of Appeal.

[3] By contrast, my judgment, although it has procedural character of providing the remedy of stay, was essentially decided on the basis that I was functus officio and that the issues were now with the Court of Appeal. I am aware that there can be some argument as to whether all the issues between the Commissioner and the plaintiffs are gathered up in the proceedings in the Court of Appeal. But in my view it is not appropriate for me to enter into fine distinctions as to the extent that those distinctions were argued before me in the earlier hearing. To the extent the distinctions were argued they have been resolved.

[4] The plaintiffs, of course, have a right of appeal against my decision of 30 September and I anticipate from listening to Mr Hampton that that right will be exercised.

[5] I just wish to note that part of the reason for Mr Hampton's and Ms Sisson's concern is that if they are redirected eventually back to the statutory disputes procedure they are concerned about the fate of a disputed NOPA sent in response to the decision of Mr Budhia. That is discussed in the earlier judgment.

[6] The Commissioner takes the view that there is not a valid NOPA. That may or may not be correct. For my part I consider that the decision of Mr Budhia is under scrutiny by the Court of Appeal and on any view of it the High Court is functus and it would not be appropriate for the Commissioner either to re-examine the matter internally at the present time. I apprehend the Commissioner certainly has no intention of doing so, because, for a start, he regards the NOPA as invalid.

[7] Mr Wallace has reassured me by stating the obvious that if and when the question of the validity of the NOPA becomes relevant, and if it is found to be relevant, and he thinks that would probably be by way of a Court decision, then appropriate orders can be made as to the process thereafter.

[8] For these reasons this application is dismissed. Mr Wallace has sought costs. I have no sense of justice either way at this point as to an order for costs. So I am going to reserve costs and the question of costs can be resolved in any final wash-up of this litigation.

Solicitors:
Litigation Management, Inland Revenue Department, Wellington

cc: D J Hampton