

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

CIV-2006-404-005001

BETWEEN BODY CORPORATE 188889
 Applicant

AND PATRICIA WENDY WITHERS AND
 JEANETTE MARIE FAESENKLOET
 First Respondents

AND OTHERS
 Second To Sixty-Fourth Respondents

CIV-2006-404-005816

BETWEEN BODY CORPORATE 195843
 Applicant

AND LIXIN DUAN AND XIN JIN AND
 OTHERS (THE GRAND)
 First Respondents

Hearing: 17 December 2009
 (On the Papers)

Appearances: M L Thornton (Applicant in Support)

Judgment: 17 December 2009

JUDGMENT OF DUFFY J

This judgment was delivered by Justice Duffy
on 17 December 2009 at 11.30 am, pursuant to
r 11.5 of the High Court Rules

Registrar/Deputy Registrar
Date:

[1] Michael Thornton, Barrister, has applied, pursuant to r 3.13 of the High Court (Access to Court Documents) Amendment Rules 2009, for permission to access the Court files of these proceedings.

[2] The proceedings involve applications under s 48 of the Unit Titles Act 1972 (the Act) in which orders were made sanctioning a scheme to implement repairs to a building subject to the Unit Titles Act 1972. In his letter to the Court, Mr Thornton advises that he practises in the leaky buildings area. He says that he has been asked if he would accept instructions to file an originating application, pursuant to s 48, seeking similar orders. Mr Thornton's prospective client owns premises in and acts on behalf of the body corporate of a building complex that is subject to the Act.

[3] Mr Thornton advises that such applications under s 48 are not common and precedents for making such applications are not readily available. He is aware that in these proceedings, orders pursuant to s 48 were made. He seeks to look at documents filed in these proceedings, particularly the originating application; affidavits filed in support; preliminary orders as to service; memoranda filed in support of the application, following effective service, in order to assist him in preparing a similar proceeding on instructions from his client.

[4] Rule 3.13 requires notice to be given to any person who in the opinion of the Judge or Registrar is adversely affected by the application. Such notice can be dispensed with if the Judge or Registrar considers it would be impracticable to require notice. The proceedings Mr Thornton seeks to view have been completed. The information contained in the documents he seeks to view will have been disclosed in open Court. I have no reason to think that anyone associated with the proceedings will be adversely affected by Mr Thornton viewing the Court file, particularly given the restrictions I intend to place on subsequent disclosure of the information he is to view. Consequently, I find that, in this case, no notice of Mr Thornton's request needs to be given to anyone.

[5] Under r 3.16, access to Court files will be permitted where it will assist the orderly and fair administration of justice. Mr Thornton submits that it will assist the orderly and fair administration of justice in respect of the persons he represents and

the claims they would seek to make using the process under s 48, if he were able to review the documents used in proceedings where such orders have been made. I see no harm in permitting Mr Thornton to view the documents he seeks to view, and I can see that those documents should be of some assistance to him in preparing similar proceedings for his own clients. Accordingly, I am prepared to grant him leave to view the Court files in these proceedings.

[6] I note in his request for information that Mr Thornton says that he would undertake to maintain confidentiality by using the documents he has access to for drafting purposes only. I direct that any copies of the documents Mr Thornton may wish to obtain are to be held by Mr Thornton, and any counsel assisting him in the proceeding for which he has instructions to bring, for drafting purposes only, and such copies should be destroyed once they cease to be of use for this purpose.

[7] Leave is reserved to Mr Thornton to come back to the Court on any matters arising from the orders I have made.

Result

[8] Leave is granted to Mr Thornton to view the Court files in these proceedings and to make copies of any documents he views, subject to the restrictions set out in [6] on their subsequent use.

Duffy J

Solicitor: M L Thornton (Applicant in Support) P O Box 91441 Victoria Street West
Auckland 1142

Copy To: Grove Darlow and Partners (T J G Allan) P O Box 2882 Shortland Street
Auckland 1140