IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

CIV-2012-409-001910
[2012] NZHC 2299

BETWEEN	CANTERBURY REGIONAL COUNCIL Applicant
AND	THE ENVIRONMENT COURT AT CHRISTCHURCH First Respondent
AND	INDEPENDENT FISHERIES LIMITED, RICHARD SCOTT PEEBLES, CASTLE ROCK ESTATE LIMITED, G F CASE, M M CASE AND MGM CASE, PROGRESSIVE ENTERPRISES LIMITED AND CLEARWATER HOLDINGS LIMITED Second Respondents
AND	CHRISTCHURCH CITY COUNCIL, WAIMAKARIRI DISTRICT COUNCIL, SELWYN DISTRICT COUNCIL AND NEW ZEALAND TRANSPORT AGENCY Third Respondents

Hearing: 6 September 2012

Appearances: D J Goddard QC, J V Ormsby and JWA Johnson for Applicant and Third Respondents
FMR Cooke QC and PA Steven for Second Respondents (but only for Independent Fisheries Ltd, Mr Peebles and the Case Family)

Judgment: 6 September 2012

ORAL JUDGMENT OF FOGARTY J

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[1] The Canterbury Regional Council has filed an application for an interim order pending the hearing of its substantive application which is to review two decisions of the Environment Court declining to adjourn the Change No. 1 proceedings. I am not going to burden this oral judgment by explaining what

Change No. 1 proceedings are. They are addressed in the judgment of this Court delivered by Chisholm J on 24 July.

[2] Essentially, the consequence of his decision is that Change No. 1 and appeals associated with it are back on the list of work to be done by the Environment Court. The decision of the High Court on 24 July 2012 has been appealed. The High Court in a decision of 1 August 2012 has ruled that it does not have the power to stay the consequences of the decision of 24 July, because the effect of the judgment of 24 July is that the relevant decision of the Minister has been quashed. The Court of Appeal is going to hear that appeal on 20 and 21 November 2012.

[3] Judge Jackson of the Environment Court is on leave but notwithstanding that he has considered two applications for adjournment and, as often happens when applications for adjournment of this nature are made when the Judge is away from the home court or on leave, he has had to do so on the papers.

[4] His two refusals to adjourn the proceedings now revived in the Environment Court is the subject of the substantive application for review. That application is arguing that his decisions were procedurally defective, because not all the parties got adequate hearing, he being absent, and, secondly, were unreasonable, such that the High Court could intervene.

[5] The High Court has both an inherent power and statutory powers under the Judicature Amendment Act to intervene and set aside decisions of the Environment Court as a statutory court. We do so reluctantly, and to maintain the rule of law and the principles of natural justice. We tend not to interfere with adjournment decisions, leaving it to the good sense of a particular court as to how it allocates its workload. Accordingly applications to judicially review refusals of the Environment Court to adjourn proceedings are approached very carefully by the High Court.

[6] However, the High Court has another policy which is that applications for judicial review are treated as urgent and in this particular case it is obvious that the whole question of the planning of Christchurch, coupled with the pending appeal in the Court of Appeal, makes it very important that this Court considers urgently the

application to set aside these two decisions of the Environment Court declining to adjourn the PC1 proceedings.

[7] I hope with that preamble I have said sufficient to make it clear both to the public and to the Court that I have not embarked on any exercise of testing whether or not there is merit in this application for judicial review. Sometimes we do that but in this case I am deliberately not doing that. Nor do I think I have to do that in order to exercise a special power given to this Court by Parliament in s 8(1(b) of the Judicature Amendment Act.

> **8 Interim orders**
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> (1) Subject to subsection (2) of this section, at any time before the final determination of an application for review, and on the application of any party, the Court may, if in its opinion it is necessary to do so for the purpose of preserving the position of the applicant, make an interim order for all or any of the following purposes:
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> ...
>
> (b) Prohibiting or staying any proceedings, civil or criminal, in connection with any matter to which the application for review relates:
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> ...

[8] I can then "*make an interim order...prohibiting or staying any proceedings civil or criminal in connection with any matter to which the application for review relates*". On its face those words allow me to exercise this power without considering whether or not the applicant has a serious argument to be made in the hearing, pending final determination of its application for review.

[9] A number of the respondents, who also figured as parties in the hearing before Chisholm J in the High Court, led by Independent Fisheries Limited, and including Mr Richard Peebles and the Case family, have taken in my view a pragmatic, and sensible position, which they invite me to adopt. I am considerably assisted by that. They are suggesting that they themselves wish to raise with Judge Jackson issues about how the hearings are to progress. In the course of that exercise practical decisions may be made to the benefit of all the parties before the Environment Court as to what evidence needs to be prepared, as to what cases need

more evidence, before they can be argued, there being a number of appeals attached and worked in around the progress of PC1.

[10] In the whole circumstances therefore faced by this Court, which I have endeavoured to summarise, Mr Cooke QC and his other counsel for Independent Fisheries and others suggest that the appropriate course be that:

(1) This Court stay the orders made in the decision issued on 31 August, leaving the matter to be taken up again by the Environment Court on 21 September (at a hearing already fixed) for the Environment Court to decide whether it should adjourn some or all of the Environment Court appeals, and to deal with the proper progress of those appeals should the Court decide not to adjourn them;

(2) That the Environment Court orders that require the UDS partners,[1] to file evidence, be suspended pending the hearing on 21 September.

[11] Having heard from counsel I am satisfied, and I would add without particularly understanding the detail of the position which is complex, but relying on Ms Stevens experience of the Environment Court practice over many years, that this order will be a practical one. It may indeed be of assistance to Judge Jackson. It is an order which does not reflect in any way a decision of this Court which is critical of the decisions he has made so far.

[12] Accordingly I am satisfied not only do I have the power under s 8(1)(b) to make such an order but also it is the appropriate one to be made today. I make those two orders accordingly.

[13] These High Court proceedings are adjourned for mention on Monday 1 October with leave reserved by either party, and any other person who would have been entitled to be here today, to apply for these proceedings to be brought on for hearing.

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[1] That is Canterbury Regional Council, Christchurch City Council, Waimakariri District Council, Selwyn District Council and New Zealand Transport Agency.

[14] The consequence of these orders is that the UDS partners are relieved of such obligations as have been imposed on them by the Environment Court by its decision of 31 August until the matter comes before the Environment Court on 21 September 2012.

[15] Costs are reserved.

[16] Whether the jurisdictional matters in the 31 August 2012 memoranda from the Environment Court are dealt with at the hearing on 21 September 2012 is a matter for the Environment Court.

[17] Leave is reserved to any party to apply further.

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