

BEFORE THE ENVIRONMENT COURT  
I MUA I TE KOOTI TAIAO O AOTEAROA

Decision No. [2018] NZEnvC 229

IN THE MATTER of the Resource Management Act 1991  
AND of an application to vary an enforcement  
order under s 321 of the Act  
BETWEEN AUGUSTINE LAU (EE KUOH LAU)  
(ENV-2018-AKL-000034)  
Applicant  
AND AUCKLAND COUNCIL  
Respondent

Court: Environment Judge M Harland sitting alone under s 279 of the Act

Date of Decision: 3 December 2018

Date of Issue: - 3 DEC 2018

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DECISION OF THE ENVIRONMENT COURT

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[A] The appeal is struck out in accordance with s 279(4) of the Act.

[B] There is no order for costs.



## REASONS

### Introduction

[1] This matter involves an application to vary enforcement orders that were granted by this Court in relation to property at 13 and 13A Memorial Avenue, Mt Roskill, Auckland.<sup>1</sup>

[2] In December 2017 an application was made for retrospective resource consent for an existing single storey sheltered deck structure on the property. If the resource consent was granted, the Council agreed that it would be appropriate for the enforcement orders to be varied to acknowledge this. As a result, the matter was placed on hold until early September 2018 to await the outcome of Mr Lau's resource consent application.

[3] On 7 September 2018 the Council filed a progress report advising that the resource consent was granted on 31 July 2018.

[4] The Council also advised that although the resource consent application was lodged by Mr Lau, he was succeeded as the applicant by Mr Liansen Mao. Mr Mao is also subject to the same enforcement orders as Mr Lau in relation to the property and is the property's registered proprietor.

[5] The Council submitted that it may be appropriate to invite Mr Mao to indicate whether he intends to succeed Mr Lau in this application, given his interest in the enforcement orders, the property and his succession as the applicant in Mr Lau's resource consent application.

[6] On 21 September 2018 Mr Zhang, counsel for Mr Mao, filed an application seeking an adjournment. In support of his application for adjournment, he stated the following:

The applicant for this proceeding, Mr Augustine Lau, was Mr Mao's property manager. This application filed by Mr Lau is in relation to enforcement orders of a property owned by Mr Mao. I have recently been engaged by Liansen Mao.

Since Mr Lau has been imprisoned over other Resource Management Act breaches, he has been unable to deal with this application himself. Mr Mao resides in China. He is also not sufficiently equipped to deal with this application. However the application has merits. The Auckland Council has signalled that it does not oppose the variations intended in the application (or that is my understanding).

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<sup>1</sup> See *Auckland Council v Lau* [2017] NZEnvC 160.



Mr Stanley Feng, a registered Town Planner engaged by Mr Lau for Mr Mao, has been actively making progress in complying with certain parts of the enforcement orders as well as regularising issues which the other parts of the enforcement orders apply to. Mr Feng has been in communication with the Auckland Council regarding the progress. In other words, we anticipate that within a matter of weeks, we should be in a position to present a complete and unopposed variation proposal to the Court.

[7] The Council advised that it agreed to the adjournment sought, but asked for clarification as to whether Mr Mao is Mr Lau's successor in this application.

[8] In response, the Court issued a Minute on 11 October 2018 adjourning the matter until 12 November 2018 and directing Mr Zhang to consider whether an application to substitute Mr Mao for Mr Lau would be filed.

[9] In a memorandum to the Court dated 18 October 2018 Mr Zhang advised the Court that:

Our understanding is that, all modification on the property which this application concerns have been removed. The property is now in compliance with the enforcement orders. It is therefore not necessary to proceed with the application, and it follows that there is no need for Mr Mao to apply to the Court to substitute Mr Lau.

#### **Application to strike out proceedings**

[10] The Council filed an application to strike out this matter on 16 November 2018. It submitted that the proceeding should be struck out for the following reasons:

- (a) Mr Lau has manifestly failed to prosecute his application to vary the enforcement orders.
- (b) The Court has given Mr Lau the opportunity to comment on the possibility that the proceeding would be struck out. Mr Lau has not done so, and appears to have abandoned his interest in the subject property and his application to vary the enforcement order.
- (c) The Court has also given Mr Mao, the owner of the relevant properties, the opportunity to be substituted for Mr Lau in the proceeding, which Mr Mao has declined.
- (d) At the time that Mr Lau initiated the proceeding, he was the manager of the relevant properties. Mr Lau is no longer able to act in that capacity. Given that, and the position of Mr Mao recorded above, it does not appear that Mr Lau has any real interest in the application.



- (e) Mr Lau's role was as a property manager for the owner. Now that the owner is directly communicating his intentions to the Court, it would be odd for Mr Lau to be afforded the opportunity to contradict the owner.

### Decision

[11] Section 279(4) of the Act provides the Court with the discretion to strike out proceedings, and states:

s279(4) An [Environment Judge] sitting alone may, at any stage of the proceedings and on such terms as the Judge thinks fit, order that the whole or any part of that person's case be struck out if the Judge considers—

- (a) That it is frivolous or vexatious; or
- (b) That it discloses no reasonable or relevant case in respect of the proceedings; or
- (c) That it would otherwise be an abuse of the process of the [Environment Court] to allow the case to be taken further.

[12] In this case counsel for Mr Mao has advised that the property now complies with the enforcement orders. It is also clear that no application to substitute Mr Mao for Mr Lau will be made.

[13] Mr Lau has not responded to any of the Court's directions or Minutes and consequently I determine that he has no further interest in this property or this application.

[14] Accordingly, the case is struck out on the grounds that:

- (a) The enforcement orders have been complied with, and there is no longer any reason to pursue the relief sought in this application to vary them; and
- (b) To allow the application filed by Mr Lau to continue when he no longer has an interest in the property would be an abuse of the Court's process.



M Harland  
Environment Judge

