

**IN THE ENVIRONMENT COURT  
AT AUCKLAND**

**I TE KŌTI TAIAO O AOTEAROA  
KI TĀMAKI MAKĀURAU**

**Decision No. [2023] NZEnvC 201**

IN THE MATTER OF

an application under s 314 of the  
Resource Management Act 1991 and  
s 16 of the Contempt of Court Act 2019

BETWEEN

AMBER WASON AND GARETH  
HALL

(ENV-2022-AKL-244)

Applicants

AND

TWO KOONER PROPERTIES  
LIMITED

First Respondent

Court: Environment Judge S M Tepania

Last case event: 15 September 2023

Submissions: A M Cameron for the Applicants  
A R Govind for the Respondent

Date of Decision: 18 September 2023

Date of Issue: 18 September 2023

---

**DECISION OF THE ENVIRONMENT COURT ON APPLICATION  
FOR ADJOURNMENT**

---

A: The application for adjournment is declined.

B: The hearing of the application to vary the Enforcement Order under s 321 of

Wason & Hall v Two Kooner Properties Limited



the RMA and the application under the CAA will proceed on 22 September 2023.

## REASONS

### Introduction

[1] Amber Wason and Gareth Hall (**Applicants**) applied to the Court on 22 December 2022 for enforcement orders against Two Kooner Properties Limited (**First Respondent**) under ss 314(1)(b)(ii) and 314(1)(c) of the Resource Management Act 1991 (**RMA**).

[2] The Court made the Enforcement Order sought with the consent of the parties, under s 314(1)(c) RMA on 11 July 2023 (**Enforcement Order**).<sup>1</sup>

[3] A second decision was issued in relation to this matter on 8 August 2023 under s 315(2) RMA allowing the Applicants to undertake the works required under the Enforcement Order from and including 12 August 2023 and to seek recovery as a debt due.<sup>2</sup>

[4] For the purposes of complying with the Enforcement Order, the Applicants and their agents were authorised to enter the property at 54 Parker Avenue, New Lynn and complete the works the subject of the Enforcement Order. The Applicants were to provide 24 hours' notice to the First Respondent prior to the works commencing.

[5] In that decision, the Court also granted the Applicants leave to join the director of the Respondent, Mr Kooner (**Second Respondent**), as a party to the Enforcement Order under s 321 of the RMA, subject to compliance with that provision.

[6] Finally, the Court granted leave for parties to return to the Court if any issues arose relating to the implementation of the Enforcement Order.

[7] On 22 August 2023, the Applicants filed an application to vary the Enforcement

---

<sup>1</sup> *Wason & Hall v Two Kooner Properties Limited* [2023] NZEnvC 149.

<sup>2</sup> *Wason & Hall v Two Kooner Properties Limited* [2023] NZEnvC 165.

Order to add the Second Respondent, Mr Kooner, as a party to the Enforcement Order in his personal capacity.

[8] On 29 August 2023, the Court received a memorandum from the Applicants indicating that there had been multiple disputes between the parties in the Applicants' attempts to access the property to carry out the remedial works required under the Enforcement Order and in accordance with the order under s 315 RMA.

[9] On 31 August 2023, the Applicants filed an application under s 16 of the Contempt of Court Act 2019 (**CCA**). This was supported by an affidavit of Amber Sheridan Grace Wason, sworn on 31 August 2023.

[10] A Judicial Telephone Conference (**JTC**) was convened on 7 September 2023. During the JTC the Court explained its intention to hold a hearing to consider both the application to vary the Enforcement Order and the application under the CCA on the same date. On this basis the Court set the matter down for hearing on 22 September 2023.

### **The application for adjournment**

[11] On 13 September 2023 the Court received advice from the Respondents that they had instructed counsel on 12 September 2023 and that the parties had entered into discussions.

[12] Counsel for the Respondents sought that the hearing on 22 September 2023 be adjourned for four weeks to allow time for the Respondents to file their evidence by 29 September 2023. The adjournment was sought on the grounds that:

- (a) The Respondents have only recently instructed counsel;
- (b) The Court provided the Respondents five working days to file their evidence. Given the seriousness of the matter under the CCA, the Respondents need more time prepare their defence and file their documents.

[13] In the meantime, the Respondents proposed the following in respect of the pending work:

- (a) If a resolution cannot be reached between the parties by 5pm on 18 September 2023, then the Respondents will deposit \$75,000 into ACS Law's trust account by 5pm on 19 September 2023. The funds will then be released to Pidgeon Judd as the bond required under the Enforcement Order. The Respondents will grant unhindered access to the Applicants to undertake work as per the Enforcement Order for 7 days.
- (b) The Respondents request that the Court directs that the Applicants, its agents or contractors, do not damage the property.

#### **The Applicants' response**

[14] Counsel for the Applicants opposed the application for adjournment for the following reasons:

- (a) the request for an adjournment has not been made in the proper form. Paragraph 5.10 of the Environment Court Practice Note 2023 requires an application to be accompanied by a memorandum and an affidavit in support of that memorandum. In this case a supporting affidavit was not filed.
- (b) the request for an extension is unnecessary, prejudicial and is inconsistent with case law relating to applications for contempt of Court.
- (c) The Respondents have had notice of these proceedings for two weeks and have repeatably been advised to seek and obtain legal advice. Counsel was formally instructed only two working days before the Respondents' documents in opposition were due.
- (d) The Respondents have not demonstrated that everything practicable has been done to avoid having to seek an adjournment.

[15] In support of the Applicants' position, counsel referred the Court to the following passages of the Supreme Court's decision in *Siemer v Solicitor-General* (*Siemer*).<sup>3</sup>

[6] A summary process has long been used by the courts to determine questions of contempt because of the perceived need for the courts to act quickly and effectively when their authority is challenged [...].

[26] The objective of the summary process in contempt of court proceedings is to protect the ability of the courts to exercise their constitutional role of upholding the rule of law. Effective administration of justice under our constitution requires that orders of the Court are obeyed unless properly challenged or set aside. Public confidence in the administration of the law, also necessary for its effective administration, requires that there is a strong expectation that those who ignore court orders are quickly brought to account. Achieving these aims is part of the objective of contempt. The purpose of the summary process, whereby that law is administered by judges without the assistance of juries, is to put the administration of the contempt law in their hands.

[16] Counsel submitted that the request for adjournment is inconsistent with the summary process applying to applications for contempt of court, set out in *Siemer* and would also be inconsistent with the Enforcement Order which requires the parties to act quickly, in order to prevent any further damage to the Applicants' interests.

[17] In addition, counsel submits that the questions to be determined at the upcoming hearing are narrow in scope and do not require extra time for a detailed briefing. The questions are:

- (a) whether other methods of enforcing the Enforcement Order have been considered and are inappropriate or have been tried unsuccessfully.
- (b) if so satisfied, whether it is proved beyond reasonable doubt that:
  - (i) the Enforcement Order being enforced was made in clear and unambiguous terms and is clearly binding on the First Respondent;
  - (ii) the First Respondent had knowledge or proper notice of the terms

---

<sup>3</sup> *Siemer v Solicitor-General* [2010] NZSC 54, [2010] 3 NZLR 767.

of the Enforcement Order being enforced; and

- (iii) the First Respondent has, without reasonable excuse, knowingly failed to comply with the Enforcement Order being enforced.

[18] In response to the Respondents' proposal regarding the payment of a bond and the pending work, counsel for the Applicants' responded by noting that:

- (a) the ultimate cost of the works will be the subject of a claim under s 315(2)(c) of the RMA.
- (b) the Respondents have no ability to curtail the right of the Applicants to enter onto the First Respondents' land to complete the works that are the subject of the Enforcement Order within the next seven days. That right is already afforded to the Applicants in accordance with the decision of this Court under s 315 of the RMA and is not time-bound.

[19] Regarding the Respondents' request that the Court directs that the Applicants do not damage the Respondent's property and that they remediate it within seven days if damage is caused, the Applicants note there is no basis for such direction. Counsel submitted that the rights under s 315 are closely circumscribed, and there is no basis upon which to assume that the Applicants will not comply with the terms of the order made.

### **Evaluation**

[20] Having considered the application and the position of all parties, I determine that it is inappropriate to adjourn the hearing.

[21] In reaching this decision, I have taken into account the following:

- (a) both the First and Second Respondents were aware that leave had been granted on 8 August 2023, to join the director of the Respondent, Mr Kooner (Second Respondent), as a party to the Enforcement Order under s 321 of the RMA, subject to compliance with that provision.

- (b) both the First and Second Respondents have been on notice that the hearing was to take place since the JTC on 7 September 2023. I am satisfied that the notice provided to both Respondents has been sufficient.
- (c) the timetable put in place for the hearing gives both the First and Second Respondents time to prepare for the hearing.
- (d) the delay in obtaining legal counsel should not be used as a reason to delay the hearing of the two applications before the Court. The First and Second Respondents have been advised by the Court to obtain legal representation in relation to this matter on more than one occasion.
- (e) it is appropriate that the hearing of the two applications occur expeditiously due to the serious nature of the Respondents' breach of enforcement orders and the Court's further orders under s 315(2) of the RMA.

### Outcome

[22] The application for adjournment is declined.

[23] The hearing of the application to vary the Enforcement Order under s 321 of the RMA and the application under the CCA will proceed on 22 September 2023.



---

**S M Tepania**  
Environment Judge

