

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

**CIV-2011-404-008091
[2012] NZHC 849**

UNDER The Arbitration Act 1966

IN THE MATTER OF An Arbitration Award dated 1 November
201

BETWEEN THOMAS RAINER LIPP AND KAREN
WENDY LIPP
Plaintiffs

AND STEPHEN JOHN CHANEY AND EDITH
MARGUARITE CHANEY
Defendants

Hearing: 30 April 2012

Appearances: H P Holland for Plaintiffs
A R Gilchrist for Defendants

Judgment: 1 May 2012

JUDGMENT OF COURTNEY J

This judgment was delivered by Justice Courtney
on 1 May 2012 at 11:15 am
pursuant to R 11.5 of the High Court Rules

Registrar / Deputy Registrar

Date.....

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[1] The plaintiffs, Mr and Mrs Lipp, and the defendants, Mr and Mrs Chaney, are neighbours on related cross-lease titles. The Chaney's wish to build a garage under their property but the Lipps maintain that access can only be obtained over a driveway that is exclusive to them and will not consent to the Chaney's using it. The Chaney's contended that access was over a driveway that was common to both properties. Last year the parties referred this issue to arbitration, with Dr McMorland as arbitrator. Dr McMorland delivered his interim award in November 2011. He found that the driveway access was common to the parties. The Lipps have both appealed that award and also applied to set it aside. A hearing date for these proceedings has been allocated for 18 June 2012.

[2] Because other issues that were originally the subject of argument at the arbitration have now fallen away the final award will deal only with the issue of costs. Dr McMorland has confirmed that he has completed the final award and that it could be delivered immediately upon receipt of his fee. The Lipps have applied to stay the arbitral proceedings so as to prevent the final award being delivered. The Chaney's oppose the stay.

[3] After hearing argument from Ms Holland, for the Lipps, and Mr Gilchrist, for the Chaney's, on 30 April 2012 I refused to make an order staying the arbitral proceedings and indicated that my reasons would follow.

[4] Ms Holland identified two main issues as the reasons the arbitral proceedings should be stayed. The first was that if the final award were to be delivered now the three month for appealing that award would very likely expire before the outcome of the substantive hearing on the interim award in June is available. The appeal would have to be brought separately and the Lipps would therefore be forced into making that decision before knowing the outcome of the proceedings relating to the interim award.

[5] The second point was a desire to avoid unnecessary cost in finalising and delivering the award which may ultimately prove to be unnecessary. However, since

Dr McMorland has already indicated that the final award is ready to be delivered that issue falls away.

[6] Mr Gilchrist submitted that the most desirable position for both parties would be for all outstanding issues between them to be before the Judge who hears the appeal/application to set aside on 18 June 2012. To ensure that this can happen the Chaney's have offered to co-operate in having any appeal on the costs award determined at the same time and have agreed not to enforce any costs award in their favour until after the outcome of the appeal/application to set aside on the interim award is known.

[7] I consider that Mr Gilchrist's position is correct. Apart from a payment of a filing fee for a fresh originating application/appeal in the event that the Lipps wish to challenge the final award there is no apparent prejudice to them in having the final award available. To the contrary, once it is available any challenge to it can be determined together with the challenge to the interim award which will be considerably cheaper for both parties than running the risk of having separate proceedings heard at a later date.

[8] On the basis of Mr Gilchrist's advice regarding the Chaney's offer to co-operate in having all issues determined together on 18 June 2012 and not enforcing the costs award until the outcome of that hearing is known, I dismissed the application to stay the arbitral proceedings.

[9] I was not addressed on the issue of costs and therefore reserve costs. They can be dealt with together with all other outstanding matters following the 18 June 2012 hearing.

P Courtney J