



concerned that the order may permit vehicles, appliances, machinery and equipment that may have a significant effect on or intrusion into their property.

[4] They believe there are options available to the applicant to have the work done without access to the respondents' property being required.

[5] The respondents wish to exercise their appeal rights.

### **Considerations**

[6] The Registry has indicated that there may be time available to hear the appeal in the week of 1 April 2019. That is only three weeks away.

[7] For the respondents it is submitted a Stay of Execution is necessary to protect their position pending the hearing and determination of the appeal. However, as counsel for the applicant submits, it is not clear what is in the respondents' position that requires protection through a Stay. There is a lack of detail about the respondents' reasons for their objection.

[8] The applicant wants to complete construction finishing work on the north wall which abuts the carpark area. Clearly the respondents are concerned that a commercial building now interrupts the view of their own building.

[9] Yet, the respondents have not been forthcoming to explain how the construction access on foot and using scissor lifts might affect their property at all in a material sense. A limited period of access only is sought.

[10] The Court agrees with the defendant counsel submission that if the respondents were successful on appeal then any losses they may have incurred could be more than adequately remedied through a claim of compensation.

[11] The respondents have a long litigation history concerning the applicant's building development. They opposed it in the Environment Court and in the High Court. More recently we have the present application which was interrupted by an application of the respondents submitting the parties' issues should proceed by way of

ordinary proceeding process. Yet, and throughout there has been, as plaintiff counsel submits, an absence of clearly demonstrated affects on the respondents. The parties' issues have no significance beyond the boundaries of their properties. The application specifically relates to the respondents' opposition to a neighbouring property. As defendant counsel submits any public interest questions concerning the relationship between private property rights and sections 319 and 320 of the Property Law Act 2007 which enable orders to be made of the kind this Court has already granted, were questions to be resolved prior to the enactment of the legislation. Those sections are there for the purpose specifically applied by this Court.

[12] Clearly there has been a considerable financial investment in the applicant's building project. They report having engaged contractors to complete the construction of the building and regarding which they have incurred penalties for delays which they say can be attributed to the respondents. The respondents' evidence was that the most urgent aspect of the construction work is the waterproofing of the north wall [for which access to the respondents' property is required]. The respondents report that there will be substantial repercussions for the completion of other work inside the building if the waterproofing work in question is not done.

[13] By contrast there is no evidence at all offered on behalf of the respondents to deny the likely effect of a delay to the construction of the building.

[14] Counsel advises that the applicant has entered into sale and purchase agreements for more than half of the apartments within its development; and purchasers are awaiting the completion of the building.

[15] Clearly, for present purposes, the overall balance of convenience favours the applicant. The respondents have provided no evidence as to how access by the scissor lifts made to be inconvenient or cause ongoing damage.

[16] Nothing is raised by the appeal which suggests the Court did not have sufficient evidence available, or that there might likely be other evidence which could be available.

[17] The respondents' case is about a reiteration of their opinion that private property rights should prevail. The fact is those rights are specifically addressed by provisions in the Property Law Act which this Court considers provides appropriate authority for the right of access that has been authorised.

### **Conclusion**

[18] There is no proper basis for Staying the Execution of the judgment pending determination of the appeal. Likewise previous orders for costs still remain payable.

### **Judgment**

[19] The application for Stay is dismissed.

[20] Costs are payable on a 2B basis.

AP Christiansen  
District Court Judge