



Supreme Court of New Zealand

4 September 2006

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

**Roger Wilson Steele and Christine Lynne Roberts v Elefariou
Serepisos
SC 68/2006 [2006] NZSC 65**

PRESS SUMMARY

This summary is provided to assist in the understanding of the Court's judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at www.courtsofnz.govt.nz.

Mr Steele and Ms Roberts, as vendors, sold an unsubdivided piece of land in Roseneath, Wellington to Mr Serepisos, a property developer. The vendors thereby undertook a contractual duty to take all reasonable steps to complete the subdivision and procure the deposit of the necessary survey plan in the land registry office. They encountered problems with providing drainage to the new lot which they were selling.

The method envisaged by both parties could not be fulfilled because neighbours declined to give the necessary easement. The alternative method through the land the vendors were retaining would have been substantially more expensive and would also have led to major amenity disadvantages for that land by way of exposed pipes and interference with an existing landscape garden.

Because the vendors had been unwilling to adopt that method they could not procure the deposit of the necessary survey plan and the land could not therefore be conveyed to Mr Serepisos. He sued the vendors for breach of contract and succeeded in the High Court and the Court of Appeal. An inquiry into the damages he had suffered from the breach was directed.

The Court of Appeal held that despite the fact that in its view the vendors had taken all reasonable steps to try and deposit the plan, they were nevertheless liable for damages because they had not given Mr Serepisos a notice warning him that they were proposing to treat the contract as over because they could not fulfil the necessary drainage requirements as the parties had envisaged. The Court of Appeal held that the giving of such a notice was necessary as it would have given Mr Serepisos an opportunity to try and procure the easement which the vendors had failed to obtain.

The Supreme Court has, by a majority of 3 to 2, upheld the Court of Appeal's conclusion that the vendors took all reasonable steps to try and complete the subdivision. But, by a majority of 4 to 1, the Court has differed from the Court of Appeal and held that the vendors were not obliged to give Mr Serepisos any warning notice before being entitled to regard themselves as discharged from the contract. The vendors' appeal has therefore been allowed on the basis that they were not in breach of contract and had no liability to pay any damages to Mr Serepisos.

Contact person: Gordon Thatcher, Supreme Court Registrar (04) 914 3545