

# **REPORT ON LEAKY BUILDINGS LIST IN AUCKLAND**

## **by Associate Judge Faire**

### **Commencement of new management arrangements for the list**

[1] New arrangements for the supervision of the cases on the leaky building list commenced in September 2012. Associate Judge Faire is the judge primarily responsible for supervision of the list. This report is the first review since that supervision commenced.

### **The process**

[2] A conference programme has been set up in Judge Faire's diary which, in broad terms, provides for three conference days per four-week period. The conferences are allocated from 9am, 9:50am, 10:40am, 11:50am, 2:15pm and 3:50pm.

[3] The 11:50am, 2:15pm and 3:50pm conference times are reserved in the first instance for face-to-face conferences usually being the first major conference for the file.

[4] Ultimately there will be one Case Officer for all files on the list. That process is taking a little time to achieve. The changeover occurs when an event is fixed for a proceeding file.

[5] As soon as a statement of defence is filed, the file is reviewed by Judge Faire. In most cases a minute is issued that fixes a conference time and sets the agenda. The exceptions occur where not all parties have defended and there may still be time for defences to be filed or where a file has a protest to jurisdiction, or a summary judgment or strike out application, or for some other good reason. The cases that fall within the exceptions category are then processed by Judge Faire, either through his chambers list or a summary judgment list as appropriate. In some instances, he will simply ask the Case Officer to withhold action until the plaintiff gives details of service on a defendant so that times for a particular defendant to take steps can be verified.

[6] As at 27 March 2013 77 minutes in respect of files on the list have been issued by Judge Faire.

[7] Regular meetings are being held with the Court Manager, Civil Case Flow Manager and the Judicial Resource Manager and Judge Faire at which progress with cases on the list and necessary arrangements are reviewed.

### **Meeting with members of the profession**

[8] A meeting was held with the Chief High Court Judge, Judge Faire, the Court's Manager and a number of her staff and a number of members of the legal profession.

Attached, marked "A", is a note of the matters discussed. A number of matters arise that require comment:

- a) Expert reports: Counsel have been invited to agree on an early exchange of expert reports in a number of cases, subject to certain conditions. The following minute has been approved in a number of cases:

Counsel will seek instructions from their clients authorising the exchange of expert reports subject to the following conditions:

- a) Any existing reports will be made available forthwith;
- b) In the case of future reports, they will be made available as soon as they are obtained by a party;
- c) The reports exchanged under this arrangement may not be the subject of cross-examination at the trial of this proceeding.

Counsel will confer and give advice as to their client's position no later than ...

[9] It is hoped that this approach will reduce the interlocutory steps that often arise in these cases;

- b) Where files disclose that some of the defendants have filed statements of defence, the practice is to issue a minute requiring the plaintiff to advise the date of service in respect of those defendants who have not filed a statement of defence. If the time for doing (usually 25 working days) has expired, a conference will be allocated. Alternatively, if advice is given that the proceeding has not been served, counsel will be asked to advise why and, if appropriate, they will be referred to the plaintiff's obligations in this respect as set out in hcr5.72. There have been one or two cases where a plaintiff has advised that the proceeding has been filed to cover a limitation problem, but because they realise that the pleading is inadequate they do not serve. Those plaintiffs have been advised that a delay in service is not justified and that there is a potential breach of hcr5.72. The object is to see that a defendant is advised of a potential claim against it as soon as possible;
- c) Trials and trial loadings: The Judicial Resource Manager advises that none of the long causes that are set down for the first and second quarter this year will proceed. There have been some files that are ready for trial at least six months before a trial date can be provided. Ways to eliminate this type of delay are being explored.
- d) A meeting with members of the legal profession will be held in late August 2013;

- e) There have been a number of requests for judicial settlement conferences, particularly for cases involving single unit dwellings (family homes), some of which have been approved by Lang J;

### **The current position of the list**

[10] The position, in summary, is as follows:

- a) 123 cases have been filed and require attention;
- b) Of the cases filed 12 have settled but are awaiting completion;
- c) 22 files are either new cases not ready for the allocation of a conference or for some particular reason have no next event date;
- d) 17 cases have been allocated first conference dates;
- e) 34 cases are awaiting trial with no specific other date allocated to them;
- f) 38 cases have either second or subsequent conference dates; interlocutory hearings scheduled or are listed for review in a chambers list.

### **Conclusions**

- (1) The list is increasing in case numbers;
- (2) There are no delays in the processing of files and in the allocation of interlocutory fixtures;

There is some delay in the allocation of trial dates, particularly for cases requiring 20 hearing days or more.

“A”

**Matters arising from meeting with profession on 4 February 2013**

[1] *Timing of conference to establish issues:*

- a) A preliminary summary of issues should be recorded at the first conference. It was felt that it was usually too early to get a more detailed list;
- b) A more detailed list of issues cannot be prepared until:
  - i) Discovery is completed;
  - ii) All relevant parties have been joined;
  - iii) Expert reports have been completed.

The above indicates that in larger cases a review of trial issues at a later stage in the management of the file is required. With the smaller cases, every effort should be made to have the issues settled as soon as possible.

[2] *Exchange of expert reports*

- a) An issue was raised concerning the discoverability of parts of these reports. It was suggested that counsel will be encouraged to agree on a formula for the exchange of expert reports. There are numerous benefits to this approach which often lead to an earlier resolution of the dispute.

[3] *Allocation of the first conference*

- a) Delay in the allocation of the first conference until the statements of defence have been filed was support by all, subject to there being a check for those cases where a defendant is deliberately evading. The current process that I have adopted is supported by the profession.

[4] *Issues Conferences*

- [5] It was suggested that expert witnesses should attend issues conferences as this is necessary for in depth discussion of the issues.

[6] *Trial loading*

- a) Concern was expressed at raising the loading from four to five in respect of long cases for a quarter. It was suggested that four should be sufficient. It was acknowledged, however, that to date there has been no actual problem. All cases had either settled or proceeded to trial as appropriate. It was emphasised that it is important that counsel report cases involving same experts and witnesses and developments relating to cases to the Judicial Resource Manager as soon as they occur. In this way an orderly planning of the trial section of these cases can be maintained.

[7] *Pre-trial conferences*

- a) Cases with an estimate of hearing of 10 days or more will always get a pre-trial conference. It is not always possible to assign the trial judge but every effort to achieve this will be attempted.
- b) Pre-trial issues, in particular the meeting of experts and the refining of the issues, were discussed. Counsel are encouraged to advise the court what hearing facilities are required as soon as possible, particularly where special directions relating to expert evidence are being considered. In this way, the court will be able to make appropriate hearing arrangements to accommodate these special directions.

[8] *Settlement*

- a) The timing for the forum for discussing settlement was agreed generally in these cases to be on completion of the expert reports and before briefing is undertaken in a formal way. The Chief High Court Judge confirmed that, in special cases, a judicial settlement conference could be ordered. For the majority of cases, however, the parties are encouraged to pursue other forms of ADR.
- b) Suggestion that judicial settlement conferences could be timed after early exchange of expert reports, and before full exchange of briefs. At times the “sunk cost” of brief preparation becomes an obstacle to settlement.

[9] *Six-monthly review*

[10] The profession would welcome a review meeting with the Chief High Court Judge, Registry staff and me at six-monthly intervals for the purpose of reviewing progress with the list and discussing any issues that might arise, with a view to improving the management of the list.