

BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL

[2016] NZREADT 29

READT 066/13 & 068/13

IN THE MATTER OF appeals under s 111 of the Real Estate Agents Act 2008

BETWEEN **EDINBURGH REALTY LTD & ORS**

Appellant (READT 066/13)

(Second respondent (068/13)

AND **REAL ESTATE AGENTS AUTHORITY (CAC20004)**

First respondent

AND **GLENYS SCANDRETT**

Second respondent (READT 066/13)

Appellant (READT 068/13)

MEMBERS OF TRIBUNAL

Judge P F Barber - Chairperson
Mr J Gaukrodger - Member
Ms C Sandelin - Member

HEARD at DUNEDIN on 12 & 13 November 2015

DATE OF DECISION 28 January 2016 [2016] NZREADT 5

DATE OF THIS RULING (Heard on the papers) – 13 April 2016

COUNSEL

Mr C S Withnall QC, Counsel for Edinburgh Realty Ltd & Ors
Ms K Lawson-Bradshaw, for the Authority
Mr B Gray, for Ms G Scandrett

RULING ON APPLICATION FOR STAY

Background

[1] On 28 January 2016 we issued a decision dealing with an appeal and cross-appeal between the above parties. We referred the complaints back to the Committee with our direction that *“the Committee now, forthwith, formulate an*

appropriate charge or charges and lay it or them before us in terms of the procedures of the Act and its Regulations”.

[2] However, all the first appellants (i.e. Edinburgh Realty Ltd, and Messrs Barclay, Clayton, and Lane Sievwright) have appealed that decision to the High Court at Dunedin. Those appellants now seek a stay of our direction ordering that charges be laid by the Committee pending the determination of that appeal to the High Court.

The Stance of the Authority

[3] The Authority is neutral on whether there should be a stay on the charges but submits that, if a stay is granted by us, it should be expressly on the basis that, if charges are ultimately laid before us, an application for dismissal cannot be made on the basis of the delay caused by the stay.

[4] The Authority also seeks clarification on the position of Mr M Shepherd (another licensee of Edinburgh Realty Ltd) but he did not appeal the Committee’s 18 October 2013 decision finding unsatisfactory conduct against him and he was not a party to the appeal proceeding before us. Accordingly, he is unaffected by our decision of 28 January 2016 and the Committee’s finding of unsatisfactory conduct against him remains extant.

Opposition by the Complainant Mrs G Scandrett

[5] In opposition to the stay application, counsel for the complainant (Mr Gray) notes that the grounds put forward by the appellants are:

- [a] That without a stay all parties will be required to be involved in considerable time, work and expense which **may** (emphasis added) be wasted depending on the outcome of the appeal.
- [b] No party will be prejudiced by proceedings being stayed pending the outcome of the appeal.

[6] Mr Gray submits that the general rule is that a party is entitled to enjoy the fruits of a judgment in its favour. He puts it that the second respondent seeks the benefit of the judgment in her favour and does not want any delay in the Complaints Assessment Committee placing charges before us against the appellants for their conduct in this matter.

[7] Mr Gray submits that a party seeking a stay has to persuade the Court that, if it were not granted, its appeal rights would be rendered nugatory: *Philip Morris (NZ) Ltd v Liggett & Myers Tobacco Co (NZ) Ltd* [1977] 2 NZLR 41 (CA); but no such claim is made by the appellants who simply submit that, without a stay, all parties will be required to be involved in considerable time, work and expense which may be wasted depending on the outcome of the appeal.

[8] Mr Gray observes that the second respondent will not be involved in any cost of referring the whole case back to Complaints Assessment Committee (“CAC”) to formulate and lay charges before us against the appellants.

[9] The second respondent understands that, in exercising its discretion, a Court must engage in a balancing exercise weighing up the position of both parties: *Duncan v Osborne Buildings Ltd* (1992) 6 PRNZ 85 (CA); *Dymocks Franchise*

Systems (NSW) Pty Ltd v Bigola Enterprises Ltd [1993] 3 NZLR 239, (1999) 13 PRNZ 48 (HC).

[10] The only prejudice put forward by the appellants is the potential cost involved in work which may be wasted depending on the outcome of the appeal. There is no claim that there is any need to preserve any position, property and/or legal right in case the appeal is successful. The only prejudice put forward is the potential expense of responding to an investigation into the appellants' conduct. If no stay is granted there is no suggestion that the appellants' rights of appeal will be rendered nugatory.

[11] Mr Gray puts it that the appeal does not dispute the finding of fact regarding the appellants conduct but, merely, our jurisdiction following those findings of fact. He submits that the appeal lacks merit.

[12] Mr Gray submits that any delay which results from a stay being granted will prejudice the second respondent as she has waited since January 2010 to hold the appellants accountable for their conduct. Also, the second respondent has incurred considerable loss and legal costs which can only now be potentially recovered through compensation granted following charges being laid by the CAC.

[13] Mr Gray submits for the complainant that, given the novelty and importance of the consequences of the conduct of the appellants, the significant public interest in these proceedings which have been the subject of two significant articles in the Otago Daily Times and the overall balance of convenience, it would be unjust if the appellants were granted a stay of these proceedings pending the outcome of an unmeritorious (he puts it) appeal.

Our Ruling

[14] The fact that the applicants have appealed our 28 January 2016 decision herein to the High Court at Dunedin is not a compelling reason for granting a stay. There is the time and expense factor in the second ground in the application for stay (filed by Mr G S Withnall QC as counsel for the appellants) which reads:

"2. Giving effect to the Tribunal's decision referring the whole case back to the Complaints Assessment Committee to formulate and lay charges before the Tribunal, and resultant further proceedings before the Tribunal, will involve all parties in considerable time work and expense which may be wasted depending on the outcome of the appeal to the High Court."

[15] Mr Withnall set out as his third ground: *"3. No party will be prejudiced by proceedings being stayed pending the outcome of the appeal to the High Court."*

[16] We observe that, if charges are ultimately laid before us as we have directed, we would not expect to grant an application for dismissal on the basis of the delay caused by any stay.

[17] Broadly, we agree with the submissions of Mr Gray as we have summarised them above.

[18] It seems to us that the procedure contemplated by Parliament is being applied. We did not have power/jurisdiction to find misconduct by the licensees without that having been put to us on a charge by a Committee. That judicial proceedings may

involve a party in expense and time, even to be vindicated, is often an element of litigation. There is prejudice to the complainant as she faces more delay from resolution. The appellants' rights of appeal are not affected by the procedure we have directed in terms of the Act.

[19] In terms of the overall balance of convenience and justice in general, we decline the application for stay.

Judge P F Barber
Chairperson

Mr J Gaukrodger
Member

Ms C Sandelin
Member