

BEFORE THE ENVIRONMENT COURT

Decision No. [2017] NZEnvC 125

UNDER the Resource Management Act 1991

AND

IN THE MATTER of an application for substituted service
under s 352 of the Act

BETWEEN

AUCKLAND COUNCIL
Applicant

(ENV-2017-AKL-000117)

AND

LIANSEN MAO
First Respondent

AND

EE KUOH LAU (AUGUSTINE LAU)
Second Respondent

AND

JESUS (2016) COMPANY LTD
Third Respondent

AND

XINWEN CAO (CINDY CAO)
Fourth Respondent

AND

CINDY PROPERTY MANAGEMENT LTD
Fifth Respondent

Court: Environment Judge D A Kirkpatrick,
sitting alone under s 279(1)(d) of the Act

Date: 15 August 2017

**DECISIONS ON APPLICATION FOR SUBSTITUTED SERVICE
OF APPLICATION FOR ENFORCEMENT ORDERS**

ORDER

A. The Auckland Council is directed to serve Liansen Mao by:



- (a) Delivering a physical copy of all of the enforcement order documentation (including the supporting affidavits) to 387 (formerly 423) Ormiston Road, Flat Bush.
- (b) Posting a physical copy of notice of the application to Mr Mao's address in China.
- (c) Posting a physical copy of notice of the application to PO Box 276138, Manukau City, Auckland.
- (d) Emailing an electronic copy of notice of the application to the following email addresses:
 - (i) mjwen1818@msn.com;
 - (ii) bigfresh5588@gmail.com;
 - (iii) augustinelau168899@hotmail.com.
- (e) In the absence of any contrary requests from Mr Mao, emailing all future correspondence relating to this matter to the three email addresses noted above.

REASONS

Introduction

[1] This is an application made by the Auckland Council together with a principal application for enforcement orders in respect of a property at 13 Memorial Avenue, Mt Roskill, Auckland. The first respondent, Liansen Mao, is the registered proprietor of the property.

[2] The Council alleges that the property is being used in a manner that contravenes Rule H5.4.1(A3), (A4) and (A5) of the Auckland Unitary Plan (operative in part) by reason of there being more than two dwellings on the property. The Council seeks orders to stop such use and to return the property to a state of compliance with the rules in the district plan.

[3] Past dealings with Liansen Mao indicate that he is not resident in New Zealand.



Substituted Service on First Respondent

[4] The Auckland Council seeks an order for substituted service on the First Respondent, Liansen Mao. To ensure that Mr Mao is given fair notice of this proceeding, especially the principal application for enforcement orders, and every reasonable opportunity to be heard in relation to these matters, the Council seeks directions regarding the method of service and the documents to be served.

[5] Section 317 of the RMA provides that applications for enforcement orders must be served "in the prescribed form on every person directly affected by the application" within five working days of the application being lodged with the Environment Court.

[6] The prescribed form is found in the Resource Management (Forms, Fees, and Procedure) Regulations 2003 (**Regulations**). Form 44 in the First Schedule to the Regulations is a notice:

- i) Describing the essential elements of the enforcement order application;
- ii) Providing contact details for the applicant and the Environment Court;
- iii) Providing prescribed advice to the recipient of the notice about their legal rights;
- iv) Advising the recipient that a copy of the application and any supporting affidavit(s) are available from the applicant upon request.

[7] As regards the mode of service, section 352(1) of the RMA states:

352 Service of documents

- (1) Where a notice or other document is to be served on a person for the purposes of this Act, it may be served—
 - (a) by delivering it personally to the person (other than a Minister of the Crown); or
 - (b) by delivering it at the usual or last known place of residence or business of the person; or
 - (c) by sending it by pre-paid post addressed to the person at the usual or last known place of residence or business of the person; or



- (d) by posting it to the Post Office box address that the person has specified as an address for service; or
- (e) by leaving it at a document exchange for direction to the document exchange box number that the person has specified as an address for service; or
- (f) by sending it to the fax number that the person has specified as an address for service; or
- (g) by sending it to the email address that the person has specified as an address for service; or
- (h) by serving it in the manner that the Environment Court directs in the particular case.

[8] The Council says that it faces the following issues in serving Liansen Mao:

- i) Service by email, Post Office Box, document exchange or fax could only be effected if Mr Mao had specified those addresses or numbers as his addresses for service. This has not occurred.
- ii) Effecting personal service on Mr Mao is impractical.
- iii) That leaves the Council with either having to effect service to Mr Mao's "usual or last known place of residence or business", or by service in a manner directed by the Environment Court.
- iv) The Council is not confident that the foreign address details for the Overseas Respondents remain correct or valid.
- v) If service to Mr Mao's foreign address were the only authorised means of service throughout the proceedings, it would likely result in delay and uncertainty.

[9] Under s 281 of the Act, a person may apply to the Court to waive any requirement about the method of service and to give a direction about what shall be served. The Court shall not grant an application under that section unless it is satisfied that none of the parties to the proceedings will be unduly prejudiced.

[10] In the circumstances, the Council seeks the Environment Court's directions regarding service under ss 281(1)(a)(iii) and (iv) so that it can comply with s 352(1)(h).



[11] The application is supported by an affidavit from Janet Mary Whiteside affirmed on 14 August 2017. Ms Whiteside is a senior advisor in the compliance unit of the Council. She holds the degree of Bachelor of Laws and a warrant under the Act.

[12] Ms Whiteside's evidence catalogues the information gathered during the Council's investigations into not only this property but also others connected with Mr Lau and which are the subject of enforcement action by the Council. Her evidence shows the difficulties that the Council has faced in attempting to make contact with Mr Mao.

[13] The modes of substituted service that the Council proposes are:

- (a) Delivering a physical copy of all of the enforcement order documentation (including the supporting affidavits) to 387 (formerly 423) Ormiston Road, Flat Bush. This is the address of another property owned by Mr Mao,¹ to which Mr Lau and Ms Mao are bailed, and to which many of the utility bills relating to 13 Memorial Avenue have been sent;²
- (b) Posting a physical copy of notice of the application to Mr Mao's address in China. This is the address specified for Mr Mao in relation to his Westpac New Zealand Ltd bank accounts;³
- (c) Posting a physical copy of notice of the application to PO Box 276138, Manukau City, Auckland. This is the post office box address openly used by Mr Lau and to which rates invoices and other such Council-related correspondence relating to 13 Memorial Avenue has been sent;⁴
- (d) Emailing an electronic copy of notice of the application to the following email addresses:
 - (i) mjwen1818@msn.com: This email address has been used by person(s) claiming to be Mr Mao and Ms Mao;⁵
 - (ii) bigfresh5588@gmail.com: This email address is connected with 13 Memorial Avenue in the Council's rating database.⁶



¹ Whiteside, Exhibit JW-62.
² Whiteside, para 4.7(j), Exhibit JW-73.
³ Whiteside, Exhibit JW-80.
⁴ Whiteside, para 4.7(i), Exhibit JW-72.
⁵ Whiteside, Exhibit JW-93.

(iii) augustinelau168899@hotmail.com: This email address is openly used by Mr Lau.

(e) In the absence of any contrary requests from Mr Mao, emailing all future correspondence relating to this matter to the three email addresses noted above.

[14] For those reasons, the Council seeks the Court's directions under s 352(1)(h) of the Act in relation to service of notice of the application and of any orders made on Mr Mao.

Decision

[15] On the evidence presently before me I am satisfied that Liansen Mao, being the registered proprietor of the subject property, is properly named as a respondent to this proceeding and that it is in the interests of justice that appropriate steps be taken to ensure that the existence and content of this proceeding is brought to his attention. I am also satisfied that no one will be unduly prejudiced by the waiver of the requirement for personal service on Liansen Mao in light of the direction for substituted service.

[16] For the foregoing reasons under ss 281(1)(a)(iii) and (iv) and s 352(1)(h) of the Act I direct the Council to serve the first respondent, Liansen Mao, in terms of the application for substituted service and as set out in Order A at the beginning of this decision.

For the Court:



A handwritten signature in black ink, appearing to read "D A Kirkpatrick", is written over a horizontal line.

D A Kirkpatrick
Environment Judge