

The Jackson Russell report

WINTER 2010

Faster and more affordable Dispute Resolution – New Approach In The District Court By Caroline Harris

Recent changes to the District Court Rules have marked a major change to the process and approach to litigation conducted in the District Court. If you are currently involved in a dispute which is headed toward the Court room, then chances are these changes will affect you. The vast majority of litigation in New Zealand is conducted in the District Court where claims worth less than \$200,000 are determined.

The new rules have established an entirely new procedure aimed at more cost-effective and speedy resolution of disputes. Settlement of disputes is the immediate objective and trial is the last resort.

New rules for litigation in the District Court now require parties to participate in a supervised settlement process at an early stage before they are allowed to proceed to trial. Many of the slow and expensive processes such as "discovery of documents" have been replaced with a new procedure requiring parties to prepare their claim or defence and provide documents supporting their case in one step through the exchange of "information capsules". The claim is then swiftly moved into a settlement conference which is presided over by a Judge.

This shortened process replaces a number of procedural phases which in the past have caused unnecessary cost and delay. The expectation is that most cases will settle at settlement conferences with only a minority of cases proceeding to the trial stage. For cases that are not resolved at the settlement conference, a new "short trial" option is available for simpler cases that do not justify the time and expense of a lengthy trial which might take several days in Court.

What has prompted this change? Put simply, the old District Court procedures made modest civil claims too expensive to run. The process did not reflect the reality. Across District Courts in New Zealand only between 1% and 3% of cases filed in the District Court get to trial. Most cases settle before the trial stage.

Despite these statistics, the old procedure required parties to participate in expensive pre-trial processes as though all cases were destined for trial. The pre-trial procedures often eroded the economic value of taking smaller claims to Court. Under the old procedure, before cases reached the Court room parties were able to make any number of procedural applications in anticipation of a trial which, statistically, was unlikely to happen. The old rules allowed often pointless "procedural battles" to continue until the money runs out. The new District Court Rules are intended to reduce much of this waste.

The new District Court Rules are coupled with an increase in the Disputes Tribunal's jurisdiction from \$7,500 to \$15,000 (or \$20,000 with both parties' agreement). This will allow parties to prosecute smaller claims themselves without legal cost.

In the past we have shared our clients' frustration when even strong cases are frustrated by procedural and delay tactics employed by the other side. It is hoped that the new District Court Rules will change this and see disputes resolved faster and for less cost.

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Meeting Today's Business Challenges

At Jackson Russell we have always prided ourselves on providing legal expertise over a wide range of areas. We've also regarded the depth of that expertise as crucial to the outcomes we deliver and constantly strive to ensure our people are able to provide a service that more than meets the demands of increasingly complex personal and commercial/business environments.

While this frequently means up-skilling staff members, it also involves bringing new people on board to augment the skills already available and add greater depth.

Over the past 6 months Jackson Russell has welcomed a new partner and number of new staff members – some you may have already had the pleasure of meeting, others may be new to you.

Marcus Rudkin Joins Jackson Russell As A Partner

Marcus is a commercial law specialist and practises mainly in the areas of commercial and corporate law, intellectual property, and information and communications technology. In his career Marcus has advised a broad range of clients from individuals, to small, medium and large companies. He has extensive legal expertise from senior roles in private practice and as senior legal counsel for companies in New Zealand and internationally, and has a practical hands-on approach to working with clients.



Green Light for ETS By Marcus Rudkin

New Zealand's emissions trading scheme (ETS) applies a price to greenhouse gas emissions by providing an incentive on users to reduce emissions. As of 1 July 2010, large greenhouse gas emitters in the transport, energy and industrial sectors have joined ETS. These emitters must either buy carbon credits to cover their greenhouse gas emissions each year or find less carbon-intensive ways of manufacturing their products.

With the introduction of ETS New Zealand has become a leader of climate change rather than a "fast follower" which was the initial promise made by Prime Minister Key. Australia has deferred its scheme and in April the United States dropped its highly publicised intention to launch new climate change laws in the short term. With the green light on the cost of fuel and electricity will increase as the upstream emitters of these products pass the cost burden to end-users. However the new law helps households by effectively halving the increased costs in fuel and electricity until December 2012.

A number of Jackson Russell's corporate clients have already been notified that their energy supplier is increasing costs post 1 July and we are working with them to achieve their best possible legal and commercial outcomes.

Unit Titles Act 2010

By Greg King

The new Unit Titles Act assented in April will introduce legal provisions which will affect you whether you are a purchaser, existing owner or vendor of a unit title property.

Purchasers

If you are considering purchasing an apartment, townhouse or office building which has a unit title it is essential that you consult your lawyer prior to signing an Agreement for Sale and Purchase.

Your lawyer will be able to advise you on the clauses required to fully protect you under the Agreement for Sale and Purchase and will ensure that the Vendor fully complies with its obligations to disclose all relevant information in relation to the property, failing which you may have the right to delay settlement or even cancel the agreement.

Existing Owners/Vendors

As the owner/vendor of a unit title you will be subject to the new strict disclosure requirements mentioned above. You should also be aware of important changes to the way that body corporate fees are levied, how common property is to be owned, maintained and repaired, how voting is conducted at meetings and how you may resolve any disputes affecting your property.

Greg King – Associate



Greg King is an associate at Jackson Russell working in the private client team and has experience in all property, company/commercial and asset protection matters. Greg practised in the United Kingdom before moving to New Zealand in 2004.

Catherine Lintott – Associate



Catherine Lintott is an associate at Jackson Russell and she is covering Zandra Wackener's absence on Parental Leave. Catherine has extensive experience in family law work, including a time as a partner in a prominent Auckland law firm. Catherine participates every week in the Family Violence Court at the Auckland District Court.

Simon Davies-Colley – Civil Litigation Team



Simon Davies-Colley has joined Jackson Russell's civil litigation team headed by Mark Sullivan. He was previously with one of the larger firms in Auckland, working in a team dealing with debt recovery and insolvency litigation for banks and finance companies.

Kylee Jacobsen – Commercial Law



Kylee Jacobsen has also joined Jackson Russell's commercial law team. Kylee grew up in the Waikato and most recently has been working for a Tauranga based law firm where she has had extensive experience with commercial work involving company formations, sale and purchase transactions, governance issues and shareholder agreements.

Louise Reed – Family Law Team



Louise Reed has joined Jackson Russell's family law team. Louise has experience in civil litigation, insurance law and family law.

Leaky Homes Update By Mark Sullivan

The National Government is proposing to partly fund leaky building repairs but not everyone will be eligible. The general proposal is to fund up to 50% of the repair costs, with 25% coming from central government coffers and the other 25% from local government (Council rates). It has been suggested that eligibility for the Council's contribution may depend on whether the Council was involved in the original defective construction work that gave rise to the leaks. It also appears that only those homeowners who meet the requirements of the Building Act's 10 year limitation period will be eligible. That may not be the only constraint and if you have not lodged a claim with the Weathertight Homes Resolution Service (WHRS) or have any concerns, please contact us.

The homeowner will need to fund the 50% balance of the cost of the work. To give the banks the confidence to lend, the Government may provide a guarantee for the bank loan but otherwise normal lending criteria is likely to apply.

It appears that the homeowner can still bring an action for recovery of the costs of repairs (50% portion, if eligible) but an indicated limitation is that, by opting into the scheme the homeowner will not be able to pursue the Council. This raises a serious legal issue as, broadly speaking, the Council is often the safety net if the builder and other parties responsible for the problems no longer exist or have insufficient funds.

Given the government refusal to accept any responsibility for the leaky home crisis in the past, this is a step in the right direction. However, it is disappointing that there is little other information available at this stage. Many homeowners will want to know as soon as possible if they are likely to be eligible for the funding scheme or not. The Minister in charge, Maurice Williamson, has indicated that the scheme may not be up and running until early 2011, however, hopefully the key criteria for eligibility will be revealed well before then.

We will monitor progress and report on significant developments, but feel free to contact us if you have any questions.

Selling Your Home – New Issues By Greg King

Recent changes to property laws mean that if you are planning to sell property it is important to instruct a lawyer much earlier in the conveyancing process and before signing an agency agreement.

In addition, an agent must not enter into an agency agreement with you unless he or she has provided you with a copy of the approved guide in respect of the agreement. An agent is also under a duty to notify you of your right to independent legal advice before signing the agency agreement and after signing the agreement you must be provided with a copy of the signed agency agreement within 48 hours. If you want to get out of your agreement you can cancel the agency agreement anytime before 5pm on the first working day after receiving a copy of the agreement.

You should be aware there are now two forms of sale agreement available for use by agents, these present very different risks. It is possible that one agreement can be used to sell your property and the other used to buy your property. We can help you to understand the difference between the two.

Disclaimer

The information contained in this newsletter is of a general nature and should be used as a guide only. Every effort has been made to ensure the accuracy of the information published, but readers are requested to seek legal advice before acting upon this information and should not rely on what is published in this newsletter.

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