

**IN THE WEATHERTIGHT HOMES TRIBUNAL  
TRI 2010-100-000026**

<b>BETWEEN</b>	<b>LUCY NORMA STANLEY and MELANIE JANE STANLEY as Trustees of the LUCY STANLEY FAMILY TRUST Claimants</b>
<b>AND</b>	<b>NORTH SHORE CITY COUNCIL First Respondent</b>
<b>AND</b>	<b>LLOYD REX BANTON Second Respondent</b>
<b>AND</b>	<b>ROSS BARRY JONES Third Respondent</b>
<b>AND</b>	<b>DARREN MCDONALD Fourth Respondent</b>
<b>AND</b>	<b>PATRICK COLIN FARRELL Fifth Respondent</b>
<b>AND</b>	<b>JASON K WARD Sixth Respondent</b>

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**PROCEDURAL ORDER 3**  
(Determination on Application for Termination and Amended Timetable)  
**Dated 23 June 2010**

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## **Application by First and Second Respondents for Termination of Claim**

1. The first and second respondents have filed lengthy applications for termination of this claim pursuant to section 55(1) of Weathertight Homes Resolution Services Act 2006.
2. Notice of opposition to such applications have been filed by the claimants and submissions of counsel for the first respondent have been filed in response to the claimants' opposition to the termination application.

### **Background**

3. This claim relates to a dwelling built at 62A Sunrise Avenue, Mairangi Bay in the period 1998 through to 2000. The property upon which the home was built was at the time of construction owned by Ross Jones, the third respondent, and Lucy Norma Stanley, a claimant.
4. On 18 May 2001, ownership of the property upon which the home was built was transferred to the sole ownership of Lucy Stanley.
5. On 2 July 2004, Lucy Stanley established the Lucy Stanley Family Trust of which Lucy Stanley was settlor and a trustee.
6. On 13 August 2004 a deed of sale of the property to the trust was signed.
7. Lucy Stanley signed the deed of sale dated 13 August 2004 in her capacity as vendor and as one of the purchasers, being one of the trustees of the family trust.

8. On 3 May 2007 Lucy Stanley applied to the Department of Building and Housing for an assessor's report, thereby commencing this claim.
9. On 18 March 2008 registered ownership of the property was transferred (registered) at the Land Transfer Office from Lucy Stanley to the trustees of the family trust of which Lucy Stanley is one. On 26 March 2010, the claimants, the trustees of the Lucy Stanley Family Trust, applied for adjudication of this claim.
10. Section 55 of the Weathertight Homes Resolution Services Act 2006 (the Act) provides that:

**55 Termination of claim where ownership changes**

- (1) A change in the ownership of a dwellinghouse on or after the transition date [1 April 2007] terminates any claim made in respect of that dwellinghouse alone by its former owner.

11. Counsel for the first and second respondents have submitted that:
  - a) The claimants have not commenced a valid claim in this Tribunal as they were not the legal owners when the claim commenced;
  - b) That the deed of sale signed in August 2004 only ever gave the trust beneficial interest in the home and not legal title;
  - c) The claim was commenced by Lucy Stanley when she was the legal owner of the property. This fact is not altered by her having entered into a deed of sale dated 13 August 2004 clause 4 of which states that she held the property on trust for the claimants until such time as all steps had been taken to effect the legal transfer. Counsel for the first respondent

submits that this clause acknowledges that she retained legal ownership until such time as all those steps had been taken;

- d) Settlement of the purchase of the property by the claimants (as trustees of the Family Trust) did not take place on 13 August 2004 as Lucy Stanley as vendor did not take all the steps required by her at that time, that is, providing the purchasers with the means of registering transfer of ownership in the terms of the Land Transfer Act 1952;
- e) All steps referred to in clause 4 of the deed of sale were not completed until on or about 18 March 2004 which is when ownership changed;
- f) Ownership changed after the transition date on 1 April 2007;
- g) The Tribunal has previously held that ownership for the purposes of the Act refers to legal ownership only.

12. The relevant provisions in the deed of sale to the Lucy Stanley Family Trust dated 13 August 2004 are:

- “1. The vendor agrees to sell the property and the purchasers agree to buy it.
- 2. Possession should be given and a settlement shall occur on the date this deed is signed (“the possession date”).
- 3. The parties agree to the sale price...
- 4. The vendor [Lucy Stanley] will do all things, sign all documents and give all notices as necessary to transfer the property into the names of the purchases [Lucy Stanley and her fellow trustees]. Until this has been completed the vendor will hold the Property on trust for the Purchasers and undertake to account to the Purchasers for all income and gains arising from the Property from the Possession Date.”

13. There could be no question that a claim under the Act may only be brought by the "owner" of the dwelling house concerned.
14. The definition of "owner" is non-exclusive and its meaning is to be viewed in context... (reserve judgment of Randerson J; *L S Petrou v Weathertight Homes Resolution Service & Ors* HC Auckland CIV-2009-404-1533, 24 November 2009; and see too section 7 of the Act).
15. A beneficiary has no right to act as claimant (see *24 Bath Street Limited v Hulena Architects Limited & Ors* WHT TRI-2007-100-000067, 26 May 2008, Adjudicator Pezaro).
16. A change of ownership in terms of section 55 of the Act must mean any change in the legal ownership of the concerned dwelling, *W K Dassanayake & Ors v Manukau City Council & Ors* WHT TRI-2010-100-000012, 19 March 2010, Adjudicator Kilgour.
17. I have considered carefully all of the submissions from counsel for the first and second respondents, counsel for the claimants and the response of counsel for the first respondents.
18. I am mindful of the purpose of the Act which is set down succinctly in section 3.
19. Whilst ownership for this present matter is not defined in the Act I have made reference to authorities above that ownership must mean legal ownership. But that is a non-exclusive term and needs to be viewed in context. The context being the purpose of the Act and that Lucy Stanley's legal status as owner of the concerned dwelling did not alter when the

property was transferred by her to herself and her co-trustees. An “inter vivos” family trust is not a separate legal entity. Ms Lucy Stanley’s legal status in 2001 is no different from her present legal status with the concerned dwelling (see *Byron Avenue* [2010] NZCA 65) she remains a “registered proprietor”.

20. Every judicial body endowed with a particular jurisdiction has, ancillary to that jurisdiction, the power necessary to enable it to act effectively within that jurisdiction (*Connelly v Director of Public Prosecutions* [1964] 2 ALLER 401, 409 HL). The Tribunal in this claim does have jurisdiction to hear the claim and in exercise of the Tribunal’s power to control its processes the Tribunal will not strike out the claim.
21. What has occurred in this matter is that Ms Lucy Stanley on 13 August 2004 (well before the transition date) transferred both beneficial and legal ownership to herself and her fellow trustees pursuant to the deed of sale dated that day. Clause 2 of that document states unequivocally that possession and settlement occurred on the date that that deed of sale was signed. The possession date and the date of signing was 13 August 2004.
22. Clause 4 of that deed was at best an administrative provision. It did not mention beneficial and/or legal ownership; it simply mentioned “transfer of property into the names of the purchasers”. That was referring to registration of transfer of ownership in terms of the Land Transfer Act 1952. The property is “torrens” Land Transfer Property subject to the provisions of the Land Transfer Act 1952. The purpose of transferring title is to confer to the purchasers’ indefeasibility of title on registration of the transfer. A “torrens” land transfer title is best evidence of legal ownership (because the Land

Transfer Act 1952 does not permit notice of trusts) but it is not absolute evidence of legal ownership.

23. I determine that legal and beneficial ownership passed and merged with settlement when possession changed and this was all clearly and unequivocally set down in clause 2 of the deed of sale.
24. For whatever reason registration of ownership on the title did not take place until March 2008, but that is not relevant for section 55 of the Act, because registration on the title does not alter "legal ownership", it simply records registered ownership. The sale and purchase transaction was not at arms-length; it was a family "transaction" and the risk that the purchasing trustees did not obtain indefeasibility of title was addressed in clause 4 of the deed of sale. However, as mentioned above, the declared purport and intent of clause 2 of the deed of sale was that ownership (both legal and beneficial) passed from Lucy Stanley as vendor and sole owner to Lucy Stanley and her co-trustee as purchasers on 13 August 2004 well before the transition date. So in fact Lucy Stanley's legal status did not change. She remained a legal owner and a registered owner (albeit jointly with a fellow trustee).
25. Lucy Stanley applied for the assessor's report in 2007 as she was entitled to do by virtue of clause 4.
26. The claimants (that is Lucy Stanley and her fellow trustee) have commenced a valid claim in this Tribunal as they were the legal owners when the claim commenced on 3 May 2007.
27. As mentioned above this Tribunal does have jurisdiction to hear the claim. The Act does not restrict "ownership" to

“registered proprietorship”. Section 55 of the Act is not designed to defeat the purpose of the Act where, as in this claim, Ms Lucy Stanley’s legal status does not change.

28. I conclude for the reasons set down above that a change in ownership of 62A Sunrise Avenue, Mairangi Bay occurred before “the transition date” and therefore the claim lodged is valid and does not infringe section 55(1) of the Act.
29. The legal estate in the concerned dwelling passed to the claimants on execution of the deed of sale, that is, 13 August 2004. Whilst the registered estate under the Land Transfer Act 1952 did not vest in the claimants until registration of the transfer instrument which did not occur until 18 March 2008, the effect solely of which was to deprive until that date the claimants indefeasibility of title in terms of the Land Transfer Act 1952. Whilst it is not terribly relevant to this decision, the indefeasibility of title benefit in respect of Lucy Stanley never altered because Lucy Stanley’s legal status as owner of the concerned dwelling did not alter when she transferred her sole ownership to herself and her co-trustee on 13 March 2004.

#### **Amended Timetable**

30. Removal applications have been received from the first, second, fourth and sixth respondents.
31. Submissions in opposition to removal applications have been received from the claimants, first, second and third respondents.
32. Counsel for the third respondent filed a memorandum on 11 June last sensibly stating that matters award this Tribunal’s



decision on the termination applications. Accordingly the Tribunal now amends the adjudication timetable as follows:

- i. Replies by applicants for removal are now ordered to be filed with the Tribunal and copied to all other parties by **4pm on Friday 9 July 2010**.
- ii. The Tribunal will try to decide on their papers, removal applications and thereby finalise the list of respondents the week of Monday 19 July 2010.
- iii. A case conference will be convened at **9.30am on Thursday 29 July 2010** to schedule the claimants to update their claim, if necessary, interim responses to the claim and a mediation date for late August or September 2010 (if agreed).

**DATED** this 23<sup>rd</sup> day of June 2010

  
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K D Kilgour  
Tribunal Member