



BELL GULLY

Property Update

DECEMBER 2007



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Welcome to the December 2007 edition of Bell Gully's Property publication

The lawmakers have been active of late when it comes to updating legislation and introducing new initiatives that will impact property and business sectors.

The Property Law Act 2007 was recently passed and will substantially reform the law on real and personal property. The Act comes into force on 1 January 2008, and in this edition we look at some of its key provisions.

There have been further changes to the Waste Minimisation Bill since it was first considered. Its new name – the Waste Minimisation and Resource Recovery Bill – reflects in part some of those changes. We look at what they are and what they may mean for business.

We are pleased to welcome some new members to the Bell Gully property team. Senior associate Josh McBride and solicitor Nick Goodger have moved from Bell Gully's litigation team to join the property team, providing invaluable specialist property litigation and dispute resolution advice. In this issue, they have written an article which examines the potential limitations of special conditions in sale and purchase agreements in light of a recent Court of Appeal decision.

We hope you find these articles of value and we look forward to receiving your feedback and suggestions for future editions. Please feel free to contact us, other members of the team listed in this update, or publication editor Nichola Flaherty at nichola.flaherty@bellgully.com.

Best regards

Tom Bennett, Jane Holland, Hugh Kettle and Andrew Petersen

Partners



Jane Holland
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“The Act replaces and repeals the Property Law Act 1952, bringing the law of property into the 21st century.”

NEW PROPERTY LAW ACT CREATES POSITIVE REFORMS

By Jane Holland

The Property Law Act 2007 will come into effect on 1 January 2008 and should help provide certainty in property dealings, facilitate the resolution of disputes and reduce litigation.

The Act replaces and repeals the Property Law Act 1952, bringing the law of property into the 21st century. Many ancient English statutes are finally repealed, with the restatement, reform and codification of the law relating to real and personal property.

So what will the changes mean in practice? We highlight some of the key provisions. More detail can be found in the reports of the Law Commission and the Justice Electoral Committee, which together provide a comprehensive explanation of the changes. The reports can be downloaded from the New Zealand Parliament website, click [here](#).

What's new?

SALE AND PURCHASE AGREEMENTS

- The vendor's right to cancel where the purchaser is in possession of the land is specifically provided for.
- There is a brand new provision introducing the right for a purchaser to claim the return of the deposit. This could arise, for example, where there is a defect in the property of which the purchaser is unaware. The vendor has no legal duty to disclose the information, and it is not a serious enough breach by the vendor to allow cancellation under the Contractual Remedies Act 1979. This provision entitles a purchaser to claim the return of the deposit where the court would not order specific performance of the agreement, and the purchaser is not entitled to cancel. This relief will be available for any contract coming into operation after 31 December 2007. The court also has the discretion to cancel the agreement or give the purchaser a lien over the land to secure payment. It will be interesting to see how this relief is applied by the courts.

ACCESS LOTS

The current position relating to access lots that are, or include a driveway, or proposed driveway, is untidy for subsequent owners when issues relating to maintenance and repair arise. The Act rectifies this by effectively bringing these access lots under the same regime of rights granted for vehicular rights of way.

MANDATORY PROVISIONS ON THE SERVICE OF CERTAIN TYPES OF NOTICES

The Act introduces a mandatory form and procedure for service of five specific notices, namely:

1. Vendor's notice to cancel agreement for sale and purchase and regain possession of the land.
2. Notice calling up a mortgage.
3. Notice of mortgagee's intention to exercise power for sale, enter into possession, or call in the mortgage under an acceleration clause.
4. Notice of the landlord's intention to cancel the lease for breach of covenant or condition.
5. Landlord's notice of refusal to grant a renewal or sale of the reversion

There is no mandatory procedure for all other notices.

“where the premises are destroyed or damaged by an insured risk, the landlord cannot require the tenant to meet the costs, or to indemnify the landlord against the costs, of making good any damage to the property”

LEASES

Short term lease

This is a new concept. A short term lease is an unregistered lease for a term of one year or less. It replaces the previous unregistered lease of a term of less than three years. Unless the new short term lease is a residential tenancy, it does not have to be in writing to be enforceable.

Distress

This antiquated right of the landlord to seize goods for rent arrears has been abolished.

Improved insurance protection for tenants

If the tenant damages the property, the landlord may repair the damage and recover the cost of the repairs from its insurer. Should that happen, the insurer can choose to exercise its subrogation rights, and recover the repair monies it has paid out to the landlord from the tenant. Alternatively, the landlord can often choose not to make any insurance claim and require the tenant to repair the damage.

The Act changes this so that where the premises are destroyed or damaged by an insured risk, the landlord cannot require the tenant to meet the costs, or to indemnify the landlord against the costs, of making good any damage to the property even if the destruction or damage is caused or contributed to by the negligence of the tenant or its agent. However, if the damage was caused by a deliberate or illegal act by the tenant or its agent, or their actions render the insurance monies irrecoverable, the landlord does not have to indemnify the tenant. In addition, where the tenant or its agent's negligence affects the landlord's ability to obtain or retain insurance on reasonable terms, the landlord is entitled to cancel the lease or recover the increased insurance costs from the tenant.

The parties can contract out of these insurance provisions in circumstances where they agree that the landlord will not insure against a certain risk. This would need to be expressly provided for in the lease. This provision will affect damage or destruction happening from 1 January 2008.

Cancellation not forfeiture

The Act updates the references to “forfeiture” of lease replacing it with “cancellation”. This provides consistency with the terminology in more recent statutes, such as the Contractual Remedies Act 1979. One of the significant changes to note is that where the tenant is in breach of the covenant to pay rent the landlord cannot cancel the lease until the appropriate notice in the form provided by the Act is served. In addition, if the names and addresses of any mortgagee, receiver or subtenant and the mortgagee or receiver of any subtenant are known to the landlord, the landlord must also serve notice on them, although failure to notify them does not invalidate the notice, but potentially extends out the period when relief from cancellation can be applied for.

Assignments are effective immediately

The Act codifies the present position, that even if an assignment occurs which is in breach of a covenant against assignment, that assignment is effective immediately. The assignee becomes automatically liable to pay the rent and observe the lease terms without the need for execution of further documents. However, this does not prevent the landlord from peaceably re-entering, cancelling the lease or making a claim for breach of the covenant to obtain consent to assignment. The prior tenant still remains liable for the payment of rent and observance of the tenant's covenants in the lease.

Sublease term

Where a sublease is created on or after 1 January 2008 for a term which is the same as, or longer than, the term of the superior lease, the Act reverses the present position providing

“The Act goes further than the previous law. Where a lease provides for the landlord’s consent, consent cannot be unreasonably withheld or delayed.”

that this will not operate as an assignment of the superior lease, unless a contrary intention appears. It will be interesting to see how a contrary intention is interpreted by the courts, so we would recommend express provisions continue to be contained in a lease where the term of the sublease being granted potentially extends beyond the term of the superior lease.

Landlord’s consent - no more delay

The Act goes further than the previous law. Where a lease provides for the landlord’s consent, consent cannot be unreasonably withheld or delayed. The parties can contract out of this in relation to certain matters (consent to alterations or signage, for instance), but for landlord’s consent to assign, sublet, mortgage, or change of use, unless there is an absolute prohibition against these events, the landlord cannot unreasonably withhold or delay consent.

The Act sets out the circumstances where consent will be deemed to be unreasonably withheld, but goes further as consent will be unreasonably withheld if it imposes on the tenant an unreasonable condition or precondition, or because the tenant is bankrupt, in receivership or liquidation. Damages may also be recovered from the landlord where the tenant/assignee/sub-lessee/mortgagee has suffered loss as a result of the landlord unreasonably withholding or delaying its consent. In many cases (particularly for retail leases) landlords will want to prohibit changes of use, so that these can be dealt with at the landlord’s discretion.



Marija Batistich
SENIOR ASSOCIATE

“The Supplementary Order Paper introduces much more achievable and quantifiable objectives, making it more palatable to business than the original Bill.”

NEW FOCUS ON WASTE RECOVERY: CHANGES AND WHAT THEY MAY MEAN

By Marija Batistich

Since we last reported on the Waste Minimisation (Solids) Bill in our April update, the Local Government and Environment Select Committee have introduced a Supplementary Order Paper (SOP). The SOP substantially amends the original Bill, renaming it the Waste Minimisation and Resource Recovery Bill to reflect its dual purposes of reducing waste and recycling resources. The SOP also introduces much more achievable and quantifiable objectives, making it more palatable to business than the original Bill.

The select committee has been hearing submissions on the original Bill over the last year, with its reporting date recently extended to 3 March 2008. The original Bill was criticised for being overly ambitious, excessively detailed and prescriptive, whilst the SOP has been received relatively warmly, if not cautiously, by most sectors. It contains the core elements of the original Bill in promoting waste minimisation and resource recovery, but improves their implementation. The original Bill's proposal for a Waste Minimisation Authority has been replaced with the Waste Advisory Board, with the sole purpose of advising the Minister for the Environment on waste minimisation or functions under the Bill.

Product lifecycles – who takes responsibility?

The Extended Producer Responsibility scheme (which sought to ensure that producers were responsible for a product throughout its lifecycle), has been replaced with a Product Stewardship Scheme. There is little difference in practice, the idea still being to develop a list of 'priority products' using specific criteria, e.g. a product that will cause significant environmental harm at the end of its life. Relevant stakeholders are then required to produce a scheme to manage the product's lifecycle. For non-priority products, voluntary product stewardship schemes can be developed. The scope for these schemes is so broad - such as expecting to result in reducing harm to the environment - that virtually any product could potentially qualify if it met the necessary criteria. While the New Zealand Packaging Council has indicated that voluntary rather than compulsory schemes are preferable, it is clear that the battle for allocating responsibility for product lifecycles is not over yet.

Waste levies and where that money will go

A key part that has survived the revised Bill is the waste levy. This is a levy on every tonne of waste which is sent for disposal, its intention being to deter wasteful behaviour and provide funding for the implementation of waste minimisation initiatives. The revised Bill sets the levy initially at \$10 per tonne, but this is to be increased over time. The NZ Business Council for Sustainable Development (NZBCSD) has indicated that it supports the proposed levy, suggesting that it be increased to up to \$30 per tonne over three years. The Secretary for the Environment (currently the Chief Executive Officer of the Ministry for the Environment) will administer the levy, with strict criteria for the use of the levy funds, including waste minimisation projects approved by the Minister for the Environment, and administrative costs. Territorial authorities will be paid a share of the levy (dependent on population) for their own waste management and minimisation activities. If they do not comply with strict criteria, the money may be withheld.

The levy's effectiveness is to be reviewed every five years. However overseas experience, particularly in the United Kingdom, has shown that an original waste levy comprising an active landfill tax of £7 per tonne in 1996 is now scheduled to increase to £32 per tonne in 2008, with an expected further increase of £8 per annum. The NZCSBD believes it is very important that the money collected from the levy is only spent on cost-effective projects and those that would not otherwise see the light of day in New Zealand. Given the restrictions on the use of the levy, and a breach of these resulting in the levy being withheld, the question arises as to how local government is expected to meet the cost of funding the other new obligations imposed by the Bill.

The costs of waste reduction

While the waste provisions of the Local Government Act 2002 will be moved to the new legislation, the administration and reporting requirements are more onerous. The proposed offences and penalties under the legislation remain - fines from \$10,000 to \$100,000 per offence, and up to six months in jail. An infringement offence regime is proposed via bylaws, however the Secretary for the Environment also has the power to appoint enforcement officers to ensure compliance with regulations made under the Bill. The implications and logistics of a dual enforcement regime via both central and local government will have wide ramifications, particularly if the Ministry is now proposing to set up some form of enforcement unit within its ranks. There is clearly also the future potential for these powers to extend to areas beyond waste.

The Bill also requires better public reporting of waste data with an emphasis on information gathering and increased audit reporting.

While ultimately the opportunities for addressing waste concerns are promoted in the proposed amendments to the Bill, the obligations on local government continue to increase with no guarantee of increased resources to help meet them. Businesses are increasingly recognising the need to become more responsible for the sustainable management of their operations, but it is still difficult to assess whether they are ready for the additional cost and administration that the Bill would bring, particularly if non-compliance leaves them vulnerable to the enforcement measures of both their local council and central government.

* The SOP is open for further submissions by original submitters only, with the select committee report due on 3 March 2008.



Josh McBride
SENIOR ASSOCIATE



Nick Goodger
SOLICITOR

PROPERTY MARKET PERILS: THE SPECIAL CONDITION TRAP

By Josh McBride and Nick Goodger

The New Zealand property market is not a forgiving environment. Countless tales of unwise investments by inexperienced speculators serve as a reminder to those contemplating entry into the market that there is no substitute for good legal advice when it comes to buying or selling property.

Unfortunately, some investors are still prepared to commit to new property ventures with little more than the reassurance of their local real estate agent, like one New Zealand couple who were recently dispossessed to the tune of approximately \$400,000.

William and Carol Fleming, Lawnmowers from East Auckland, entered into a contract to purchase a lifestyle block near Whangarei in Northland for the sum of \$860,000. The contract was in the usual ADLS form with a couple of special conditions attached, including one for the sole benefit of the Flemings which gave them the option of cancelling the agreement in the event that they were unable to sell their own property on terms and conditions acceptable to them by an agreed due date.

The Flemings were unable to sell their own property by the due date. However, they failed to list it with any real estate agent, failed to advertise on TradeMe and for most of the time did not even have a “for sale” sign posted on the front lawn. Following the Flemings’ purported cancellation of the agreement, the vendors eventually managed to sell the Northland property for a sum of \$770,000, and sued the Flemings for the difference.

The case went all the way to the Court of Appeal where the court held that, even though under the special condition the Flemings had a discretion to sell their own property on terms and conditions acceptable to them, they were bound by clause 8.7(2) of the standard form ADLS agreement to “do all things which may reasonably be necessary to enable the condition to be fulfilled”.

The Flemings had a discretion as to the terms and conditions of the sale of their own property therefore, how could the vendors prove any loss? Even if the Flemings had done all things reasonably necessary to sell their property, surely they could still have relied on the discretion afforded by the special condition and validly cancelled the agreement?

The court had two things to say about this:

1. The word “reasonably” must import an objective standard, and performance is to be measured by applying that standard to the facts. Anything less than an objective standard would allow a subjective assessment according to the values of the party whose conduct is at issue (and would necessarily convert the contract into an option to purchase). As such, it was sufficient for the vendors to prove that the Flemings had failed to do all things which may have been reasonably necessary to sell their property. The vendors did not have to go further and prove that the Flemings would have sold their property had they made all reasonable attempts to do so. The court was satisfied that no proof of a causal connection was necessary in order to prove an actionable breach.
2. The Flemings rejected two offers made on their property, and while the court noted that the exercise of this did not require consideration (as it was the vendor’s case that the Flemings failed to do all things which were reasonably necessary to enable entry into a sale agreement on acceptable terms), they did comment that in exercising this judgment, a purchaser is subject to a duty to act honestly and in good faith.

As a result, the Flemings were liable for the \$90,000 shortfall on the eventual sale of the vendor’s property, and penalty interest accruing on the entire sum of \$860,000 from the time of breach until the time of the eventual sale.

The case provides a reminder for those entering the property market that special conditions do not constitute a method of avoiding a sale and purchase agreement because a party gets

cold feet. Such conditions are strictly interpreted by courts, and abuse of these conditions can prove costly.

The case also offers a warning to more experienced commercial players. Although the express requirement that a party do all things reasonably necessary to enable the fulfilment of a condition is specific to the standard ADLS form, the courts have, in previous cases, implied such a term in sale and purchase agreements.

It appears that regardless of the width of discretion attached to the satisfaction of a condition, reasonable attempts must be made to ensure that it is satisfied. This is particularly relevant in relation to due diligence conditions that often allow the purchaser unfettered discretion to purchase property following a due diligence exercise. According to the decision in Fleming, unless the purchaser conducts a full due diligence exercise, effectively doing all things reasonably necessary to enable the condition to be fulfilled, they may just find themselves in a similar predicament to William and Carol Fleming.

WHAT'S NEW IN LEGISLATION?

UPDATES ON PREVIOUSLY NOTED LEGISLATION

Leaky building measures

The Weathertight Homes Resolution Services (Remedies) Amendment Act 2007 came into force on 29 August 2007. The Act amends the Weathertight Homes Resolution Services Act 2006 to make clear the remedies that may be claimed under that Act and ordered by the Weathertight Homes Tribunal in determining a claim adjudicated by it under that Act.

Land Transfer Amendment Regulations (No. 2) 2007

These amended regulations came into force on 8 October 2007. They amend the Land Transfer Regulations 2002 to support the expansion of instruments that may be lodged for registration electronically through Landonline e-dealing (such as withdrawal of caveat, discharge of charging order) and also to clarify and simplify the existing regulations.

Retirement Villages Act 2003

The Retirement Villages Act 2003 came fully into force on 1 May 2007, although the final deadlines for some of its compliance requirements are deferred until 2008. For more information, visit the Ministry of Housing website [here](#)

Building Amendment Regulations (No 2) 2007 (SR 2007/226)

These regulations, most of which come into force on 31 October 2007, amend the Building Code set out in Schedule 1 of the Building Regulations 1992 to increase the thermal resistance (insulation) performance requirements for housing. The objective of those requirements is to facilitate efficient use of energy. The new requirements are introduced in stages, and apply to the following climate zones on and after the following dates:

- 31 October 2007—climate zone 3 (the South Island, the Taupo and Ruapehu Districts, the northern part of the Rangitikei District, the Chatham Islands, Stewart Island, and other land territories, islands, and islets south of the 42nd parallel);
- 30 June 2008—climate zone 2 (land territories, islands, and islets within the internal waters of New Zealand but not in climate zone 3 or climate zone 1);
- 30 September 2008—climate zone 1 (specified Northland, Auckland, and Thames-Coromandel districts in the North Island, the Kermadec Group of Islands, and other land territories, islands, and islets north of the 42nd parallel).

Solar Water Heating Code

A comprehensive guide on solar water installations to be incorporated in the national Building Code is a step closer with the release of a second draft standard by the Department of Building and Housing, click [here](#) to view.

The proposed changes would lower power and gas bills and reduce the environmental impact of homes and workplaces. They are part of the Government's increased focus on improving energy efficiency and combating the effects of climate change.

From the Department of Housing and Building

A second Building Code Review discussion document was released in July 2007, with a review of the Building Code to be completed by 30 November 2007. Click [here](#) to view copy of the discussion document.

The Licensed Building Practitioner Scheme is one of a series of changes introduced by the Building Act 2004 to improve the quality of buildings in New Zealand.

Part 4 of the Act provides the legal framework for the establishment of a national licensing system for building designers, building site supervisors and some specialist tradespeople.

There will be 13 licence classes. On 1 November 2007, the following seven licence classes were introduced:

- Design, 1, 2 & 3
- Site, 1, 2 & 3
- Carpentry

From 2008 onwards the following specialist and trade licence classes will be introduced:

- External Plaster
- Roofing
- Bricklaying and Blocklaying
- Concrete Structure
- Steel Structure
- Building Services.

The trade and specialist licence classes apply across all three building categories. The three specialist licences will be:

- Concrete Structure
- Steel Structure
- Building Services.

The four trade licences will be:

- Carpentry
- External Plaster
- Roofing
- Bricklaying and Blocklaying.

A person licensed in the carpentry class will have a sound knowledge and practical experience of current building and trade practice; the legislation that relates to their work in the industry; the processes involved in planning, scheduling and carrying out carpentry work.

The standards for the other trade and specialist licence classes are currently being worked on, in consultation with relevant sectors of the industry. These licence classes will be introduced in late 2008. Further information can be obtained on the Department of Building and Housing website, click [here](#).

The Department of Building and Housing will be hosting a series of workshops around the country from 25 October to explain the application process for the Licensed Building Practitioner Scheme. These will run until the end of November.

The schedule of events is on the Department website. Further events are planned for the New Year, and the schedule will be updated with information on these as it is confirmed.

Building Amendment Bill 2007

The Building Amendment Bill 2007 contains some minor adjustments to improve the workability of the Building Act 2004, and to improve the clarity and effectiveness of the regulatory framework. This will encourage an efficient and fair provision of building and local government services for New Zealanders.

The Building Amendment Bill 2007 was introduced in Parliament on 18 July 2007 and is expected to be enacted before the end of 2007.

BCA accreditation: The extended deadline for councils to become accredited as building consent authorities (BCAs) is not in the Building Amendment Bill.

This topic has been addressed in the Building (Consent Authorities) Amendment Act 2007, which amends the Building Act 2004, by extending the date by which territorial and regional authorities have to be accredited and registered as building consent authorities, or by which they have to transfer their building consent functions to an accredited and registered building consent authority, from 30 November 2007 to 30 June 2008.

WHAT'S NEW IN THE COURTS?

UPDATES ON PREVIOUSLY NOTED COURT NEWS

No unit title subdivisions of sub-lessee interests

It has been just over a year since we reported on the NZPS³ case, where it was held that the framework of the Unit Titles Act 1972 does not contemplate subdivision of sublease interest in land nor does it allow unit titles to be created where the lease is a combination of a current lease and a future lease.

This decision has been upheld on appeal. The Court of Appeal, in its judgment of 31 August 2007, concluded that the courts are not well placed to embark on a modernisation process in this area, as that is a matter for policy makers and law reformers, noting that a review of the Act is underway and a variety of changes have been mooted. There is presently no draft legislation for consideration, as it is still being reviewed, but we will keep you advised on progress.

An apartment is a "piece of land" under the landlocked provisions of Property Law Act 1952

Under section 129B of the present Property Law Act 1952 (with equivalent provisions being introduced by sections 326 to 331 of the new Property Law Act 2007), the court has the discretion, on application, to grant reasonable access to a "piece of land" that is landlocked (defined as "landlocked land" under the 2007 Act, but the effect is the same).

The decision in *Druskovich*¹ is an intriguing one as it was held that an apartment above a pharmacy, let on a short term lease, was a "piece of land" within the meaning of section 129B. The only access to the apartment was by an external staircase at the back of the building to the rear courtyard (an internal staircase, which previously provided access, having been removed some years earlier). The right of way, while used by the occupiers of the apartment and the pharmacy, was for the benefit of another lot further on. The registered proprietor of the right of way began to build a fence that would block this right of way, which resulted in this matter coming to court.

The Court of Appeal granted relief, but limited it to the apartment (the pharmacy enjoyed another route of access from the front of its premises) and only until one year after expiry of the pharmacy lease to give the owners the opportunity to provide an alternative access from the main road in front. The court commented that they did not consider that the existence of a separate title in respect of a part of a building is a prerequisite to that part being regarded as a "piece of land". The apartment was a separate and identifiable area to which there would, as a matter of fact, be no access to if the fence were completed. As a practical matter, the apartment would be landlocked. The court therefore felt it was consistent with the remedial purposes of section 129B to treat the apartment as "a piece of land".

A fax header – does this constitute a signature to a contract?

In *Welsh*², while the plaintiffs did succeed in having the sale and purchase agreement enforced, the interesting aspect of this recent case was the extensive consideration of case law both in New Zealand, and in other jurisdictions, on electronic signatures. Here, a fax header printed using the fax machine's capacity to add writing to the document as it is copied and sent, in the absence of any evidence that it was specifically inserted for the transaction concerned, was held not to constitute a signature both under the Contracts Enforcement Act 1956 (the 1956 Act) and the Electronic Transactions Act 2002 (the 2002 Act).

Justice Miller, in considering the 1956 Act, commented that a typed or printed signature in an electronic writing may amount to a signature if, on the facts, it identifies the person charged, is made by that person, and evidences his or her intention to be bound by its contents. While in this case the printed name and fax number sufficiently identified the person sending the fax, on the facts, the necessary intention to be bound to the transaction was not established. Justice Miller reached the same conclusions in relation to the 2002 Act, in that it did not comply with the legal requirements for a signature contained in section 22(1)(a). He noted that an electronic signature will not prove adequate unless the court is satisfied that its insertion was intended to signify adoption of the electronic note or memorandum of which it forms part or with which it is otherwise associated.

¹ *B A Trustees Ltd v Druskovich* [2007] 3 NZLR 279

² *Welsh & Welsh v Gatchell* (Unreported, High Court, Blenheim, CIV 2005-406-279, 21 June 2007, Miller J)

³ *NZPS Investments Limited v The Registrar General of Land* (Unreported, Court of Appeal, 21 February 2007, CA 138/06)

In this case the fax header was not attached for the purpose of the transaction, all it proved was that the defendant had sent the fax – it was not a signature. As to how that intention can be evidenced, this will necessarily depend on what one party says it intended to do or not. In this case the vendor husband had passed away, with the action being taken against the widow, who was not actively involved in the initial negotiations between the parties. On the basis that there was no evidence that the defendant husband had inserted the fax header manually, Justice Miller was prepared to draw an inference that the fax header was programmed into the machine's memory some time previously, probably when it was first set up, and then attached automatically to all faxes – therefore the necessary intention was not established.

It would therefore be prudent, where a party wishes to rely on an electronic signature, to expressly warn the party to be charged that the writing is a contract that will bind the party when he/she attaches an electronic signature to it, and to specify what form of electronic signature is required.

USEFUL WEBSITES

New Zealand Government

- Department of Building and Housing
[\[www.dbh.govt.nz\]](http://www.dbh.govt.nz)
- Local Government online (for details of local councils and websites)
[\[www.localgovt.co.nz\]](http://www.localgovt.co.nz)
- Landonline
[\[www.landonline.govt.nz\]](http://www.landonline.govt.nz)
- Inland Revenue Department
[\[www.ird.govt.nz\]](http://www.ird.govt.nz)
- Ministry of Economic Development
[\[www.med.govt.nz\]](http://www.med.govt.nz)
- NZ Government
[\[www.govt.nz\]](http://www.govt.nz)
[\[www.beehive.govt.nz\]](http://www.beehive.govt.nz)
- Occupational Health and Safety, Department of Labour
[\[www.osh.govt.nz\]](http://www.osh.govt.nz)
- The Companies Office
[\[www.companies.govt.nz\]](http://www.companies.govt.nz)
- Overseas Investment Office
[\[www.oio.lin.govt.nz\]](http://www.oio.lin.govt.nz)
- Personal Property Securities Register
[\[www.ppsr.govt.nz\]](http://www.ppsr.govt.nz)
- [Standards New Zealand](http://www.standards.co.nz)
[\[www.standards.co.nz\]](http://www.standards.co.nz)

Australian commercial

- Green Building Council of Australia
[\[www.gbcaus.org\]](http://www.gbcaus.org)
- Property Council of Australia
[\[www.propertyoz.com.au\]](http://www.propertyoz.com.au)
- Real Estate Institute of Australia
[\[www.reiaustralia.com\]](http://www.reiaustralia.com)

New Zealand commercial

- BRANZ Limited
[\[www.branz.co.nz\]](http://www.branz.co.nz)
- Building Officials Institute of New Zealand Inc
[\[www.boinz.org.nz\]](http://www.boinz.org.nz)
- Construction Industry Council
[\[www.nzcic.co.nz\]](http://www.nzcic.co.nz)
- New Zealand Business Council for Sustainable Development
[\[www.nzbczd.org.nz\]](http://www.nzbczd.org.nz)
- New Zealand Green Building Council
[\[www.nzgbc.org.nz\]](http://www.nzgbc.org.nz)
- Institute of Professional Engineers
[\[www.ipenz.org.nz\]](http://www.ipenz.org.nz)
- Insurance Council of New Zealand
[\[www.icnz.org.nz\]](http://www.icnz.org.nz)
- New Zealand Fire Service
[\[www.fire.org.nz\]](http://www.fire.org.nz)
- New Zealand Institute of Management
[\[www.nzim.net.nz\]](http://www.nzim.net.nz)
- Property Council of New Zealand
[\[www.propertynz.co.nz\]](http://www.propertynz.co.nz)
- Property Institute of New Zealand
[\[www.property.org.nz\]](http://www.property.org.nz)
- QV Insider
[\[www.qvinsider.co.nz\]](http://www.qvinsider.co.nz)
- Real Estate Institute of New Zealand
[\[www.reinz.org.nz\]](http://www.reinz.org.nz)
- New Zealand Institute of Economic Research
[\[www.nzier.org.nz\]](http://www.nzier.org.nz)

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