



Supreme Court of New Zealand

15 June 2006

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

EASTERN SERVICE LIMITED V NO. 68 LIMITED
SC 64/2005 [2006] NZSC 42

PRESS SUMMARY

This summary is provided to assist in the understanding of the Court's judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at Judicial Decisions of Public Interest www.courtsofnz.govt.nz/from/decisions/judgments.

The Supreme Court has unanimously upheld the Court of Appeal's decision, finding that the appellant Eastern Services Limited is required to grant to the respondent No 68 Limited a registrable transfer of an easement over certain property in Auckland's central business district.

No 68 Limited's right to have Eastern Services grant the easement arose under a contract that was entered into in 1977. However, for reasons which are not fully known, No 68 never had the easement registered. More than 20 years later, No 68 brought proceedings in the High Court seeking an order for specific performance of the agreement to grant the easement. Eastern Services argued in response that No 68's claim was barred because it had delayed for too long, thus allowing Eastern to invoke the equitable defence of delay known as *laches*.

The Supreme Court has held that the *laches* defence is not available in this case. Eastern Services cannot demonstrate any actual prejudice that has arisen from No 68's delay. While it is possible that mere delay without any prejudice might suffice for the *laches* defence (a question that the Supreme Court has left open), the delay in this case must be balanced against other factors in No 68's favour. These include the fact that No 68 paid valuable consideration for the easement, helped to construct a vehicle access way over it, and is the equitable owner of the easement.

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