



Supreme Court

New South Wales

**Medium Neutral Citation:** Eliezer v The Owners - Strata Plan No 51682 and Ors [2017] NSWSC 581

**Hearing dates:** 9 May 2017

**Date of orders:** 09 May 2017

**Decision date:** 09 May 2017

**Jurisdiction:** Common Law

**Before:** Johnson J

**Decision:** 1. Applicant's Notice of Motion filed 3 May 2017 dismissed.  
2. Applicant to pay the Defendants' costs of the Notice of Motion.

**Catchwords:** PRACTICE AND PROCEDURE - application for stay of orders of single Judge pending appeal - Judge refused Applicant leave to file amended pleading and made associated orders - Applicant has filed Notice of Intention to Appeal only - no grounds of appeal identified - stay refused

**Legislation Cited:** [Civil Procedure Act 2005](#),  
[Uniform Civil Procedure Rules 2005](#).

**Cases Cited:** Eliezer v The Owners - Strata Plan No 51682 and Ors [\[2017\] NSWSC 278](#).

**Texts Cited:** ---

**Category:** Procedural and other rulings

**Parties:** Supriya Eliezer (Plaintiff)  
The Owners – Strata Plan No 51682 (First Defendant)  
Australian Property Managers Pty Ltd (Second Defendant)  
Peter Woodbury (Third Defendant)  
Frances Li (Fourth Defendant)  
Wanglang Yang (Fifth Defendant)  
Meimei Xie (Sixth Defendant)  
Zhisheng Duan (Seventh Defendant)

Wei Li Yu (Eighth Defendant)  
Xin Wang (Ninth Defendant)  
Ping Kwan Lo (Tenth Defendant)  
Leng Lin Leong (Eleventh Defendant)

**Representation:**

Solicitors:

Ms S Eliezer (Plaintiff in Person)  
Ms S Jadhav, Jemmeson & Fisher (Second Defendant,  
Third Defendant, Fourth Defendant)  
Mr F Krstic, Colin Biggers & Paisley (Fifth Defendant,  
Sixth Defendant)  
Mr D Lamb, Gilbert M Johnstone & Co (First Defendant,  
Seventh Defendant, Eighth Defendant, Tenth Defendant,  
Eleventh Defendant)  
Mr G Li, Jing Sun Lawyers (Ninth Defendant)

**File Number(s):**

2015/123687

**Publication restriction:**

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*Judgment*

1. **JOHNSON J:** Before the Court is a Notice of Motion in litigation, which has been described by Natalie Adams J as proceedings with “*a troubled history*”.
2. By Notice of Motion filed on 3 May 2017, the Applicant, Supriya Eliezer, seeks certain orders against the First Defendant, The Owners - Strata Plan No 51682 and 10 other nominated Defendants.
3. The application brought by Ms Eliezer today may be shortly described as an application to stay orders, and the effect of orders, made by Natalie Adams J on 22 March 2017.
4. The proceedings (and their background) are described in some detail in the judgment of Natalie Adams J of 22 March 2017: [\*Eliezer v The Owners - Strata Plan No 51682 and Ors\*](#) [2017] NSWSC 278. In that judgment, her Honour declined certain relief sought by Ms Eliezer, and made orders refusing Ms Eliezer leave to join her husband as a Second Plaintiff in the proceedings, refusing Ms Eliezer leave to file either an Amended Statement of Claim dated 11 August 2016 or an Amended Statement of Claim dated 29 September 2016, together with an order that Ms Eliezer pay the Defendants’ costs of the Motion.
5. The claim sought to be advanced by Ms Eliezer against the Defendants (all of whom are associated with a strata scheme at West Ryde) included allegations of malicious prosecution, collateral abuse of process and fraud. Her Honour did direct that, should Ms Eliezer wish to file any Further Amended Statement of Claim, she must do so by filing and serving a Notice of Motion seeking the Court’s leave on or before 3 May 2017 with any such Motion to be returnable before the Court on

17 May 2017. Her Honour directed, as well, that any application by the Defendants to have the proceedings summarily dismissed was to be by way of Notice of Motion returnable on 17 May 2017. Her Honour stood the proceedings over for further directions before the Common Law Registrar at 9.00 am on 17 May 2017.

6. By her Notice of Motion, Ms Eliezer seeks that the hearing date for further directions on 17 May 2017 be vacated and that orders made by Natalie Adams J on 22 March 2017 be stayed. She seeks an order that the proceedings be stayed and that the stay be continued until the hearing of what she described as the appeal to the Court of Appeal is concluded.
7. Ms Eliezer has relied on two affidavits sworn by herself on 2 and 8 May 2017 respectively for the purpose of this hearing. The affidavit of 2 May 2017 indicates that on 10 April 2017, Ms Eliezer filed a Notice of Intention to Appeal to the Court of Appeal against the orders and judgment of Natalie Adams J made on 22 March 2017. No Notice of Appeal has been filed by Ms Eliezer. The affidavits also reveal that the legal representatives for the Defendants have drawn to the attention of Ms Eliezer their opposition to the stay (which she seeks today), with it being emphasised that all that she has filed is a Notice of Intention to Appeal.
8. Written submissions provided by Ms Eliezer urge the granting of a stay. There are no articulated grounds of appeal proposed by Ms Eliezer, who has had the judgment of Natalie Adams J since 22 March 2017.
9. Rule 51.6 *Uniform Civil Procedures Rules 2005* provides for the filing of a Notice of Intention to Appeal. Rule 51.9(3) makes clear that the filing and service of a Notice of Intention to Appeal does not operate to commence proceedings in the Court. Nor does the filing of a Notice of Intention to Appeal give rise to a stay, or any entitlement to a stay.
10. A Notice of Intention to Appeal is a document of limited utility, which is used from time to time largely by persons who seek some opportunity to consider whether, in fact, they will bring an appeal against a decision.
11. Ms Eliezer has not moved beyond the bare filing of a Notice of Intention to Appeal, and a month has passed since that step was taken.
12. In a matter of practice and procedure such as this, it is likely that leave to appeal will be required from the Court of Appeal. However, I do not pause to further consider that aspect, because it is the fact there is simply no appeal on foot to the Court of Appeal at present.
13. The judgment of Natalie Adams J sets out the extensive history of this litigation involving a multitude of Defendants. A proper foundation must be demonstrated for a stay. There is simply no proper foundation identified for a stay in this case.

14. The Court should have regard, as well, to the requirements of s.56 Civil Procedure Act 2005 , and the overriding purpose to seek to achieve the just, cheap and quick resolution of the real issues in dispute in civil proceedings.
15. Ms Eliezer's proceedings have a lengthy history in this Court, and there is a real question as to whether there has been any compliance by her with the requirements of s.56.
16. The point has been reached where a Judge of this Court, after a hearing, has given a considered judgment on 22 March 2017 and, thereafter, has provided Ms Eliezer with another opportunity to file and serve a Motion together with any Further Amended Statement of Claim upon which she sought to rely. Ms Eliezer has not availed herself of that opportunity.
17. What lies ahead is a listing on 17 May 2017, when the Registrar may make such orders as appear appropriate with respect to the present state of this litigation.
18. I am not persuaded that any basis has been demonstrated for the making of any of the orders sought in Ms Eliezer's Notice of Motion filed on 3 May 2017. I dismiss that Notice of Motion.
19. I order Ms Eliezer to pay the costs of each of the Defendants with respect to this Notice of Motion.

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Decision last updated: 15 May 2017