

Wright v Tan 17/9/02, Paterson J, HC Auckland CP678-SD00

Application for declaration determining whether first defendants entitled to build on subdivided section - condition of original subdivision that included first defendants' property that building not to be permitted on site - condition included on title - defendants not made aware of effect of condition until they had completed purchase - first defendants' property had no legal frontage - only access by means of a right of way which they do not own - owners of adjoining property had transferred frontage strip - plaintiffs sought to establish that transfer of no effect in satisfying Council condition - meaning of condition.

Held, at the time the condition was imposed sections subdivided for sale were required to have road frontage - - conditions imposed to ensure that local authority ensured adequate practical access - council had simply intended to provide for eventualities and not to prevent section being built on - access strip constituted "fortage" within meaning of condition - vehicular access not required - declaration accordingly.