

Tram Lease Ltd v Croad 10/10/02, Salmon J, HC Auckland CL16/02

Application to resolve respective rights of parties - defendants lessees of shoe repair business - plaintiffs owned building housing defendants' business and adjoining property - plaintiffs sought to demolish party wall between premises - defendants sought to stop demolition and claim relief under Property Law Act - claim of proprietary estoppel - defendants occupied land under perpetually renewable lease - original lease granted lessors right to use wall - term removed from document by District Land Registrar - removal of wall could cause serious damage to property - whether defendants had been encouraged to believe that the wall and building could continue in its present form.

Held, no evidence produced contrary to plaintiff's contention that it had only learnt of wall's existence earlier in the year - plaintiff not in breach of implied promise not to interfere with defendants' right of possession - intention when shoe repair premises built that building would be able to use wall indefinitely - Court has jurisdiction to order relief because predecessor in title erected building which encroached upon adjoining site - original parties intended to be bound indefinitely and successive lessors and lessees of both sites accepted arrangement - relief granted to defendant.