IN THE MĀORI LAND COURT OF NEW ZEALAND
TĀKITIMU DISTRICT

A20130005544

UNDER	Sections 67 and 237, Te Ture Whenua Māori Act 1993
IN THE MATTER OF	PUKEPUKE TANGIORA ESTATE
BETWEEN	DAVID POHATU STONE & KARANEMA BARTLETT Applicants

Hearing: 31 July 2013

Counsel: Ms E Dawson for the Applicants

Date: 5 September 2013

RESERVED JUDGMENT OF JUDGE L R HARVEY

Solicitors: Bramwell Grossman, PO Box 500, Hastings 4156

Introduction

[1] The trustees of the Pukepuke Tangiora Estate seek directions from the Court concerning the process for the nomination and election of replacement trustees. Until the passing of the Mäori Purposes Act 2011 the authority to appoint trustees lay with the Governor General on the recommendation of the Minister of Mäori Affairs.[1] The 2011 legislation now empowers this Court to deal with, inter alia, trustee appointments.

[2] One of the trustees, Albert Horsfall, has passed away and now the remaining two trustees wish to devise a process of election whereby replacement trustees can be elected. In recent times the trust beneficiaries have considered a range of voting systems and now apply to the Court for endorsement of their preferred mode of election.

[3] The issue for determination is whether or not a weighted voting system based on shares allocated to the original nine beneficiaries is appropriate.

Background

[4] The testatrix Pukepuke Tangiora died in 1936 leaving a will and a substantial estate in land. Probate was granted by this Court on 8 December 1936. Since then by act of Parliament the will of Pukepuke Tangiora has been amended seven times. There have also been numerous court cases over the years concerning proposals to distribute the estate and sell land.

[5] Ms Tangiora left one son Te Akonga Mohi, who had nine children. Those nine children have a life interest in the estate. Counsel advises there is one surviving life tenant. The residual beneficiaries are the children of the life beneficiaries. The estate is of considerable value owning substantial land holdings within Hawkes Bay. I further understand that the net value of the estate exceeds $10 million.

[6] The application was originally received on 30 January 2013 but inexplicably was not responded to until 9 May 2013. In that reply Court staff advised that a judicial conference might be a more appropriate avenue for counsel and the trustees to discuss their voting proposals with the Court. As soon as I became away of the inordinate delay that had

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1 See the Mäori Purposes Act 1943 and amendments

occurred with this file I directed the case manager to liaise with counsel to arrange as hearing without delay and in due course this was done on 31 July 2013.

Submissions

[7] By memorandum dated 7 August 2013 counsel confirms that traditionally the trust had three trustees and the current incumbents are Albert Horsfall who is deceased, David Pohatu Stone and Karanema Bartlett. Mr Horsfall died in 2011 and as a consequence the remaining trustees, as foreshadowed, now seek directions from the Court as to process for appointment. In this context I note that neither the will nor associated legislation provides any useful guidance on the voting process. In any event, counsel confirms that voting methods were discussed at a whānau wānanga.

[8] The outcome of that discussion was that there was a preference by those present at the wānanga for a weighted voting system. This would need to be done by way of postal vote to ensure all beneficiaries had a reasonable opportunity to participate.

[9] As foreshadowed, until recently, the trustees to the estate had been appointed by the Minister of Māori Affairs. However that process has now changed and it is this Court that has the jurisdiction to appoint trustees per section 4(1) of the Māori Purposes Act 2011.

The Law

[10] Section 4(1) states:

> **4 Functions and jurisdiction of Maori Land Court relating to trustees and administration of estate**
> (1) The following matters are functions of the Maori Land Court:
> (a) the appointment and removal of the trustees of the estate; and
> (b) the fixing of payments from the estate for the trustees' fees and allowances.
> (2) The Maori Land Court has jurisdiction under Te Ture Whenua Maori Act 1993 to—
> (a) perform those functions; and
> (b) hear and decide any matter relating to the administration of the estate.
> (3) The trustees of the estate at the date of commencement of this Act are to be treated as if they had been appointed by the Maori Land Court.
> (4) This section applies despite any other enactment or anything in the will.

[11] In the context of systems of voting for Mäori land trusts, there are judgments of the Court of Appeal, the Māori Appellate Court and this Court that supports the following propositions:

(a) The Māori Assembled Owners Regulations 1995 do not apply to general meetings of owners called by trustees of a trust constituted under part 12 of the Act: *Clarke v Karaitiana*;[2]

(b) The Court should fashion its processes for elections and meetings of owners to ensure the widest possible participation of the owners and this may include the use of powers of attorney to ensure the views of those owners who cannot attend meetings are considered by the trustees;

(c) Unless the trust order provides specific references, voting by owners will not be binding on trustees: *Proprietors of Mangakino Incorporation v Hemi*;[3]

(d) Beneficial owners means those individuals who are recorded in the schedule of ownership held by the Court. Descendants of deceased owners are not entitled to speak at meetings of owners without the approval of the trustees who will usually put the matter to the meeting for consideration before making a decision: *re Parihaka X Trust*.[4]

(e) Advisory trustees provide advice to the responsible trustees but their presence cannot be counted toward the quorum and they cannot move or second resolutions at meetings of trustees.

[12] On the issue of voting by shares or show of hands in *Thomson v Newton – Pokuru 1A1B2 and 1A2D2* the Mäori Appellate Court stated:[5]

> Section 222 of Te Ture Whenua Mäori Act 1992 provides that the Court is appointing trustees, must be satisfied inter alia that the trustee/trustees to be appointed "would be broadly acceptable to the beneficiaries'. The meeting of beneficial owners was arranged by the court under the chairmanship of an officer of the Court. This was a meeting of beneficial owners not a meeting of assembled owners, summoned in terms of Part IX of the Act. It was sought merely to enable to owners to decide who should e nominated to the trust for appointment for the purposes of satisfying the provisions of section 222 of the Act. **Such meetings have no formal requirements as to quorum or voting and since a consensus only is sought, voting by a show of hands is appropriate.** Trustees are appointed in accordance with statute or the trust document. In this present instance the trust document is silent as to the matter of appointment of trustees and neither the Trust Act 1956 nor te Ture Whenua Maori Act 1994[sic] make any provision as to the manner or voting on these matters. **A vote by poll is not essential nor warranted and a consensus is more**

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2 [2011] NZAR 370
3 (1999) 73 Taupo MB 30 (73 TPO 30)
4 154 Aotea MB 45 (154 AOT 45)
5 (1997) 19 Waikato Maniapoto Appellate MB 66 (19 APWM 66)

> **appropriate and better meets the provisions of section 17 (2)(c) of the Act, whereby a balance is achieved between major and minor owners.**
>
> (Emphasis added)

[13] A counterpoint is s215(5) of the Act which states that the land and assets of a trust shall be held for the beneficial owners by the trustees in "proportion to their several interests" in the land. The short point is that either way meetings of owners voting by shares or by show of hands do not bind the Court or the trustees except where the trust order makes explicit provision for this. The Court, like the trustees, will take into account a range of relevant considerations before making a decision including the views of the owners.

[14] It will also be remembered that the Court of Appeal has recently confirmed in its judgment *Clarke v Karaitiana* that this Court must fashion its processes to ensure the widest possible opportunity is accorded the beneficiaries to ensure a high level of participation in any election process.[6] That Court stated:[7]

> [53] It will be plain from these observations that the discretion of the Court is not broad and unfettered. Of course, the Court may take into account such other matters as it thinks fit but the exercise of its discretion will be primarily guided by s 222(2). *The importance ordinarily attaching to the views of the owners highlights the need to design meeting procedures which are likely to secure the widest possible input from the owners.* Given the inconvenience of travelling long distances to attend meetings, and the number of beneficiaries involved in a trust such as this, the use of voting under powers of attorney may well be desirable.
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> (Emphasis added)

Discussion

[15] Counsel submits that a proposed system of voting would have 900 votes being 100 votes per family of the nine grandchildren of the testatrix. The 100 votes would then be split between those entitled to income in the same proportion as to the allocation of income. In practical terms this means that the parity value of each of the nine original beneficiaries is maintained. By way of contrast if the proposal were to follow a one beneficiary one vote regime then this would result in a dilution of the interests of the nine beneficiaries and their

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6 [2011] NZCA 154
7 Ibid

successors. Moreover, I note that the beneficiaries themselves have endorsed the present proposal for a weighted voting system for their trust. In the absence of meritorious objection I see no reason why the present application for directions should not be granted.

[16] Having considered the matter carefully, taking into account the relevant background to this estate, I am satisfied that counsel's proposal is both sensible and practical in the circumstances. I confirm that the weighted voting system proposed by counsel in accordance with the wishes of the beneficiaries and the trustees is approved.

Decision

[17] The trustees' application for a weighted voting system based on share allocations to the original nine beneficiaries is approved.

[18] Leave is reserved for any affected party to apply for directions at any time.

Pronounced in open Court at am/pm in

On this day of 2013

L R Harvey
JUDGE