IN THE MĀORI LAND COURT OF NEW ZEALAND
WAIKATO MANIAPOTO DISTRICT

A20130007185 and
A20130007190

UNDER	Section 79, Te Ture Whenua Māori Act 1993
BETWEEN	PETER RAYMOND GEORGE STOCKMAN AND DARREN RONALD STOCKMAN Applicants
AND	RAMONA CECILIA LEE, CONRAD ANARU AND KELVIN MARSHALL AS TRUSTEES OF THE GEORGE STOCKMAN FAMILY TRUST Respondents

Hearing: 22 January 2014 (71 Waikato Maniapoto MB 84-97)
26 August 2014 (86 Waikato Maniapoto MB 86-97)
21 November 2014 (90 Waikato Maniapoto MB 212-217)
26 May 2015 (98 Waikato Maniapoto MB 169-174)
22 June 2015 (99 Waikato Maniapoto MB 220-223 - Teleconference)
29 June 2015 (100 Waikato Maniapoto MB 78-82 - Teleconference)
9 October 2015 (108 Waikato Maniapoto MB 24-28 - Teleconference)
(All heard at Hamilton)

10 February 2016 (115 Waikato Maniapoto MB 218-224 - Teleconference)
(Heard at Tauranga)

Appearances: Mrs R P Mullins, Counsel for the applicants
Mrs R Lee, on behalf of the George Stockman Family Trust

Judgment: 06 April 2016

RESERVED JUDGMENT OF JUDGE S R CLARK

Copies to:

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Introduction

[1] The George Stockman Family Trust is a private family trust which was created on 2 April 1980. Thomas George Stockman's daughter, Ramona Lee has been a trustee of the trust since its formation. The sole asset of the trust are shares in the Mangapapa B2 Block Incorporation.

[2] Issues have arisen recently concerning the operation of the trust. In general terms there has been dissatisfaction about representation and allegations made concerning the administration of the trust.

[3] Proceedings were filed by the applicants in August 2013. They sought:

a) The termination of the trust pursuant to s 241 of Te Ture Whenua Māori Act 1993 ("the Act");

b) That the trust be replaced by a new whānau trust created under s 214 of the Act.

[4] This matter was called in Court on numerous occasions. I do not propose to traverse the history of those appearances. Suffice to say there was a great deal of encouragement from the Court for the parties to meet and resolve their differences amongst themselves. To that end the Court spent time attempting to understand the issues and also directed that hui be facilitated by Māori Land Court staff.

[5] No fewer than four hui were facilitated by Māori Land Court staff on: 15 March 2014; 14 June 2014; 21 June 2014; and 19 July 2014. Unfortunately, although the parties were close, no enduring settlement was reached.

[6] In recent times the applicants have attempted to persuade the respondents to proceed formally to mediation. The respondents have not agreed to that course of action.

[7] Counsel for the applicants indicated during a telephone conference on 9 October 2015 that her instructions were to discontinue the proceedings once the question of costs had been sorted between the parties.[1]

[8] At the most recent telephone conference on 10 February 2016, counsel for the applicants indicated that the parties had been unable to reach agreement concerning costs. Counsel filed a notice of discontinuance on 5 April 2016. All parties accept that the proceedings are now at an end subject to the question of costs.

The applicants' position

[9] Counsel for the applicants filed a memorandum dated 24 February 2016. The applicants resist any award of costs. They say that the respondents' approach has been unreasonable throughout, that they have been unwilling to compromise and work towards a fair resolution. Furthermore that agreements reached in principle at Court facilitated hui were later reneged on and the respondents have been unwilling to resolve matters by way of mediation.

[10] The applicants say that they were unwilling to file proceedings in the first place but were left with little option given the respondents' unwillingness to engage and compromise. The applicants submit that the issuing of proceedings was necessary to force the respondents' hand and progress matters.

[11] Finally the applicants submit that the decision to bring an end to the proceedings was done as a gesture of goodwill and in an effort to bring to an end the dispute involving the wider whānau.

The respondents' position

[12] Notwithstanding the fact that her counsel was granted leave to withdraw on 12 December 2015, on 10 February 2016 Ramona Lee filed a memorandum signed by her then counsel dated 12 December 2015. In it counsel references Schedule 4, Scale B of the

[1] 108 Waikato Maniapoto MB 27 (108 WMN 27).

District Court Costs Scale and the applicable daily recovery rate. That memorandum seems to suggest that by applying the scale, the respondents are entitled to $6,853.00.

[13] Attached to the memorandum are two tax invoices from Foster Milroy, Lawyers. The first is dated 22 January 2014 and is addressed to Ramona Lee on behalf of the George Stockman Family Trust. The total amount of that invoice including GST and disbursements is $1,480.00. A second invoice dated 9 October 2015 is addressed to Ramona Lee on behalf of the George Stockman Family Trust. It totals $1,790.00 including GST and disbursements. In total Foster Milroy have invoiced the respondents the sum of $3,270.00.

[14] In a letter dated 9 February 2016, Ramona Lee on behalf of the George Stockman Family Trust seeks "full payment of legal costs of $3,000.00." She says that the trust has been subjected to Court proceedings without cause, there has been no misappropriation of money, unnecessary meetings have been caused by these proceedings and that she and other trustees have been personally defamed.

[15] Further complicating the matter is the fact that Ramona Lee filed a letter dated 1 March 2016 with the Court in which she refers to payments that have been made to Foster Milroy. The dates given in the letter do not necessarily marry with the dates of the invoices. However she reiterates the position of the trust which is that they were in Court without cause and that their costs should be met by the applicants.

Legal principles

[16] Section 79(1) of the Act is relevant. It reads as follows:

> **79 Orders as to costs**
>
> (1) In any proceedings, the court may make such order as it thinks just as to the payment of the costs of those proceedings, or of any proceedings or matters incidental or preliminary to them, by or to any person who is or was a party to those proceedings or to whom leave has been granted by the court to be heard.
>
> …

[17] The leading authorities are *Nicholls v Nicholls – Part Papaaroha 6B Block*,[2] *Riddiford v Te Whaiti*,[3] *Manuirirangi v Paraninihi ki Waitotara Incorporation*,[4] *De Loree v Mokomoko – Hiwarau C*[5] and *Samuels v Matauri X Incorporation*.[6]

[18] Those authorities confirm that the Court has a broad jurisdiction to grant costs in any proceedings. In the determination of costs there is a two-stage approach required, the first question being should costs be awarded? If the answer is yes, then the Court moves to consider the quantum. Costs will normally follow the event and a successful party should be awarded a reasonable contribution to the costs that were actually and reasonably incurred.

[19] The Māori Land Court has jurisdiction to award costs following the withdrawal and dismissal of applications, examples of that are *Ngamoki-Cameron – The Proprietors of Mangaroa & Other Blocks Inc*,[7] *Smith v The Proprietors of Mangaroa & Other Blocks Ltd*,[8] *Big Hill Station Ltd v Hemana-Awarua o Hinemanu Trust*.[9]

[20] There is specific provision in the High Court Rules which responds to a situation where a plaintiff discontinues proceedings. That rule reads as follows:

> **15.23 Costs**
>
> Unless the defendant otherwise agrees or the court otherwise orders, a plaintiff who discontinues a proceeding against a defendant must pay costs to the defendant of and incidental to the proceeding up to and including the discontinuance.

[21] The Court of Appeal authorities of *Kroma Colour Prints Ltd v Tridonicatco NZ Ltd*[10] and *Earthquake Commission v Whiting & Ors and IAG*[11] confirm the following principles:

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[2] [2011] Māori Appellate Court MB 64 (2011 APPEAL 64).
[3] (2001) 13 Takitimu Appellate MB 184 (13 ACTK 184).
[4] (2002) 15 Whanganui Appellate MB 64 (15 WGAP 64).
[5] (2008) 11 Waiariki Appellate MB 249 (11 AP 249).
[6] (2009) 7 Taitokerau Appellate MB 216 (7 APWH 216).
[7] (2015) 119 Waiariki MB 225 (119 WAR 225).
[8] (2015) 113 Waiariki MB 1 (113 WAR 1).
[9] (2015) 43 Takitimu MB 218 (43 TKT 218).
[10] [2008] NZCA 150.
[11] [2015] NZCA 144.

a) Costs follow the event when a notice of discontinuance is filed unless an agreement has been reached or the Court orders otherwise;

b) The Court has a discretion to award costs to a plaintiff in whole or part. This reflects the general rule that all matters relating to costs are at the discretion of the Court. The discretion is not unfettered, but qualified by specific cost rules;

c) The Courts have been persuaded to exercise that discretion when the defendant's acts or omissions have caused the litigation and then rendered it unnecessary or an intervening governmental or third party decision has rendered the proceeding redundant;

d) The Court will not undertake a review of the merits of the plaintiff's claim unless they are immediately apparent. To undertake a disputed merits review would result in a trial which is contrary to the object of the rule.

[22] I adopt the principles discussed above.

Discussion

[23] Although this is a case which involves a dispute concerning a family trust the stance adopted by both parties throughout has been reasonably orthodox. For the majority of the proceedings both parties were represented by counsel. As counsel for the applicants accepted in her memorandum, the proceedings were conducted in a relatively formal manner akin to civil litigation. Thus I consider it would be hard to displace the principle that costs should follow the event.

[24] Counsel for the applicants makes a general submission that the respondents' approach prior to and throughout the Court process has been unreasonable and they have been unwilling to compromise and work towards a resolution. Specific complaints made are:

a) At Court facilitated hui the parties reached an agreed position only for those steps to be reneged upon by the respondents prior to the matter returning to Court;

b) The applicants suggested mediation. The respondents would only agree to mediation if the applicants withdrew the proceedings. On the question of costs the respondents would not agree to allow costs to lie where they fall;

c) The applicants did not wish to bring the proceedings in the first place. Due to an unwillingness on the part of the respondents to act co-operatively the issuing of proceedings was necessary to force the hand of the respondents;

d) Finally the applicants submit that they have withdrawn the proceedings in an attempt to preserve whānau relationships.

[25] I have reviewed the Court minutes and the material, such as it is, which is before the Court. It is trite to say it is unfortunate to see the Stockman whānau embroiled in litigation and then failing to reach resolution of their differences.

[26] Having said that, I am not persuaded on the basis of what is before me that it was unreasonable for the respondents to defend the proceedings in the manner in which they did. Notwithstanding the fact that there were Court facilitated hui I do not consider it inherently unreasonable in failing to agree to the terms suggested by the applicants. Nor can it be said to be unreasonable if the respondents did not agree to mediation. They were entitled to litigate the matter in a traditional fashion. They are not obliged to agree to mediate and were entitled to insist that even if they did so, they would not agree to costs lying where they fell. Whilst I agree that the stance adopted throughout by the respondents was robust, I do not agree with the suggestion by the applicants that it was inherently unreasonable. After all, the respondents did not initiate the proceedings and when faced with those proceedings they were entitled to defend them in the manner in which they did.

[27] Nor am I persuaded that the merits of the case were so obvious that I should exercise a discretion in favour of the applicants. Indeed we were far from ever getting to a consideration of the merits and I am not prepared to effectively consider the merits on a

cost application. In summary this is not a case in which it is so obvious that the respondents' acts or omissions have caused the litigation and then rendered it unnecessary.

[28] Therefore I reach the position that an award of costs in favour of the respondents is appropriate.

Quantum

[29] Although the material put before the Court by Ramona Lee is muddled and internally inconsistent I consider the best evidence of the costs the George Stockman Family Trust incurred are copies of the two invoices sent to her by Foster Milroy. They total $3,270.00 including GST and disbursements.

[30] In setting the quantum I remind myself that the approach of this Court is to award a reasonable contribution to the costs that were actually and reasonably incurred.

[31] In the circumstances of this case I consider that an award of 50 percent of the costs actually and reasonably incurred is appropriate.

Decision

[32] Pursuant to s 79 of Te Ture Whenua Māori Act 1993 the applicants are to pay the sum of $1,635.00.

[33] Applications A20130007185 and A20130007190 are dismissed.

Pronounced in open Court at 8.45 am in Hamilton on the 6th day of April 2016.

S R Clark
JUDGE