

**I TE KOOTI WHENUA MĀORI O AOTEAROA
I TE ROHE O TE WAIPOUNAMU**

*In the Māori Land Court of New Zealand
Te Waipounamu District*

A20220003482

A20170007433

WĀHANGA
Under

Sections 19 and 244, Te Ture Whenua Māori Act
1993

MŌ TE TAKE
In the matter of

Edgecombe Block X Section 12B

I WAENGA I A
Between

DUDLEY JOHN DOBSON
Te Kaitono
Applicant

Nohoanga: 7 March 2022, 75 Te Waipounamu MB 201-210
Hearing (Heard at Wellington via AVL)

Whakataunga: 16 March 2022
Judgment date

TE WHAKATAUNGA Ā KAIWHAKAWĀ S F REEVES
Judgment of Judge S F Reeves

Hei kōrero tīmatanga

Introduction

[1] Dudley John Dobson, a beneficiary of the Tame Anini Patete Whānau Trust (“the Whānau Trust”) applies under s 19 of Te Ture Whenua Māori Act 1993 (“the Act”) for an injunction to halt construction of an unauthorised structure on Edgecombe Block X Section 12B, Bakers Bay, Endeavour Inlet, Queen Charlotte Sound (“the block”) by Michael Patete who is a beneficiary and trustee of the Whānau Trust.

[2] The issue is whether I should grant the order and if so, on what terms.

Kōrero whānui

Background

[3] The block is Māori freehold land comprising approximately 77.52 hectares. The Whānau Trust is the sole owner of the block holding 191.55625 shares.

[4] The Whānau Trust was established in 1998¹ and currently has three trustees, Tracey Anne Patete, Margaret Patete, and Michael Patete appointed in 2016.² Since at least 2017, the Whānau Trust has been unable to meet its obligations to hold a general meeting and appoint enough trustees to comply with its quorum requirements of four trustees.³

[5] In 2017, trustee Margaret Patete filed an application to vary the quorum requirements for trustees meetings or alternatively, to reduce the number of trustees required from four to three.⁴ The application was heard at Wellington before Judge Doogan on 23 March 2018.⁵ At the conclusion of the hearing Judge Doogan made the following order and directions:

Pursuant to section 244 of Te Ture Whenua Māori Act 1993, the Court makes an order varying the terms of the trust by amending clause 12 as follows:

“... For the period April 2018 to 30 April 2019, no trustee meeting shall be deemed to be constituted until at least three (3) trustees are present. From 1 May 2019 or until further order of the Court, no trustee meeting shall be deemed to be constituted unless at least four (4) trustees are present.”

[...]

¹ 86 Waikato MB 57-62 (86 W 57-62).

² 359 Aotea MB 285-289 (359 AOT 285-289).

³ The Trust order, cl 12.

⁴ A20170007433.

⁵ 383 Aotea MB 149-156 (383 AOT 149-156) at 156.

The application is adjourned pursuant to rule 6.9(1)(c) of the Māori Land Court Rules 2011. The application is to be set down for hearing upon the case manager receiving the AGM minutes and upon the Court being notified in Chambers of such receipt.

The Principal Liaison Officer is directed to organise and facilitate an Annual General Meeting of the beneficiaries. The purpose of the meeting is to include, but not limited to, discussion on the following:

- The number of trustees
- The role of trustees
- The quorum requirements; and
- The possible amending to terms of trust to allow trustees to attend meetings by way of electronic means.

Leave is reserved for parties to seek further directions if required.

[6] At the conclusion of the hearing Judge Doogan also noted that until the ongoing issues of quorum and number of trustees were resolved that it would be prudent for the Whānau Trust not to enter into any major new undertaking or commitment.⁶

[7] An annual general meeting of the beneficiaries has not taken place since the Court issued directions in 2018 and the issue of trustee quorum remains outstanding. Neither have any of the parties sought further directions of the Court.

[8] The application dated 28 February 2022 alleges that Michael Patete has commenced building a structure on the block without notice or authority. The application is for an injunction to halt the building works until the Whānau Trust has resolved the trustee quorum issue.

[9] Once the quorum issue is resolved, the applicant says the trustees could then finalise a leasing policy for the block that has been on-hold for some time and make a decision about Michael Patete's wish to build on the block. The applicant also says Mr Patete's actions are in conflict with his duties as a trustee to act in the best interests of all beneficiaries.

[10] The application was supported by a statutory declaration of Paris Gleeson dated 5 March 2022 giving details of the building activity seen by him on a visit to the block in December 2021. Mr Gleeson's declaration states:

⁶ 383 Aotea MB 149-156, above n 5, at 154.

On 17/12/21 I arrived at Bakers Bay and located the building site. I observed 4 piles concreted into the ground and another stack of piles and concrete covered by a tarpaulin. I noted the location of the build to be on a slip to the southern side of the existing bach. I took photos of the building site and building materials.

[11] All parties were notified of the hearing held on 7 March 2022 by AVL. At the hearing I heard from the applicant, trustees Tracey Patete and Margaret Patete, and beneficiaries Sue Gleeson and Paris Gleeson. There was no appearance of Michael Patete. At the conclusion of the hearing I adjourned for a decision to be issued as soon as possible.

[12] On 8 March 2022, Michael Patete contacted the Court advising he did not receive notice of the hearing and providing a written submission. I directed that his submission be provided to the applicant and the other trustees for any further comment by 10 March 2022. Submissions in response have now been received from all those parties.

Ngā tuku kōrero
Submissions

[13] The applicant submits that the building work was commenced without notice and is unauthorised by the trustees who are the legal owners of the block. It is submitted Michael Patete has knowingly acted without authority and in conflict with his duties as a trustee. The applicant says Mr Patete is aware of the need to resolve trustee quorum so the trustees can make decisions including the trust leasing policy. Mr Patete's decision to build will lead to further conflict and mistrust among the beneficiaries.

[14] Tracey Patete is the chair of the trustees. She supports an injunction and advises that the trustees were not advised of the building works, nor was their agreement sought. The trustees have a duty to look after all beneficiaries which is why the leasing policy must first be finalised. In order to do this, the issue of trustee quorum has first to be resolved. She says there are unanswered questions regarding building consent, the rates implications and ownership of the building. These are matters that are required to be covered in a leasing policy.

[15] Margaret Patete is a trustee and also supports an injunction to maintain the status quo until a leasing policy for Baker Bay and the trustee quorum issue raised in the previous application to the Court are resolved.

[16] Sue Gleeson and Paris Gleeson also spoke in support of the injunction. Paris Gleeson provided the statutory declaration filed in support of the application.

[17] In his written submission dated 8 March 2022, Michael Patete does not deny that he has started building on the block nor does he assert that he has the trustees consent. The reason he gives for building is that the leasing policy for Bakers Bay was first tabled in 2007, and 15 years later still has not been finalised. He is frustrated by the impasse and alleges that the policy's progress has been frustrated by conflict with the trust.

[18] Mr Patete wishes to build a small kaumatua flat of approximately 20m² on the block, away from the main hut, not visible from the current bach at the bay. He wants to lease 20m² and pay the Whānau Trust for occupying the land. He says he has spent 15 years trying to get the leasing policy through but that whānau are unable or unwilling to make a decision. He says that if he doesn't build now then soon he won't be physically able to.

[19] In support of his submission, Mr Patete provided a document summarising the history of the leasing policy and also a report from 2017 giving details of beneficiaries who've visited the bay and a tree safety issue.

[20] The submissions that were filed in reply do not disagree with Mr Patete's comments about the delay in finalising a leasing policy. But it is submitted that he is wrong to commence building without notice or consent and in breach of his duty to all beneficiaries, and that the trustee quorum issue needs first to be resolved so that the trustees are able to make decisions about utilisation of the block.

Te Ture

The law

[21] The relevant parts of s 19 of the Act state:

19 Jurisdiction in respect of injunctions

- (1) The court, on application made by any person interested or by the Registrar of the court, or of its own motion, may at any time issue an order by way of injunction—
 - (a) against any person in respect of any actual or threatened trespass or other injury to any Maori land or Maori reservation; or

- (b) prohibiting any person, where proceedings are pending before the court or the Chief Judge, from dealing with or doing any injury to any property that is the subject matter of the proceedings or that may be affected by any order that may be made in the proceedings; or
- (ba) requiring any person to—
 - (i) remove any structure or object from any Maori land or Maori reservation; or
 - (ii) reinstate any structure or object that has been removed from any Maori land or Maori reservation; or
 - (iii) restore any Maori land or Maori reservation to the condition it was in before it was modified by any infrastructure work, earthwork, or other means; or
 - (iv) remedy any damage done to any Maori land or Maori reservation;

[22] Although the application does not specify, I am satisfied from the submissions made at the hearing that an interim injunction is sought.

[23] The principles concerning a grant of an interim injunction are well established. An applicant must show there is a serious question to be tried, that the balance of convenience favours them, and that it is in the interests of justice that an interim injunction be granted.⁷

[24] The decision in *Roseneath Holdings Ltd v Grieve* set out the purpose of an interim injunction to protect the applicant from harm as a result of any breach of rights that are the subject of current proceedings, for which damages are not adequate compensation.⁸

[25] The Court has specific jurisdiction to issue an injunction to prohibit anyone from interfering with land that is the subject of pending or actual court proceedings.⁹

Kupu Whakatau

The decision

[26] The application does not state which sub-section of s 19 of the Act the proceedings have been brought under. At the hearing I discussed the application for variation that is still

⁷ *Lomax v Apatu – Awarua o Hinemanu Trust* (2013) 22 Takitimu MB 282 (22 TKT 282).

⁸ *Roseneath Holdings Ltd v Grieve* [2004] 2 NZLR 168.

⁹ Te Ture Whenua Māori Act 1993, s 19(1)(b).

before the Court with the parties present. I am satisfied I should exercise my jurisdiction under s 37(3) of the Act to make clear that the application is proceeding per s 19(1)(b) of the Act.

[27] It is regrettable that the variation application has not progressed following the hearing held by Judge Doogan in 2018. It is clear that ensuring the trustees' have power to make decisions with a proper quorum is a first step that must be taken before trustees can make decisions concerning leasing and occupation of the block at Baker Bay.

[28] I'm satisfied that Mr Patete would or should have known when he decided to build on the block, that his actions were unauthorised, and he did not have the consent of the trustees who are the legal owners of the block. Further, that his actions were in conflict with his own duties as a trustee and were likely to pre-empt trustees decisions concerning leasing and occupation policy to the potential detriment of other beneficiaries.

[29] I should also add that Mr Patete could always apply to the Court for an occupation order per s 328 of the Act, as the Act has now been amended to allow occupation orders to be made in favour of beneficiaries of a whānau trust. But that also requires the consent of the trustees and a sufficient level of support among the other beneficiaries.

[30] The outstanding directions of the Court in relation to the s 244 application should not have been allowed to remain unresolved for as long as it has. Judge Doogan's direction to hold an AGM must now be progressed as soon as possible. **There is a further direction that Aotea court staff are to facilitate and organise the AGM of beneficiaries to be held within 3 months of this decision (by AVL if necessary, because of the on-going COVID-19 situation).**

[31] I am satisfied that there is a serious issue to be tried and the balance of convenience favours the applicant. The application for an interim injunction is granted and Michael Patete is ordered to cease all building activity on the block. The injunction also applies to any of Mr Patete's invitees or delegates. For the avoidance of doubt, the injunction is to remain in place until Mr Patete has received consent or permission to build on the block from the trustees by way of licence, lease, or similar.

The foregoing order is to issue immediately pursuant to rule 7.5(2)(b) of the Māori Land Court Rules 2011.

I whakapuaki i te haurua mai i te kotahi karaka i Pōneke, o te rā tekau mā ono o Poutū-te-rangi te tau 2022.

S F Reeves
JUDGE