

**IN THE MĀORI LAND COURT OF NEW ZEALAND
TAKITIMU DISTRICT**

A20130006007

UNDER Sections 220, 222, 231 and 239 of Te Ture
Whenua Māori Act 1993

IN THE MATTER OF Te Haroto 2B2B Trust

BETWEEN GEORGE TE OTINGA SULLIVAN
Applicant

AND BARBARA SULLIVAN-TEEPA, JOYCE
EPARAIMA AND IVY SMITH
Respondents

Hearings: 26 Tākitimu MB 32-36 dated 1 August 2013
30 Tākitimu MB 272-287 dated 7 February 2014

Appearances: George Sullivan, Henare Rātima and Ivy Kahukiwa-Smith, in person

Judgment: 15 April 2014

RESERVED JUDGMENT OF JUDGE L R HARVEY

Introduction

[1] George Sullivan, an owner in Te Haroto 2B2B Trust, has applied for a review. Following several preliminary appearances it emerged that a meeting of owners had not been held for some time and that several trustees were deceased. A meeting of owners was convened on 12 December 2013 to discuss, amongst other things, the election of replacement trustees.

[2] The meeting was notified in a local newspaper on two occasions and 400 individual notices were issued on 15 November 2013. Twelve notices were marked returned to sender. The current trustees were sent individual notice but only one trustee, Ivy Smith, attended the meeting. Despite the extensive notification turn-out was poor with only 12 persons named as owners participating in the hui. The meeting was advised that on 3 July 2013 the number of trustees was reduced for various reasons leaving three remaining trustees, Joyce Eparaima, Barbara Sullivan-Teepa and Mrs Smith.

[3] The hui also discussed the future use and development of the land. The minutes of the meeting record that a suggestion was made that a sole trustee be appointed to investigate potential development of the land and to then report back to the owners in due course. Henare Rātima was nominated as sole responsible trustee by George Sullivan and Nigel Baker. The minutes record that after considerable discussion the resolution as passed with one objector, Mrs Smith.

Issue

[4] The issue for determination is whether or not Henare Rātima should be appointed sole responsible trustee per s222 and 239 of Te Ture Whenua Māori Act 1993

Background

[5] Te Haroto 2B2B is a block of Māori freehold land 145.2091 hectares in area created by partition order on 21 March 1957.¹ As at the date of hearing there were 827 owners in the land holding 56,927.15 shares. The memorial schedule of the land records that the original trustee of the land was Ngāti Hineuru Incorporated Society appointed on 23 May 1994.² As foreshadowed, the current trustees, Barbara Sullivan-Teepa, Gladys Campbell, Ivy Smith, Joyce Eparaima, Phillip Sullivan and Rere Puna were appointed on 7 October 2003.³

[6] At a judicial conference held per s 67 of the Act on 3 July 2013 Mr Sullivan gave evidence that three of the then trustees were deceased. By consent the proceedings were amended to include an application for review. At the conclusion of the conference the Court was formally convened and orders were issued per s 239 of the Act to reduce the number of trustees on account of the passing of Mrs Campbell and Messrs Sullivan and Puna. Orders were also issued directing the Registrar to convene a meeting of owners. The remaining trustees were also directed to file annual accounts for the previous five years and were put on formal notice that failure to comply could result in the Court using any of its powers as set out in part 12 of the Act.

[7] A further hearing was held on 1 August 2013.⁴ Mrs Eparaima attended and gave evidence that she did not understand that she was still a responsible trustee. Instead, she

¹ 92 Napier MB 412

² 137 Napier MB 183

³ 173 Napier MB 230

contended that an incorporation representing Ngāti Hineuru (I assume she meant an incorporated society) were now responsible for the management of the land. At the conclusion of the hearing I again directed the Registrar to convene a meeting of owners as soon as possible.

[8] A hearing was then held on 7 February 2014.⁵ Mr Bloor gave a report on the outcome of the meeting. At the hearing, the majority of evidence was given by Mr Rātima and Mrs Smith and focused on their opposing perspectives on why Mr Rātima should or should not be sole responsible trustee. In addition, Mrs Smith contended that she wished to remain a responsible trustee to which Mr Rātima's response was that he could not work with her and argued that he should be sole responsible trustee. The proceedings were then adjourned for a reserved decision.

The Law

[9] Section 222 of the Act sets out:

Appointment of trustees

(1) Subject to subsections (2) and (3), the court may appoint as trustee of any trust constituted under this Part—

- (a) an individual; or
- (b) a Maori Trust Board constituted under the Maori Trust Boards Act 1955 or any other enactment, or any body corporate constituted by or under any enactment; or
- (c) a Maori incorporation; or
- (d) the Māori Trustee; or
- (e) Public Trust; or
- (f) a trustee company within the meaning of the Trustee Companies Act 1967

(2) The court, in deciding whether to appoint any individual or body to be a trustee of a trust constituted under this Part,—

- (a) shall have regard to the ability, experience, and knowledge of the individual or body; and
- (b) shall not appoint an individual or body unless it is satisfied that the appointment of that individual or body would be broadly acceptable to the beneficiaries.

(3) The court shall not appoint any individual or body to be a trustee of any trust constituted under this Part unless it is satisfied that the proposed appointee consents to the appointment.

⁴ 26 Tākitimu MB 32

⁵ 30 Tākitimu MB 272

(4) Subject to subsection (5), the court may appoint any such individual or body as a responsible trustee, or an advisory trustee, or a custodian trustee.

(5) For every trust constituted under this Part the court shall appoint 1 or more responsible trustees, and may appoint 1 or more advisory trustees and 1 or more custodian trustees.

[10] A leading authority on the appointment of trustees is the Court of Appeal decision *Clarke v Karaitiana*.⁶ I adopt the reasoning set out in that judgment.

Discussion

[11] This is a case simply about who should be put in charge of this land. Two of the owners, doubtless close whanaunga, who have a history of involvement as trustees in this and other blocks, cannot seem to agree on a common course of action to benefit the owners. Mr Rātima was supported by the recent meeting of owners to be appointed sole responsible trustee. He would prefer to work on his own but with the ability to co-opt support where he considers it necessary. He has, as Mrs Smith points out, previous experience with this land and if she is to be believed, not all of it successful. For his part Mr Rātima disputes Mrs Smith's claims and instead points out that under her stewardship the land has not progressed very far.

[12] Then there were allegations and counter-allegations over details of past performance including reference to a shop, the removal of buildings and what might be described as alternative views over hapū history. The short point is that both Mr Rātima and Mrs Smith appear to indicate that, at least on Mr Rātima's part, he could not work co-operatively with Mrs Smith. She says that she would like to remain a responsible trustee knowing that Mr Rātima and those owners supporting him at the meeting endorsed his proposal to be sole responsible trustee.

[13] Two points can be made from these positions. First, Mrs Smith is entitled to remain as a trustee unless either she loses the support of the beneficial owners as expressed at a general meeting or otherwise per s 222 of the Act. The decision of Judge Carter in *Ellis v Faulkner – Poripori Farm A Trust* is authority for that proposition.⁷

⁶ *Clarke v Karaitiana* [2011] NZCA 154 at [51]-[53]

⁷ *Ellis v Faulkner Poripori Farm A Trust* (1996) 57 Tauranga MB 7 (57 T 7)

[14] Second, it could also be argued that the decision of the owners to almost unanimously endorse the Rātima proposal for appointment as sole responsible trustee, the owners have, in effect, voted Mrs Smith out of office in accordance with the *Faulkner* decision. No doubt Mrs Smith and her supporters will not see it that way. They will contend no doubt that she was never given the opportunity to argue her case and if it had been understood by the owners that endorsement of the Rātima proposal would result in her removal then the owners may have expressed their views differently.

[15] Mrs Smith again emphasised that she would like to remain a responsible trustee and acknowledges that Mr Rātima was supported by the owners, despite her personal reservations based on what she says is his past lack of performance. Mr Rātima says that it is Mrs Smith who has been called to account for her lack of performance and those of her colleagues as responsible trustees. He argues, as foreshadowed, that the owners have endorsed his proposal that he be appointed sole replacement responsible trustee. As Mrs Smith said at the hearing, ultimately it is for the Court to make a decision.

[16] While I would have preferred that Mr Rātima and Mrs Smith put aside their past history and simply attend to the duties of trustee, it appears that, given their pronouncements, this combination is unlikely to bear positive fruit for the owners. While it is not simply a case of one argument prevailing over the other, or that disagreement cannot result in sound decisions, in the end the owners need a practical outcome. One that will mean progress with the use and development of the land. According, I accept the decision of the owners to appoint Henare Rātima as sole responsible trustee.

[17] For the avoidance of doubt, I make no criticism of Mrs Smith as I have not yet heard sufficient evidence to warrant her removal for cause per s 240. Instead, I rely on the *Faulkner* decision for authority that Mrs Smith and her colleagues can be replaced by Mr Rātima as they no longer command the support of the owners as expressed at a meeting convened by the Court for the purpose of elections.

Decision

[18] Henare Rātima is appointed sole responsible trustee per s 222 and 220 of Te Ture Whenua Māori Act 1993.

[19] For the avoidance of doubt, he is also appointed per s 239 of the Act by way of replacement for all existing responsible trustees.

[20] The application for review is therefore concluded and dismissed.

[21] There will be no order as to costs.

Pronounced at 2.15 pm in Rotorua on this 15th day of April 2014

L R Harvey
JUDGE