

**IN THE MĀORI LAND COURT OF NEW ZEALAND  
TAITOKERAU**

**A20160003704**

UNDER Section 19, Te Ture Whenua Māori Act 1993

IN THE MATTER OF Pouto 2E4A Block

BETWEEN SCOTT BARTLETT  
Applicant

AND NELLIE TE PORA CLAY, MACK GEORGE,  
DANIEL GRAY, SARAH GREY-HARRIMAN,  
ANI HAWKE, WAYNE HARRIS, MERILEE  
HART, PENE TARANUI HITA AND PIKI TE  
ORA MAKOARE as trustees of TE PUKE  
ARIKI AWHINA 2E4A POUTO AHU  
WHENUA TRUST  
Respondent

Hearing: 30 June 2016  
(Heard at Whangarei)

Appearances: Pene Hita, Scott Bartlett, Wayne Harris, Piki Te Ora Makoare,  
William Kapa, Krystle Stone, C B Hart, Merilee Pairama-Hart

Judgment: 30 June 2016

---

**ORAL JUDGMENT OF JUDGE M P ARMSTRONG**

---

## Introduction

[1] Scott Bartlett applies for a permanent injunction per s 19 of Te Ture Whenua Māori Act 1993 (“the Act”) to prevent the trustees of Te Puke Ariki Awhina 2E4A Pouto Ahu Whenua Trust (“the trust”) from removing him from the Pouto 2E4A Block.

[2] The issue in this case is whether the injunction should be granted.

[3] As with all oral decisions, I reserve the right to amend this decision, although any such amendments shall only be as to form, not as to substance, and shall not change the outcome of the decision that I am about to make.

## Background

[4] Pouto 2E4A (“the block”) is 353.2653 hectares of Māori freehold land.

[5] The block is vested in the trustees of the trust. The current trustees are Ani Hawke, Daniel Gray, Mack George, Merilee Hart, Nellie Te Pora Clay, Pene Taranui Hita, Piki Te Ora Makoare, Sarah Grey-Harriman and Wayne Harris.<sup>1</sup>

[6] There are 178 beneficial owners in the block. The applicant, Mr Bartlett, is one of those beneficial owners holding 2.5153 shares. Mr Bartlett is also the sole trustee of the Hazel Bartlett Whānau Trust which holds a further 11.6359 shares in the block.<sup>2</sup>

[7] The majority of the block has been leased by the trustees for farming purposes. There are also three houses located on the block. Two of those houses are occupied by trustees of the trust. The third house was, until recently, vacant.

[8] On 1 June 2016, Mr Bartlett moved into the vacant house. On or around 12 June 2016, the trustees served a trespass notice on Mr Bartlett requiring him to vacate the house.

[9] In response, Mr Bartlett filed the present application seeking an injunction preventing the trustees from removing him.

---

<sup>1</sup> 54 Taitokerau MB 12-15 (54 TTK 12-15).

<sup>2</sup> 106 Taitokerau MB 16-27 (106 TTK 16-27).

## The Law

[10] The Court has jurisdiction to grant permanent injunctions per s 19 of the Act. The Court also has jurisdiction to enforce the obligations of trust, by way of injunction or otherwise, per s 238 of the Act, although this application has not been brought on that basis.<sup>3</sup>

[11] The grant of a permanent injunction has been considered by the Māori Appellate Court in the decisions of *Te Hokowhitu v Proprietors of Matauri X – Matauri X Incorporation*, *O'Malley v Wyborn - Orokawa 3C2B*, and *Taueki v Horowhenua Sailing Club – Horowhenua 11 (Lake) Block*.<sup>4</sup> I adopt the principles set out in those decisions.

## Discussion

[12] Mr Bartlett is a beneficial owner in the block. He made a formal request to the trustees, to allow him to reside in the vacant house on the block. Mr Bartlett advised that, while he was waiting for the trustees to respond to his request, he was evicted from his former residence. Mr Bartlett had nowhere else to go so he moved into the vacant house on the block.

[13] Mr Bartlett accepts that the trustees have not granted him a right to reside in the house. He advised that one of the trustees, Daniel Gray, supports him. Mr Bartlett has also advised that two trustees, Daniel Gray and Merilee Hart, are currently living in the other two houses located on the block. Mr Bartlett considers that he should be afforded the same opportunity to do so.

[14] Mr Hita, on behalf of the trustees, expressed some sympathy for Mr Bartlett's position. He confirmed that the trustees received a request from Mr Bartlett to occupy the vacant house.

---

<sup>3</sup> See for example *Putataua Bay Holdings Ltd v Pere - Roadway Order Instrument 7895326.1* (2015) 105 Taitokerau MB 103 (105 TTK 103).

<sup>4</sup> *Te Hokowhitu v Proprietors of Matauri X – Matauri X Incorporation* [2010] Māori Appellate Court MB 566 (2010 APPEAL 566), *O.Malley v Wyborn - Orokawa 3C2B* [2010] Maori Appellate Court MB 494 (2010 APPEAL 494), and *Taueki v Horowhenua Sailing Club - Horowhenua11 (Lake) Block* [2014] Māori Appellate Court MB 60 (2014 APPEAL 60).

[15] Minutes have been filed for a meeting of the trustees held on 3 April 2016. Those minutes record that the following two resolutions were passed:

1] The Whare at 5763 Pouto Road; will be held by the Trust as a Business Venture for the Farm and the Future Prospects of; Te Puke Ariki Awhina 2e4a Pouto Trust.

...

2] Secretary to inform Scott Bartlett by letter; the proposal presented to the trust board for the property of 5763 Pouto road was opposed; on the bases that it will be used by the Trust.

[sic]

[16] Mr Hita also advised that the trustees have granted rights of occupation to both Mr Gray and Ms Hart who are occupying the other houses on the block.

[17] Finally, Mr Hita advised that Daniel Gray supported the other trustees when they resolved that Mr Bartlett should be removed from the house. As such, he was somewhat surprised to see that Mr Gray is now supporting Mr Bartlett. Despite that, Mr Hita argued that Mr Gray is only one trustee and he cannot override a decision made by the majority of the trustees pursuant to the trust order.

[18] It is trite law that the infringement of a legal or equitable right is a prerequisite to the granting of injunctive relief. In the decision of *Eriwata v Trustees of Waitara SD s6 and 91 Land Trust - Waitara SD s6 and 91 Land Trust*, the Māori Appellate Court held:<sup>5</sup>

[5] When trustees are appointed to an Ahu Whenua Trust, they take legal ownership. The owners in their shares in the schedule of owners have beneficial or equitable ownership but do not have legal ownership, and do not have the right to manage the land or to occupy the land. Trustees are empowered and indeed required to make decisions in relation to the land and they are often hard decisions. Their power and obligation to manage the land cannot be overridden by any owner or group of owners or even the Māori Land Court, so long as the trustees are acting within their terms of trust and the general law and it reasonably appears that they are acting for the benefit of the beneficial owners as a whole. A meeting of owners cannot override the trustees. Decisions to be taken for the land are to be the decision of the trustees. They decide who can enter and who can reside there and how the land is managed.

[19] This applies in the present case. It is the trustees who decide who can enter and who can reside on this block and how the block is to be managed. The trustees have not

---

<sup>5</sup> *Eriwata v Trustees of Waitara SD s6 and 91 Land Trust - Waitara SD s6 and 91 Land Trust* (2005) 15 Whanganui Appellate Court MB 192 (15 WGAP 192).

granted Mr Bartlett a right to reside in the vacant house on the block. While Mr Bartlett is a beneficial owner in the block, that does not give him a right of occupation unless granted by the trustees.

[20] It appears that at least one trustee, Mr Gray, now supports Mr Bartlett. However, one trustee cannot bind the trust. There is a clear majority of trustees, in this case, who are seeking that Mr Bartlett is to be removed from the property.

[21] I have some sympathy for Mr Bartlett. He has advised that he has been seeking to occupy the house for some time. He has also advised that he was evicted from his former residence and he had to move into the vacant house as he had nowhere else to go.

[22] Mr Bartlett has also questioned whether the trustees have made the right decision in seeking to use the house for business premises. He considers that occupation of the house by beneficial owners should be given priority. There may well be some merit in Mr Bartlett's view. However, the trustees are acting within the terms of their powers. I cannot make the decisions for this trust nor can I substitute my own view for that of the trustees.

[23] It is for the trustees to make decisions concerning the use and occupation of the block including any houses located on the block. Those are often difficult decisions. The trustees have done so in this case and there is no proper basis upon which I can overturn or disregard their decision.

[24] Mr Bartlett has failed to establish that he has a legal or equitable right to reside in the property which should be protected by injunctive relief.

[25] I note that even where there is evidence of a legal or equitable right that has been infringed, the grant of an injunction is discretionary and equitable considerations apply. That may include considering whether damages are sufficient as an alternative remedy or taking into account the parties' conduct.<sup>6</sup>

---

<sup>6</sup> See *Te Hokowhitu v Proprietors of Matauri X – Matauri X Incorporation* [2010] Māori Appellate Court MB 566 (2010 APPEAL 566).

[26] As I have found that there is no legal or equitable right being infringed in this case, it is not necessary to consider whether any equitable considerations apply which may affect the grant of relief.

**Decision**

[27] The application is dismissed.

Pronounced at 11.11am in Whangarei on Thursday the 30<sup>th</sup> day of June 2016.

M P Armstrong  
**JUDGE**