

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

A20180001954

UNDER Section 19, Te Ture Whenua Māori Act 1993

IN THE MATTER OF Maungaturoto D1B

BETWEEN MARTHA DAWSON, CATRINA HADFIELD,
YVONNE TEMOANANUI, BUBBA MICHAEL
YOUNG AND JOHN YOUNG AS TRUSTEES
OF THE MAUNGATUROTO D1B AHU
WHENUA TRUST
Applicants

AND SCOTT YOUNG
Respondent

Hearing: 28 May 2018, 174 Taitokerau MB 75-85
(Heard at Kaikohe)

Judgment: 22 June 2018

JUDGMENT OF JUDGE M P ARMSTRONG

Introduction

[1] The trustees of the Maungaturoto D1B Ahu Whenua Trust seek a permanent injunction requiring Scott Young to vacate the Maungaturoto D1B block. The issue in this case is whether such an injunction should be granted.

Background

[2] Maungaturoto D1B is 23.512 hectares of Māori freehold land located in Maungaturoto. There are 11 owners who hold shares in the land as tenants in common. Only 4 of those owners are alive: Catrina Hadfield, Martha Dawson, Rhybon Te Moananui and Yvonne Te Moananui.

[3] In around 1982, Wiripo Young moved, and lived, on the land. According to Wiripo's brother, John Young, this was part of an agreement with their parents. Wiripo is the largest shareholder in the block owning 175.161 shares. Wiripo lived there, with his family, until his death in 2015. Wiripo's son, Scott Young, lived with his father his whole life. Scott continued to live on the land after his father passed away. Scott, and his siblings, have not yet succeeded to their father.

[4] On 15 December 2017, I granted an order constituting the Maungaturoto D1B Ahu Whenua Trust over the land.¹ The trustees are Catrina Hadfield, Martha Dawson, John Young, Yvonne Te Moananui and Bubba Michael Young.

The Law

[5] I have jurisdiction to grant a permanent injunction per s 19 of Te Ture Whenua Māori Act 1993. In *Taueki v Horowhenua Sailing Club – Horowhenua 11 (Lake) Block*,² the Māori Appellate Court held, when seeking a permanent injunction, the applicant must first demonstrate a trespass has occurred. If that is established, the Court then considers whether to exercise its discretion to grant an injunction. I adopt that approach.

¹ 176 Taitokerau MB 27 (176 TTK 27).

² *Taueki v Horowhenua Sailing Club – Horowhenua 11 (Lake) Block* [2014] Māori Appellate Court MB 60 (2014 APPEAL 60).

Did Scott receive notice of the application?

[6] When this application was filed I directed the trustees to serve a copy of the application and supporting material on Scott. I also directed the Registrar to give notice of the hearing to Scott.

[7] The Registrar sent notice of the hearing to Scott, and the trustees, on 27 March 2018. The trustees confirmed they received this notice. At the hearing, the trustees advised they served Scott with a copy of the application and supporting material by courier. Scott did not appear at the hearing though his brother, Wayne, did. I directed the trustees to file confirmation from NZ Post that the courier was delivered. This was filed on 11 June 2018. As Scott did not attend the hearing, I also directed he could file any submissions responding to the application by 11 June 2018. No submissions were received.

[8] Although Scott did not attend the hearing, and has not responded to the application, I am satisfied he received notice of the hearing, and a copy of the application and supporting documents.

Has a trespass occurred?

[9] In *Eriwata v Trustees of Waitara SD s6 and 91 Land Trust - Waitara SD s6 and 91 Land Trust*, the Māori Appellate Court held:³

[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.

[10] On 14 January 2018, the trustees met to discuss Scott's occupation of the land. According to Bubba, these discussions were robust. The minutes from the meeting

³ *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).

confirm all trustees agreed that Scott had to vacate the land by 11 February 2018. Bubba said they did not make this decision lightly. A letter was sent to Scott advising him of this decision. On 16 February 2018, Catrina and Martha travelled to see if Scott had vacated the land. He had not. They met with Scott and referred to the letter requiring him to vacate. According to Martha, Scott said his lawyer told him to remain on the land.

[11] The trustees are the legal owners of the land. They decide who can enter, who can reside there, and how the land is managed. Scott is not an owner in the land. He may be entitled to succeed to his father Wiripo, along with his siblings, though that application has not been filed. Even if he had succeeded to those interests, it would still be for the trustees to decide who can occupy the land.

[12] The trustees have decided by consensus that Scott must vacate the land. They have advised Scott of this decision by letter and in person. Scott has refused to vacate. He has no authority to remain on the land without the consent of the trustees. I am satisfied that an action in trespass is made out.

Should I exercise my discretion to grant an injunction?

[13] The prima facie rule is that a land owner is entitled to an injunction to restrain a trespass. However, the Court still has discretion as to whether to grant the injunction. There is a good working rule that if an injury to the plaintiff is small, it can be compensated by a small monetary payment, and it will be oppressive to the defendant to grant an injunction, damages may be awarded in substitution for an injunction.⁴

[14] This is not a case where the good working rule applies. This is not a minor trespass. Scott is living on the land without the consent of the trustees. Such a trespass cannot be compensated by a small monetary payment.

[15] Injunctions are an equitable remedy. I have to take into account any equitable considerations including the parties' conduct. These must also be balanced against the statutory objectives set out in the Preamble and ss 2 and 17 of the Act.

⁴ *Te Hokowhitu v Proprietors of Matauri X* [2010] Māori Appellate Court MB 566 (2010 APPEAL 566).

[16] The trustees argue Scott has not paid the rates and refuses to do so. They contend Scott has failed to maintain the property and the land is in disrepair. They seek an injunction requiring Scott to vacate the land to allow them to utilise and develop the land for the benefit of all the owners. This is consistent with the kaupapa of the Act promoting the retention of the land in the hands of the owners and the effective use, management and development of the land by or on behalf of the owners.

[17] Against this, I cannot overlook that Scott has lived on this land his whole life. His father lived there without objection from the other owners. Following his death, Scott continued to live on the land. I do not doubt the grant of an injunction will have a significant impact on Scott. No doubt he considers this is his home. However, while I have given this full weight, it cannot outweigh the right of the trustees to administer and develop the land for the benefit of all the owners. In these circumstances, my only option is to grant the injunction sought.

[18] To try and reduce the negative impact on Scott, I am going to allow a further 90 days for him to vacate the land. This will ensure he has sufficient time to find alternative accommodation, to vacate the land and remove his belongings.

Decision

[19] Pursuant to section 19(1)(a) of Te Ture Whenua Māori Act 1993, I grant a permanent injunction requiring Scott Young to vacate the Maungaturoto D1B block, and to remove his possessions, within 90 days of this decision.

Pronounced at 11.55 am in Whangarei on Friday this 22nd day of June 2018.

M P Armstrong
JUDGE