

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

**A20180008336**

UNDER Section 19, Te Ture Whenua Māori Act 1993  
IN THE MATTER OF Te Touwai B2B2A  
BETWEEN MERE LAING  
Applicant  
AND ANI TANIWHA and HAROLD PAUL  
Respondents

Hearing: On the papers

Judgment: 28 November 2018

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**JUDGMENT OF JUDGE M P ARMSTRONG**

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## **Introduction**

[1] Mere Laing has filed an application to determine ownership of a house on Te Touwai B2B2A. Ms Laing has also filed an application seeking an interim injunction against Ani Taniwha and Harold Paul concerning this house.

[2] This decision determines whether an interim injunction should be granted, and if so, on what terms.

## **Background**

[3] Waikainga Poata was a shareholder in Te Touwai B2B2A. This land is administered by the trustees of the Te Touwai B2B1A and B2B2A Ahu Whenua Trust.

[4] In 1987, Waikainga and her husband, Poihakena Syd Kira, entered into a tripartite agreement to build a house on the block. This house is the subject of Ms Laing's application to determine ownership of the dwelling.

[5] Waikainga passed away. Her interests in the land went to her children subject to a life interest in favour of Poihakena. Ms Laing, and her sister, Parani Franklin, are Waikainga's only surviving children. Poihakena has also passed away and his life interest in the land has been extinguished. A determination was never made on who owns the house.

[6] Ms Laing argues that she and other family members rented the house to Mr Paul in 2007. She alleges that Ani Taniwha claims an interest in the house by way of Poihakena's estate. According to Ms Laing, Ms Taniwha met with Mr Paul in 2017 and directed him to pay the rent to her. Ms Laing further alleges that Mr Paul has caused damage to the property. Ms Laing now seeks an interim injunction against Ms Taniwha and Mr Paul concerning the rent, and damage to the house.

## **The Law**

[7] I have jurisdiction to grant an interim injunction per s 19(1)(b) of Te Ture Whenua Māori Act 1993 prohibiting any person, where proceedings are pending before the Court, from dealing with or doing any injury to any property that is the subject matter of the proceedings.

[8] When seeking an interim injunction, the applicant must demonstrate that:

- (a) There is a serious question to be tried;
- (b) The balance of convenience is in favour of an injunction; and
- (c) It is in the interests of justice to grant an injunction.

### **Deciding the application on the papers**

[9] On 31 October 2018, I directed the applicant to serve a copy of this application, the supporting material, and my directions, on Ms Taniwha and Mr Paul. I also directed Ms Taniwha and Mr Paul to file any response by 23 November 2018, after which I would decide the application on the papers.

[10] The applicant has filed copies of correspondence demonstrating that the application, supporting material, and directions, were served on Ms Taniwha and Mr Paul. No response has been received.

[11] Pursuant to my earlier directions, I now determine this application on the papers.

### **Should I grant the injunction?**

[12] Ms Laing argues that, as with her shares in the land, Waikainga owned the house, though Poihakena was entitled to a life interest. She contends that, as Poihakena has passed away, any interest he had in the house has been extinguished. As one of Waikainga's descendants and successors, Ms Laing now claims an interest in the house.

[13] The ownership of the house will be determined in the substantive application. I do not need to make a final decision on this issue. Instead, the applicant only needs to demonstrate there is a serious question to be tried. Based on Waikainga's shares in the land, the terms of the tripartite agreement, and the contributions Waikainga and her children (allegedly) made towards the house (including repaying the mortgage), there is an arguable case that Waikainga has an equitable interest in the house. It is also arguable that the applicant, along with her siblings, are entitled to succeed to that interest. I am satisfied that there is a serious question to be tried.

[14] I now turn to consider where the balance of convenience lies and whether it is in the interests of justice to grant an injunction.

[15] The applicant seeks an interim injunction:

- (a) Prohibiting Ms Taniwha from dealing with the property;
- (b) Requiring her to repay the rent she received;
- (c) Requiring Mr Paul to vacate the dwelling; and
- (d) Preventing Mr Paul from causing any further damage to the property.

[16] The only relief sought by Ms Laing in the substantive application is to determine ownership of the dwelling. No applications have been filed requiring Mr Paul to vacate the dwelling or requiring Ms Taniwha to repay rent she received. I cannot grant interim relief requiring Mr Paul to vacate the property, and requiring Ms Taniwha to repay rent, when these are not the subject of the substantive proceeding. The only issue in the substantive proceeding is who owns the house.

[17] Ms Laing has demonstrated in evidence that Mr Paul has caused damage to the house. She is entitled to an interim injunction to prevent any further damage from occurring until ownership of the house has been determined. If Ms Laing seeks further relief requiring Mr Paul to vacate the house, and seeking payment of rent, further applications will have to be filed to properly bring that before the Court.

**Decision**

[18] Pursuant to section 19(1)(b) of Te Ture Whenua Māori Act 1993, I grant an interim injunction preventing Harold Paul from causing any further injury or damage to the house erected by Waikainga Poata and Poihakena Syd Kira, and the surrounding property, on Te Touwai B2B2A.

Pronounced at                      pm in Whangārei on Wednesday this 28<sup>th</sup> day of November 2018.

M P Armstrong  
**JUDGE**