IN THE MĀORI LAND COURT OF NEW ZEALAND
TĀKITIMU DISTRICT

A20150002509

	UNDER	Section 237 of Te Ture Whenua Māori Act 1993
	IN THE MATTER OF	Te Haroto 2B2B
	BETWEEN	HENARE RĀTIMA Applicant
	AND	IVY KAHUKIWA SMITH Respondent

Hearings: 58 Tākitimu MB 97-106, 1 March 2017
62 Tākitimu MB 78-85, 3 August 2017
67 Tākitimu MB 70-75, 1 March 2018
67 Tākitimu MB 275-278, 1 May 2018
(Heard at Hastings)

Appearances: C Bennett for Applicant
M Wenley for Respondent

Judgment: 19 July 2018

JUDGMENT OF JUDGE L R HARVEY

Copies to: C Bennett, Langley Twigg Law, 66 West Quay, Box 446, Napier 4140
M Wenley, Willis Legal 116 Vautier Street, Private Bag 6018, Napier 4142

Introduction

[1] Henare Rātima is the sole trustee of Te Haroto 2B2B trust.[1] Since his appointment, in April 2014, Mr Rātima has sought to obtain trust documents from the former trustees and the trust's bank. As that information had not been forthcoming, Mr Rātima then sought and was granted an order directing the former trustees to return any documents relating to the trust. Ivy Kahukiwa-Smith, a former trustee, subsequently advised that she does not hold any of the trust's documentation.

[2] Following that, on 1 December 2017, I issued a direction expressing concern that trust funds appear to be unaccounted for. The former trustees were directed to seek advice and to consider whether additional applications need to be filed for relief per s 73 of the Trustee Act 1956.[2] Mr Wenley was subsequently appointed to represent the former trustees.

[3] A practical issue that has arisen for Mr Rātima is that he says the trust's bank refuses to recognise him as the sole trustee. The result is that he cannot attend to his duties to pay accounts, as and when they fall due, or to deal with the trust's cash assets.

Issues

[4] The issues for determination are:

(a) Did the former trustees breach their trust duties?

(b) Does the Limitation Act 1950 apply?

(c) Should the former trustees be granted relief from liability?

(d) Should any of the former trustees serve a period of ineligibility for reappointment?

Background

[5] Te Haroto 2B2B is Māori freehold land comprising 145.2091 hectares. The land is administered by the Te Haroto 2B2B ahu whenua trust.

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1 *Sullivan v Sullivan-Teepa – Te Haroto 2B2B* (2014) 31 Tākitimu MB 138 (31 TKT 138)
2 64 Tākitimu MB 184-185 (64 TKT 184-185)

[6] The land was originally vested in the Māori Trustee on 9 October 1981 per s 438 of the Māori Affairs Act 1953.[3] On 19 December 1983, Terina Sullivan Meads, Charlie Utiera, Roy Wildermott, Mathew Huirua, John Wall, Henare Tongariro Ratima, Willis Wano and Majorie Joe were appointed as replacement trustees.[4] In 1985, Charlie Utiera, Roy Wildermott, Mathew Huirua, John Wall were replaced by Frederick Reti.[5]

[7] Then on 23 May 1994, the land was vested in the Ngati Hineuru Incorporated Society as trustees.[6] Following that, on 7 December 1999, Barbara Sullivan Teepa, Ivy May Smith, Gladys Hine Campbell, David Rere Puna, Len Renata Bush, Joyce Eparaima, Richard Lenden, Nigel Rory Baker and Phillip Sullivan were appointed trustees in place of Ngāti Hineuru Incorporated Society.[7] On 7 October 2003 Len Renata Bush, Nigel Rory Baker and Richard Lenden were removed as trustees.[8]

[8] In 2014 the trusteeship was reduced further to Barbara Sullivan-Teepa, Ivy May Smith and Joyce Eparaima.[9] On 15 April 2014, I appointed Henare Ratima as sole trustee by way of replacement for Barbara Sullivan-Teepa, Ivy Smith and Joyce Eparaima.[10]

Procedural history

[9] At a hearing held on 1 March 2017, I directed: [11]

(a) The Registrar to write to the Manager of the Napier Westpac Bank asking for an explanation as to why the bank did not recognise Mr Rātima as the sole trustee and to furnish copies of all cheques that it has in its possession;

(b) The former trustees to provide an explanation of the previous and current use and occupation of the land and documents that coincide with withdrawal and payments;

(c) The Registrar to write to the Hastings District Council to ascertain the rates due;

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3 115 Napier MB 274-276 (115 NA 274-276)
4 118 Napier MB 312-316 (118 NA 312-316)
5 120 Napier MB 187-188 (120 NA 187-188)
6 137 Napier MB 183-185 (137 NA 183-185)
7 158 Napier MB 243-246 (158 NA 243-246)
8 173 Napier MB 230-233 (173 NA 230-233)
9 25 Tākitimu MB 34-37 (25 TKT 34-37)
10 31 Tākitimu MB 138-143 (31 TKT 138-143)
11 58 Tākitimu MB 97-106 (57 TKT 97-106)

(d) An independent facilitator to be appointed to convene a meeting of owners to obtain the views of the beneficiaries; and

(e) An accountant be engaged to prepare an audit of the trust's accounts.

[10] Westpac Bank and the Hastings District Council have since replied. A meeting of owners was then held in May 2017. The audit report was completed on 30 August 2017.

[11] A final hearing was held on 1 May 2018.[12] In summary, Ms Bennett implored the Court to hold the former trustees responsible for the unaccounted trust funds. Mr Wenley argued that the former trustees had provided all the information they could and that any claim against them is statute barred, so the application should be dismissed.

Applicant's submissions

[12] Ms Bennett submitted that the former trustees have breached their duty to account. She argued that the accountant's report has revealed that forty seven cheques were that are unaccounted for and there has been no explanation from the former trustees.

[13] In addition, counsel argued that of the eighteen cheques that have been identified, the former trustees have not adequately explained the payments. Counsel submitted that, given the lack of adequate explanation for the payments, the former trustees should be required to repay those amounts.

[14] Further, Ms Bennett argued that the claims against the former trustees are not statute barred per the Limitation Act 1950, as this case concerned a failure to account, which is a breach of trust duty which in turn is a fiduciary duty. A breach of the latter constitutes equitable fraud, which is a clear exemption to any limitation restrictions. Counsel contended that it is incorrect to suggest a claim of fraud has not been made, given that the investigation was ordered by the Court and the formers trustees have been on notice of the claim.

[15] Counsel argued that the Court should take notice of the amounts received by Mrs Kahukiwa-Smith because there is no evidence they are reimbursements or that approval was sought for those payments. She added that the trust order does not provide for such payments and there is no evidence that the administration services or the Te Puni Kōkiri

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[12] 67 Tākitimu MB 275-278 (67 TKT 274-278)

(TPK) contract entered into by Mrs Kahukiwa-Smith, were entered into at arm's length or that the beneficiaries accepted that she would be the 'Key Worker' as outlined in the agreement with TPK. Ms Bennett submitted that payments made to each of the former trustees, Mrs Kahukiwa-Smith, Barbara Sullivan and Joyce Eparaima, all lacked supporting evidence and so the trustees should be held to account for those payments.

[16] Regarding occupation, Ms Bennett submitted that it is inappropriate for a trustee to occupy trust property without paying rental. She contended there has been no determination of ownership of the dwelling and no evidence of payments for occupation.

[17] Counsel argued that there should be no relief of liability per s 73 of the Trustee Act 1956 for the former trustees. Ms Bennett submitted that the former trustees have failed to act reasonably and honestly and have not demonstrated adherence to the trust order or their duties. Their management of the trust, Ms Bennett continued, was not satisfactory and breaches of their duties are so fundamental that the former trustees should not escape the consequences.

[18] Ms Bennett submitted that the Court should exercise its discretion per s 238(2) of Te Ture Whenua Māori Act 1993 to enforce the obligations of the former trustees and to make good the losses caused by their actions. To do otherwise, counsel argued, would be contrary to law and create a perception that Māori trusts are treated differently, in a judicial sense.

Respondent's submissions

[19] Mr Wenley confirmed that Mrs Kahukiwa-Smith does not hold any of the trust's documentation but has provided personal information she holds regarding the trust. She did advise him that the minutes she held on her computer were "lost" when it malfunctioned.

[20] In addition, counsel confirmed that Mrs Eparaima no longer holds any of the trust's documentation either, as it too had been inadvertently discarded. Mr Wenley also confirmed his clients' instructions that the trust's cheque book was held by the former chairman, Rere Puna, who had passed away.

[21] Mr Wenley submitted that the trust has received minimal income by way of lease and the only significant funds they received was a grant of $25,000.00 from TPK for (ironically) trustee training and capacity building. It is reasonable to assume, he contended, that the funds from TPK were expended for that purpose and so there is no basis to allege

maladministration solely on the basis that the records of those payments cannot now be located.

[22] Further, Mr Wenley submitted that, since 21 May 2005, the trust has been dormant and the balance funds of $3,892.00 were passed to Mr Rātima when he was appointed in 2014.

[23] Regarding payments to Mrs Kahukiwa-Smith, Mr Wenley submitted that the $11,555.56 paid to her was supported by minutes of trustee hui approving those amounts. The contract with TPK for her role as "Key Worker" for the trustee training and capacity building had also concluded some time ago.

[24] Counsel submitted that the remainder of the expenditure identified is historical and no useful purpose can be identified in further investigating the expenditure between 2002-2005. In any event, he argued, the claim against the former trustees is statute barred per s 21 of the Limitation Act 1950. Mr Wenley submitted that there is no evidence of fraud or of funds being converted to the trustees' own use, or for an improper purpose, which would give rise to an exception from the statutory limitation.

[25] Regarding Mrs Kahukiwa-Smith's occupation, counsel contended that her family purchased the houses on the land. This is evidenced by: two receipts dated 23 February 1963 and 7 February 1964; a tenancy agreement between the Ngāti Hineuru Incorporated Society as trustee and Colin Smith, dated 1995; and an occupation licence between the trustees and Ivy Smith, dated 2000. Counsel submitted that this is adequate evidence to establish ownership. Moreover, counsel argued that the meeting of owners held in May 2017, resolved unanimously that those living on the land were not required to pay for their occupation.

[26] In conclusion, Mr Wenley submitted that the lack of historical records does not prevent the trustee from pursuing development of the remainder of the land.

The Law

[27] Section 237 of the Act states:

> **237 Jurisdiction of court generally**
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> (1) Subject to the express provisions of this Part, in respect of any trust to which this Part applies, the Maori Land Court shall have and may exercise all the same powers and authorities as the High Court has (whether by

> statute or by any rule of law or by virtue of its inherent jurisdiction) in respect of trusts generally.
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> (2) Nothing in subsection (1) shall limit or affect the jurisdiction of the High Court.

[28] Section 238 is also relevant:

> **238 Enforcement of obligations of trust**
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> (1) The court may at any time require any trustee of a trust to file in the court a written report, and to appear before the court for questioning on the report, or on any matter relating to the administration of the trust or the performance of his or her duties as a trustee.
>
> (2) The court may at any time, in respect of any trustee of a trust to which this section applies, enforce the obligations of his or her trust (whether by way of injunction or otherwise).

[29] In *Naera v Fenwick* the Court of Appeal stated:[13]

> [85] When considering a claim relating to breach of trust, the starting position is that trustees of Māori land are under the same obligations as other trustees. Equitable principles such as the duty of loyalty and good faith, the duty to act personally, and the duty not to profit, apply equally to Māori trustees. Those general principles may be modified, however, by the Act or by the trust order. In *Rameka v Hall* the position was described by this Court as follows:
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> > [19] … The trustees have obligations to the beneficiaries to administer the trust property in accordance with general trust law, the requirements of the Trustee Act 1956 and the provisions of the Act. In other words, trustees are *subject to traditional trustee duties with the statutory overlay* of particular obligations arising from the context of ahu whenua trusts.

[30] The general responsibilities of responsible trustees are set out in s 223 of the Act. General trust law principles are also relevant, as are any additional responsibilities set out in the trust order. The obligations of a trustee are well established and need not be set out exhaustively here. Trustees have a fundamental duty not to make a profit for themselves out of the trust property or out of their office of trust.[14] In addition, trustees have a basic duty to keep proper accounts and to report to their beneficiaries when reasonably requested to do so.

Discussion

Did the former trustees breach their duties?

[31] Mr Francois, an accountant engaged by the Court, undertook an investigation into the financial position of the trust. His report was compiled from bank statements for the last

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13 *Naera v Fenwick* [2013] NZCA 353 citing *Rameka v Hall* [2013] NZCA 203

14 *Rameka v Hall* [2013] NZCA 203 citing *Apatu v Puna – Owhaoko C* [2010] Māori Appellate Court MB 34 (2010 APPEAL 34)

fifteen years from September 2001 to August 2016, limited trust minutes, correspondence and general information and discussions with the former trustees, as well as Mr Rātima and Peter Bloor, consultant, and a former staff member of the Māori Land Court. His report noted that Mrs Kahukiwa-Smith provided further information after the initial draft report was completed. That information included minutes from trustee hui held between 1999 and 2002, an occupation licence for Colin and Ivy Smith, a letter to Walter Hook about his lack of lease payments and a contract between Mrs Kahukiwa-Smith and TPK for the provision of a business plan and strategic planning for the trust.

[32] Mr Francois found that the only lease income received during the sixteen years was from Aranui, who paid $1,520.00 and from Mrs Kahukiwa-Smith who paid $1,980.00. Aranui ceased paying the lease in March 2003 and Mrs Kahukiwa-Smith did the same in March 2011. Mr Francois also pointed out that during the two years from March 2002 to 2004, TPK paid the trust $25,000.00 for trustee training and business planning. He confirmed that TPK had not been able to provide any further information about how that money was spent.

[33] As foreshadowed, trustees have a fundamental duty to account. In the present case, the former trustees have simply failed to keep proper accounts and to provide that information to the current trustee. Mr Francois has been at pains to underscore his frustration in not receiving information from Mrs Kahukiwa-Smith until after his initial draft report was completed. Mrs Kahukiwa-Smith has, it would appear, been reluctant to assist Mr Rātima in compiling the trust documentation. Minutes of trustee hui and the TPK contract only came to light *after* Mr Francois had identified the funds he stated appeared to be unaccounted for, according to the available evidence.

[34] While I accept that, due to unforeseen circumstances, trust documentation may have been lost, I find it concerning that the trust was left in such a parlous state regarding its records to begin with. Mrs Kahukiwa-Smith as the secretary and Ms Eparaima as the treasurer, had a duty to account and to keep proper records. This they failed to do and for that they must be held to account.

[35] As evidenced by the audit report, sixty five cheques totalling $23,394.00 were issued between 2001 and 2005. Only eighteen totalling $5,788.71 were identified initially, leaving $17,605.29 unaccounted for, according to Mr Francois. Mrs Kahukiwa-Smith subsequently confirmed she received two payments from the trust totalling $11,556.00 for her work with TPK, leaving a balance of $6,049.29. The minutes of trustee hui held between 2001 and

2005 confirmed that attempts were made to have payments authorised at meetings. However, it would appear that at least one of these meetings was inquorate.

[36] The trustees had a duty to account to the beneficiaries and to keep proper records and accounts at all times. Their failure to do so casts a shadow over their tenure as trustees. That individuals with their experience failed to adhere to their core trustee duties, is inexplicable. For these reasons, I determine that the former trustees breached their duty to account to the beneficiaries and their responsibility to keep proper records. That alone was sufficient to warrant their removal, had they not resigned.

Does the Limitation Act 1950 apply?

[37] The Limitation Act 1950 continues to apply to a cause of action that occurred prior to 1 January 2011. The Act prescribes a six year limitation from the date on which the right of action accrued for bringing proceedings to recover trust property. Section 21 states:

> **21 Limitation of actions in respect of trust property**
> (1) No period of limitation prescribed by this Act shall apply to an action by a beneficiary under a trust, being an action—
> (a) in respect of any fraud or fraudulent breach of trust to which the trustee was a party or privy; or
> (b) to recover from the trustee trust property or the proceeds thereof in the possession of the trustee, or previously received by the trustee and converted to his use.
> (2) Subject as aforesaid, an action by a beneficiary to recover trust property or in respect of any breach of trust, not being an action for which a period of limitation is prescribed by any other provision of this Act, shall not be brought after the expiration of 6 years from the date on which the right of action accrued:
> Provided that the right of action shall not be deemed to have accrued to any beneficiary entitled to a future interest in the trust property until the interest fell into possession.
> (3) No beneficiary as against whom there would be a good defence under this Act shall derive any greater or other benefit from a judgment or order obtained by any other beneficiary than he could have obtained if he had brought the action and this Act had been pleaded in defence

[38] The six year limitation does not apply in respect of any fraud or fraudulent breach of trust to which the trustee was a party or privy; or in proceedings to recover from the trustee, trust property or the proceeds thereof in the possession of the trustee, or previously received by the trustee and converted to his or her use.

[39] It can be argued that there is no evidence of fraud simply because the evidence is extremely limited. Consequently, it is impossible to properly assess whether improper conduct has occurred. The most reliable material unearthed has been the bank statements.

They confirm that funds were withdrawn during the relevant period, but the real difficulty is that there is little to corroborate the reasons for the expenditure or that it had been properly authorised in the first place. This failure to keep proper records must call into doubt the ability of the then trustees to discharge their responsibilities, even at a most elementary level. They were also required under the trust order to file their annual accounts with the Registrar. If they had done this, then at least one set of accounts would now be available for the relevant periods. This failure compounds their principal breach of duty in not accounting for trust funds or keeping trust records.

[40] If there is no evidence of fraud, then the only plausible explanation is one of trustee incompetence and dereliction of duty. Even so, it is insufficient for the trustees to blithely assert that the records were lost or destroyed due to computer malfunctions or for similar unexplained reasons, and to expect that such explanations are acceptable. If trustees generally were to be excused for a lack of accountability for trust funds on the basis that records were lost, contrary to one of a trustee's fundamental duties to keep records and to account, then it would signal that such conduct was acceptable.

[41] Unfortunately, this is not the first time trustees of ahu whenua trusts have claimed relief for lack of accountability over trust funds due to a lack of records.[15] An uncharitable eye might suggest that the former trustees' replies were simply responses of convenience but, given the dearth of relevant evidence, such an observation may be unreasonable. The short point is that the former trustees failed to account and keep proper records which meant that no proper inquiry can now be undertaken into their activities regarding the amounts that have not been properly accounted for to the trust's beneficiaries. Even so, on the balance of probabilities, I do accept Mrs Kahukiwa-Smith's evidence that she received payments of $11,556.00 from TPK and Mr Wenley's submission that it is reasonable to have expected TPK to have sought appropriate remedies had they believed their funding had not been used correctly. Unless Ms Bennett has additional evidence to support an allegation of deliberate and wilful wrongdoing, then it is difficult to take this point about the payments received by Mrs Kahukiwa-Smith from TPK.

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15 See for example *Hunia v Skerrett-White - Kawerau A8D* (2016) 146 Waiariki MB 281 (146 WAR 281) at [33]-[46] and [78]-[92]; and *Wetini v Hunia - Matatā Parish 39A4* (2011) 38 Waiariki MB 244 (38 WAR 244) at [5]

[42] At a minimum, according to Mr Francois, some $6,049.29 of trust funds remains unaccounted for in the context of an absence of corroborating evidence, less the amount transferred to Mr Rātima's care as sole responsible trustee, if I have understood Mr Francois' report correctly. While it is possible that some of the former trustees have used the trust funds for their own use, there is insufficient evidence to support such an assertion. That said however, there remains the issue of the funds not accounted for, which, while modest in the overall scheme of the case, are still monies that properly belonged to the trust. The former trustees need to be held accountable for those funds.

[43] My conclusion is that the claims against the former trustees are not barred by the Limitation Act 1950, given that they involve an allegation of improper conduct in the failure to account and to provide records. The proper course in such circumstances, and in the absence of any grant of relief, is for the trust beneficiaries to be given an opportunity to express their views on the issue, either at a general meeting, by postal ballot or by a combination of the two. This approach has been adopted previously.[16] Following that a final decision can then issue as to any liability to repay trust funds.

Should the former trustees be granted relief from liability?

[44] Ms Bennett argued that there should be no relief from liability per s 73 of the Trustee Act 1956 for the former trustees. She submitted that the former trustees failed to act reasonably and honestly and have not demonstrated that they have adhered to the trust order or their duties. Their management of the trust, Ms Bennett continued, was not satisfactory. The breaches of trust were also so fundamental that the former trustees should not escape responsibility without consequence.

[45] Counsel submitted that the Court should exercise its discretion per s 238(2) of the Act to enforce the obligations of the former trustees to make good the losses caused by their actions. In this context, I accept Mr Wenley's argument that if the TPK funds, being public money, had not been properly expended, then the funder would have taken steps to recover their funds.

[46] Section 73 of the Trustee Act 1956 provides:

> **73 Power to relieve trustee from personal liability**

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[16] *Tupe Snr v Everton - Manunui No 1 4th Residue Ahu Whenua Trust* (2015) 334 Aotea MB 227 (334 AOT 227) at [50]- [53]

> If it appears to the Court that a trustee, whether appointed by the Court or otherwise, is or may be personally liable for any breach of trust, whether the transaction alleged to be a breach of trust occurred before or after the commencement of this Act, but has acted honestly and reasonably, and ought fairly to be excused for the breach of trust and for omitting to obtain the directions of the Court in the matter in which he committed the breach, then the Court may relieve him either wholly or partly from personal liability for the same.

[47] Section 73 provides that trustees may be granted relief from personal liability for any breach of trust, where they acted honestly and reasonably and ought fairly to be excused and for omitting to obtain the direction of the Court. It is also important to underscore that, while the Court can grant such relief, that remedy will not be given lightly.[17]

[48] In *Wong v Burt* the Court of Appeal stated:[18]

> In our view, this is not a case where the trustees can claim the protection of s 73 of the Trustee Act 1956. The expression "honestly and reasonably" is conjuctive. It was not merely unreasonable – it was downright foolish – to proceed to implement a scheme of this kind knowing that it could come under critical legal scrutiny, as being an allegedly unlawful device. There may well be cases in which trustees are entitled to put to one side a quite untenable position. But with all due respect, in this case, patently, the appropriate course to have followed would have been to obtain directions under s 66 of the Trustee Act 1956. This case would never have come about had that course had been followed.

[49] Here the trustees have failed to keep the trust records and to account for funds. The beneficiaries of the trust would have a reasonable expectation that the former trustees would have attended to this basic duty diligently – more so given the role Mrs Kahukiwa-Smith appeared to play in supporting the training of trustees as part of the TPK contract. The trust has largely been dormant since 2005, minimal income has been received and little to no action has been taken to advance the trust until Mr Rātima's appointment as independent trustee. Trustee and owners' meetings occurred intermittently and it is evident that the trust has not been actively managed. In the circumstances, I do not consider that the former trustees have acted deliberately and wilfully, they have just not acted at all. Trust documentation has been lost and the trust is in a state where it needs to be reconstituted. The former trustees have not assisted themselves by being less that forthcoming with information about the trust.

[50] I consider that, while the trustees may have acted honestly, they have not acted reasonably since it would never be reasonable for a trustee to lose control of the trust's critical records including its accounts and minutes. They cannot therefore be excused for

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17 *Rātima v Sullivan – Tataraakina C* (2017) 64 Tākitimu MB 121 (64 TKT 121) and *Tauhara Middle 4A2B2C* (1996) 68 Taupo MB 27 (68 TPO 27)

18 *Wong v Burt* [2005] 1 NZLR 91 at [57]

their breaches of trust or for failing to seek directions from the Court and cannot claim the shelter of s 73.

Should any of the former trustees serve a period of ineligibility for reappointment?

[51] This is not the first time Mrs Kahukiwa-Smith has appeared before the Court during proceedings involving allegations of breach of trust and regarding the unsatisfactory performance of trustees' duties generally.[19] That she was engaged by TPK to support trustee training is even more perplexing in the circumstances of this case. I consider that it may be appropriate for Mrs Kahukiwa-Smith to serve a period of ineligibility for future appointment to this trust. I invite her counsel to file submissions on this issue within 2 months from the date of this judgment.

Conclusion

[52] The former trustees have breached their duty to account to the beneficiaries and their duty to keep proper records. Those breaches would have been sufficient to warrant their removal, had they not already resigned. Their conduct was not reasonable and there will be no grant of relief from liability under s 73 of the Trustee Act 1956.

[53] According to the calculations of Mr Francois, some $6,049.29 of trust funds remains unaccounted for, less the amount transferred to Mr Rātima's as sole responsible trustee of $3,892.00. This leaves a balance of $2,157.29. As noted, the beneficiaries of the trust must be given an opportunity to express their views as to whether the former trustees should repay this amount, either at a general meeting, by postal ballot or by a combination of the two.

Decision

[54] The former trustees have breached their duties sufficient to warrant their removal, had they not resigned, for failing to account and failing to maintain the records of the trust.

[55] The beneficial owners are to be asked their views on whether the former trustees should be required to repay the trust in the amount of $2,157.29 being the balance of the trust funds that have not been properly accounted for.

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[19] See *Rātima v Sullivan – Tataraakina C* (2017) 64 Tākitimu MB 121 (64 TKT 121)

[56] Mr Rātima is directed to arrange for such views to be obtained from the beneficiaries by 31 October 2018 by way of general meeting, postal ballot or a combination of both. A final decision will then issue as to liability.

[57] Counsel for Mrs Kahukiwa-Smith is invited to file submissions on whether his client should serve out a period of ineligibility for reappointment to the trust within two months from the date of this judgment.

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

Pronounced at 1.15pm in Levin on Thursday this 19th day of July 2018

L R Harvey
JUDGE