

**IN THE MĀORI LAND COURT OF NEW ZEALAND  
TE WAIPOUNAMU DISTRICT**

**A20170003957**

UNDER Section 231, Te Ture Whenua Māori Act 1993

IN THE MATTER OF Riwaka-Matiu-Mātana Whānau Trust and Riwaka-Matiu-Mātana Ahu Whenua Trust

SUSAN BUCHANAN  
Applicant

Hearing: 7 July 2017, 45 Te Waipounamu MB 282-296  
(Heard at Christchurch)  
14 May 2018  
(Heard at Wellington)  
27 June 2018, 50 Te Waipounamu MB 152-163  
(Heard at Wellington)

Appearances: M Tukapua for Margaret Riwaka-Love  
Alan Riwaka in person  
Paia Riwaka-Herbert in person  
Susan Buchanan in person  
Pārua Riwaka in person  
Nicholas Riwaka in person

Judgment: 17 September 2018

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**JUDGMENT OF JUDGE M J DOOGAN**

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[1] On the 27<sup>th</sup> June 2018, I issued a provisional determination.<sup>1</sup> I raised the following proposals with the whānau:

- a. That the house at 77 Moana View Road be offered for sale to Pārua at the “whānau price” previously agreed when a proposal was made to sell the house to other whānau members. Pārua would be given the option of purchasing the house at that “whānau price” less his \$100,000 of equity. The balance of the purchase price could then be set aside and invested with the income being applied for the benefit of the whānau and future generations in the same way as the current rental income is being used by the trustees of the ahu whenua trust.
- b. If Pārua does not wish to exercise this option, the property at 77 Moana View Road be sold (within the preferred class) at market price with the balance of sale proceeds after payment of Pārua’s \$100,000 equity applied in the manner suggested above.

[2] I also directed trustees to file updated accounts together with details of any current tax liability within 15 working days of 27<sup>th</sup> June 2018. That information has yet to be filed.

[3] Since the provisional determination the Court has received the following:

- (a) An email dated 26 August 2018 and two emails dated 5 September 2018 from Paia Riwaka-Herbert noting that, as Pārua is unable to purchase the property himself, she supports the sale to Mahana for \$320,000. She noted on 5 September that she was happy to transfer any shares which remained in her name to Mahana to allow her to obtain a loan to purchase the property.
- (b) Emails dated 2 September and 5 September 2018 from Alan Riwaka in support of the sale to his daughter, Mahana, for \$320,000 and noting that he had spoken to Mahana’s loan broker who intended to have a conditional loan approved shortly.
- (c) An email dated 4 September 2018 from Pārua expressing his consent to the sale of 77 Moana View Road to his niece, Mahana Vardy, for the “whānau price” of \$320,000. He also noted that he had no issue with any financial appreciation that Mahana may receive from a future sale of the property.

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<sup>1</sup> 50 Te Waipounamu MB 152-163 (50 TWP 152-163).

- (d) An email dated 5 September 2018 from Margaret Riwaka-Love supporting the sale of the property to Mahana on the conditions that: a right of first refusal be offered to the descendants of the current owners when the property is on-sold; and a valuation be obtained to determine the percentage difference between the sale price and market value so that the “whānau” discount could be replicated upon future sale. Margaret emphasised the “whānau price” being a discount rather than a gift, as she wished for that discount to have continued application and be applied to future sales to other whānau members.
- (e) A phone call from Susan Buchanan on 5 September 2018, the content of which was subsequently summarised by the Court’s service manager in an email dated 5 September. Susan agreed with the sale in accordance with Alan’s proposal and noted her support for the proposition that a current market valuation should be obtained to calculate the percentage discount and, if Mahana sells the property in future, it should be offered to other whānau members at the same percentage discount.
- (f) An email dated 5 September 2018 from Margaret Riwaka-Love on behalf of the trustees of the Whānau Trust noting that she had received legal advice and was concerned that the trustees’ obligations were incompatible with the proposed sale of the house to a single beneficiary. She noted the possibility of winding up the trust to allow the sale to go ahead and sought the Court’s guidance in this regard.

[4] The Court has not received a response from Nick Riwaka.

[5] I am prepared to sanction the proposed sale of the property to Alan’s daughter Mahana Vardy at an agreed “whānau price” of \$320,000. The proposal is similar to that made in my provisional determination, and appears to have near unanimous support amongst the whānau.

[6] I was prepared to sanction the sale of the property at 77 Moana View Road to Pārua at a discounted “whānau price”, primarily because this seemed to me the fairest way to

resolve the dispute that had arisen over how to fulfil the family arrangement to compensate Pārua for the fact that provision made for him in the will of Agnus Riwaka was no longer available. The proposal to now sell the property to Mahana would also enable Pārua to be compensated out of the proceeds to the \$100,000 value I have assessed.

[7] I consider it appropriate to approve this arrangement for the same reasons set out in my provisional determination.<sup>2</sup>

[8] I agree that in the circumstances it would be fair that the current owners (the siblings) and their children be offered a right of first refusal at a comparable discounted whānau price as and when Mahana Vardy wishes to sell the property. I propose to make that condition as part of the orders the Court will make.

[9] I am satisfied in terms of section 147A and section 150A that Mahana is within the preferred class and that there is the necessary level of support for the sale of the property to her.

[10] I am also satisfied in accordance with section 152 of the Act that the proposed alienation is not in breach of trust, that all fixtures and improvements have been given due consideration and that the consideration is adequate having regard to the relationship between the parties and the special circumstances of this case. Accordingly and subject to the directions that follow I signal my conditional approval to the proposed alienation to Mahana. To avoid doubt I will also authorise the alienation pursuant to section 64 of the Trustee Act 1956.

[11] As the property is the sole asset of the Ahu Whenua Trust I also propose to make orders winding up the Ahu Whenua Trust. I acknowledge that the power to terminate a trust is discretionary, and one to be invoked with a degree of caution.<sup>3</sup>

[12] In doing so, I have regard to the matters set out in the Preamble, ss 2 and 17 of the Act. Of particular relevance in this application are the principles of retention, use and development of land, and the objectives to determine and give effect to the wishes of

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<sup>2</sup> Above n 1 at [27]-[28].

<sup>3</sup> *Lake – Ngarara B3B Trust* (2003) 134 Aotea MB 20 (134 AOT 20) at 26.

landowners, to facilitate the settlement of disputes among landowners, to ensure fairness in dealings with owners, and to promote practical solutions.

[13] The Court has previously recognised that termination of an ahu whenua trust over a single block of land may be justified where there is no real reason for the Trust to remain in its present form, there would be no unreasonable disadvantage to the beneficial owners as a result of termination, and the purposes set out in s 215(2) of the Act are unable to be fulfilled by the trust (specifically that the trust does not promote and facilitate the use and administration of the land in the interests of those beneficially entitled to it).

[14] I similarly conclude that, in this case, there is no real reason for the Ahu Whenua trust to remain once the property has been sold, that there will be no unreasonable disadvantage to the beneficial owners from terminating the trust; and the continuing existence of the trust will not fulfil the purposes of s 215(2) to promote and facilitate the use and administration of the land.

[15] Moreover, the proposed sale of the property to Mahana is part of a wider arrangement sanctioned by the Court to help resolve the dispute as to how the family arrangement with Pārua may be given effect to. I am satisfied in these circumstances that the sale of the property and the subsequent termination of the Trust is in the best interests of all parties in helping to resolve the whānau dispute, ensuring fairness to each of the Riwaka siblings, and providing a practical solution to enable them to move forward. This solution will also allow for the retention of the property within the whānau.

### **Orders/Directions**

[16] Pursuant to s 237 of Te Ture Whenua Māori Act 1993 and s 64 of the Trustee Act 1956, I authorise the trustees of the Riwaka-Matiu-Matana Ahu Whenua trust to sell 77 Moana View Road, Waikawa to Mahana Vardy for \$320,000.00.

[17] The alienation is confirmed pursuant to s 152 of Te Ture Whenua Māori Act 1993, and is conditional on the trustees of the ahu whenua trust filing with the Court a current market valuation of the property, a copy of the sale and purchase agreement and evidence of payment of the purchase price. The sale is also conditional upon the trustees including as a

special condition of sale a requirement that if and when Mahana Vardy wishes to sell the property, she must first offer a right of first refusal to Pārua, Nick and Alan Riwaka, Paia Riwaka-Herbert, Susan Buchanan, and Margaret Riwaka-Love and their respective children. The offer must be on comparable ‘whānau price’ terms calculated by reference to the percentage difference between the purchase price of \$320,000.00 and the market value as assessed by the independent valuer appointed in accordance with these directions.

[18] The proceeds of sale are to be applied in the following manner:

[19] The sum of \$100,000.00 is to be paid to Pārua Riwaka (the trustees are to take advice and confirm with the Court whether this sum is to be inclusive or exclusive of GST);

[20] The trustees are to apply such sums as are required to settle all outstanding tax liabilities and any other outstanding liabilities of the trust; and

[21] The balance remaining is to be divided into six shares with a one sixth share to be paid to Alan Riwaka and a further one sixth share to be paid Margaret Riwaka-Love. The remaining four sixths are to be vested in the trustees of the whānau trust.

[22] I envisage that the current funds held by the Ahu Whenua Trust will be sufficient to pay for a market valuation of the property. Once available, that valuation is to be filed with the Court together with the updated accounts and details of tax liability previously directed at paragraph 35 of my provisional determination of the 27<sup>th</sup> June 2018.

[23] The orders and directions recorded above should be sufficient to enable the sale to proceed. The final and consequential orders including orders terminating the Ahu Whenua Trust will issue from Chambers following compliance with the steps set out above.

[24] Leave is reserved to the parties to apply for further directions if required.

Pronounced at 4.30pm at Wellington on this 17<sup>th</sup> day of September 2018.

M J Doogan  
**JUDGE**