IN THE MĀORI LAND COURT OF NEW ZEALAND
WAIARIKI DISTRICT

A20150003701

UNDER	Section 289 of Te Ture Whenua Māori Act 1993
IN THE MATTER OF	Paenoa Te Akau (Balance) Block
BETWEEN	MARION CHASE SEYMOUR on behalf of the NGAHUIA RIPEKA WHĀNAU TRUST Applicant
AND	PAENOA TE AKAU TRUST Respondent

Hearings: 339 Aotea MB 274 - 295 dated 14 July 2015
132 Waiariki MB 168-173 dated 20 November 2015

Judgment: 18 April 2016

RESERVED JUDGMENT OF JUDGE L R HARVEY

Introduction

[1] On 3 March 2015 Judge Savage finalised partition orders in respect of Paenoa Te Akau Block.[1] Marion Chase-Seymour, on behalf of the Ngahuia Ripeka Whānau Trust, now applies for a further partition of the remaining shares held by that trust in Paenoa Te Akau (Balance) Block.

[2] The application is opposed by Kiri Potaka-Dewes and Nick Duff, trustees of the Paenoa Te Akau ahu whenua trust, who are concerned that the partition sought is contrary to the resolution made at the 2011 annual general meeting. They are also concerned that the orders sought for a further partition will disadvantage other owners in the land. They say that the application cannot be granted without a further opportunity for discussion amongst all affected owners.

[3] The issues for determination are:

(a) Have the tests for sufficient notice, opportunity for discussion and support been met?

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[1] *Chase-Seymour v Dansey – Paenoa Te Akau* (2015) 114 Waiariki MB 195 (114 WAR 195)

(b) Is the partition reasonably necessary?

Background

[4] As foreshadowed, the Paenoa Te Akau Block recently underwent a partition.[2] Paenoa Te Akau A is 1.4944 ha in area and the Ngahuia Ripeka Whānau Trust and Rangitopeora Whānau Trust were determined owners. Paenoa Te Akau B is 6.1045 ha and is owned by 43 beneficial owners.

[5] Paenoa Te Akau (Balance) Block is 64.1921 ha. The blockis administered by the Paenoa Te Akau ahu whenua trust. There are 2,115 beneficial owners in the land holding 921,850 shares. The Ngahuia Ripeka Whānau Trust holds 4,268.86 shares.

[6] The original trustees of Paenoa Te Akau Trust were Selwyn Katene, Sean Ellison, Winnie McKenzie, Tamamutu Samuels and Manu Pene.[3] The current trustees are Nick Duff, Fred Nicholl, Kiri Potaka-Dewes and Rose Spain.[4]

Procedural history

[7] Following the filing of the application, Mrs Chase-Seymour was requested to provide further information as to what former title the applicant was seeking to partition, whether this application was different from a previous version and to provide a sketch plan, details of the application, and consents of owners and trustees.

[8] Mrs Chase-Seymour clarified that the application is a new one as it seeks to partition out the remaining shares held by the whānau trust in Paenoa Te Akau (Balance) Block. At that stage Mrs Chase-Seymour considered that the remaining shares could be *added* to Paenoa Te Akau A so that the extra portion of land would be located adjacent to that block. Mrs Chase-Seymour also requested that the Court use the information contained in the previous partition file to obtain a sketch plan and details of consents.

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[2] *Chase-Seymour v Dansey – Paenoa Te Akau* (2015) 114 Waiariki MB 195 (114 WAR 195)
[3] 66 Taupo MB 177-178 (66 TPO 177-178)
[4] 61 Waiariki MB 240 (61 WAR 240)

[9] The application was set down to be heard before Judge Coxhead on 24 August 2015.[5] However, prior to the hearing the applicant requested an adjournment which was granted.

[10] Isabella Westbury, George McLaughlin and others nonetheless, appeared on 24 August 2015. They were unaware that the adjournment had been granted and generally opposed the application. Judge Coxhead confirmed, that given the adjournment had already be granted, those in attendance should file further submissions ahead of the next hearing. A letter of objection was subsequently filed by Mrs Westbury.

[11] The proceedings were then referred to me. On 11 November 2015 I issued directions to the case manager querying whether a meeting of owners had been held to discuss the proposal, what in fact the proposal was seeking and whether the trustees of Paenoa Te Akau (Balance) had been given notice of the application.

[12] Mrs Chase-Seymour subsequently confirmed that that the original partition of Paenoa Te Akau A was meant to include *all* the shares held by the whānau trust. However, given that shareholding equated to an area larger than the historical Rangatira 8A10E block, a portion of shares remained in Paenoa Te Akau (Balance). Mrs Chase-Seymour confirmed that a new partition is sought to deal with the balance shares and that she did not want to disrupt the previous partition order granted by Judge Savage.

[13] As foreshadowed, I heard the application on 20 November 2015.[6] Mrs Westbury attended the hearing and advised that she no longer opposed the application as the access issues had been resolved. In the absence of any further objections and after expressing a preliminary view I adjourned the case for a written decision to issue.

The Law

[14] The approach of this Court to partition applications is set out in the Māori Appellate Court decisions *Hammond – Whangawehi 1B3H1*[7] and *Whaanga v Niania – Anewa block*.[8] In *Hammond* three essential prerequisites were identified which must be satisfied before the Court can grant a partition:[9]

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[5] 126 Waiariki MB 157 (126 WAR 157)
[6] 132 Waiariki MB 168 (132 WAR 168)
[7] *Hammond - Whangawehi 1B3H1* (2007) 34 Gisborne Appellate MB 185 (34 APGS 185)
[8] *Whaanga v Niania – Anewa block* [2011] Māori Appellate Court MB 428 (2011 APPEAL 428)
[9] *Hammond - Whangawehi 1B3H1* (2007) 34 Gisborne Appellate MB 185 (34 APGS 185) at [14]-[20]

> [14] The leading decision on partition is that of the *High Court in Brown v Māori Appellate Court* [2001] 1 NZLR 87. We refer also to the decisions of this Court in *Re Port Levy – Wade Wereta Osborne*, *Re Kaiwaitau 1* (2005) 34 APGS 168 and *Re Matakana 1A7A Ngatai v Duvall & Ors* (2007) 21 Waikato Maniapoto Appellate MB 147.
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> [15] The Court has exclusive jurisdiction to grant partition orders in relation to Māori freehold land in accordance with Part 14 of the Act. That jurisdiction is discretionary. The Act directs the Court to exercise its discretion in three steps.
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> [16] First, the statutory prerequisites must be satisfied. The Court is expressly prohibited from granting partition if these prerequisites are not satisfied. There are, in essence, three (we do not look at the situation where the land is vested in an Incorporation):
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> > Section 288(2)(a): The Court must be satisfied that the owners have had sufficient notice of the application and sufficient opportunity to discuss and consider it.
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> > Section 288(2)(b): The Court must be satisfied that there is a sufficient degree of support for the application among the owners, having regard to the nature and importance of the matter.
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> > Section 288(4)(a) and (b): The Court must be satisfied that the partition is necessary to facilitate the effective operation, development, and utilisation of the land; or, effects an alienation of land, by gift, to a member of the donor‘s whanau, being a member who is within the preferred classes of alienees.
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> [17] In *Brown v Māori Appellate Court* the High Court clarified (para 51) that necessary in section 288(4)(a) is properly to be construed as reasonably necessary and that it is closer to that which is essential than that which is simply desirable or expedient.
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> [18] Second, if the statutory prerequisites are satisfied, the Court must then address the mandatory considerations in section 288(1). That section requires the Court to have regard to the opinion of the owners as a whole, the effect of the proposal on the interests of the owners, and the best overall use and development of the land.
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> [19] Third, the Court is to exercise its general discretion mindful that it may refuse to exercise that discretion if it would not achieve the principal purpose of Part 14 of the Act: section 287(2). The principal purpose is expressed in section 286(1) to be ―to facilitate the use and occupation by the owners of land owned by Māori by rationalising particular landholdings and providing access or additional or improved access to the land.
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> [20] At all times the Court must have regard to the principles set out in the preamble to the Act, section 2 and section 17: *Brown v Māori Appellate Court* (para 66).

[15] I adopt the reasoning set out in that judgment.

Have the tests for sufficient notice, opportunity for discussion and support been met?

Applicant's submissions

[16] Mrs Chase-Seymour submits that at the time the partition orders were made in respect of Paenoa Te Akau A it was envisaged that *all* the shares held by the whānau trust would be partitioned out and an equivalent area of land granted. The applicant says this is not what occurred and the trust still retains shares in the balance block.

[17] According to Mrs Chase-Seymour the whānau trust now seeks to partition out the area of land formerly known as Rangatira 8A10B1C and would ideally like to amalgamate that portion with Paenoa Te Akau A. She says this will enable the whānau to build on their land and will benefit the block because families will be able to better utilise their land.

[18] The applicant relies on previous evidence provided to the Court in 2011when Paenoa Te Akau A was subject to partition. She says the 2011 meeting of owners is basis enough to demonstrate support for the partition and submits that that meeting obviated the need to call hui every time someone wanted to partition their land both now and in the future.

[19] In response to concerns raised by the ahu whenua trustees regarding the intention of the original partition, the applicant submits that the idea was to have the original area jointed to Paenoa Te Akau A. It now appears that Mrs Chase-Seymour acknowledges that it is not as simple as adding the extra land to the existing block and that the part comprising Rangatira 8A10B1C may need to be sectioned off as a different parcel of land.

Respondent's submissions

[20] At the time of the hearing the application was opposed by Mrs Westbury as she believed that her access to Lake Taupō and the land would be restricted. Mrs Westbury has now withdrawn that objection having been satisfied that access will not be restricted.

[21] Kiri Potaka-Dewes, one of the ahu whenua trustees, is concerned that the applicant is now seeking something which was not originally agreed to and believes that the application may have implications for those whānau yet to partition.

[22] Nick Duff, chairman of the ahu whenua trust, initially supported the application. However, after having considered the application in full he has now expressed concern that the whānau trust is seeking to add an *additional* area of land to Paenoa Te Akau A based on their balance shares. He is concerned that the area sought is not a historic block. According to Mr Duff the whānau trust can only make a claim to the land that formerly comprised Rangatira 8A10E. He says that if whānau members have other shares, they would probably relate to different historical titles.

[23] Mr Duff further submits that the unanimous approval given in 2011 referred to partitions of historical blocks only and not unspecified areas of land. He argues that if the land that the

applicant seeks was taken from either of the blocks adjacent to Paenoa Te Akau A it could seriously disadvantage the owners of those historic blocks if and when they seek to partition.

[24] In addition, Mr Duff is concerned that if the partition is granted it would mean that the "first dressed" and "best dressed" applicants would squeeze out or disadvantage later partitions by the residue owners.

Discussion

[25] Mrs Chase-Seymour submits that at the 26 November 2011 hui-a-tau the idea of returning the original whānau partitions (in line with the former Rangatira blocks) was raised. She says that at the meeting it was resolved that those owners who wanted to partition could do so. It was further agreed she says that each whānau would be responsible for their "own" block. Mrs Chase-Seymour considered those minutes sufficient evidence of consent and consultation.

[26] The trustees submit that the original intention of that meeting was to enable whānau to partition out *historical* blocks. They are concerned the applicant is trying to circumvent that original intention.

[27] The minutes of the 2011 hui-a-tau record that Mr Duff put forward the idea of returning to the original whānau partitions as this would hand back control of each block to the relevant whānau. The meeting resolved:

> Resolution 1: "That this hui agree to partition for those owners who want to partition"
> Moved by Tu Dansey
> Seconded by Bill Hall
> Resolution 2: "That block owners be responsible for their own blocks."
> Moved by Tom Walters
> Seconded by Tu Dansey

[28] I consider that the intention of those who attended the 2011 hui was that whānau be able to partition whānau blocks only in accordance with their *historic* title. At the outset of this application Mrs Chase-Seymour sought to partition out an area equivalent to the remaining shares held by the whānau trust and adjoin that area to Paenoa Te Akau A. However, to do so would mean taking land out of neighbouring blocks from which I understand the applicants to have no direct individual historical connection. As the trustees point out, taking the area from one of those blocks would disadvantage those whānau seeking to partition their block at a later stage.

[29] As foreshadowed, it appears that the applicant now acknowledges that any further partition should be completed in accordance with the historical boundaries as raised by the trustees. In this case the area sought for partition is Rangatira 8A10B1C.

[30] It is therefore necessary that sufficient notice and opportunity to discuss the proposal be given to those owners who have a connection with Rangatira 8A10B1C. The 2011 hui minutes do not provide sufficient evidence of their support for partition in favour of the applicants.

[31] I am also concerned that the plan filed with the application only depicts the parent title Rangatira 8A10B. It does not show which part of that block is sought by the applicant and nor does it show the size of the area that the applicant seeks.

[32] According to the records of the Court, Rangatira 8A10B1C was originally subject to partition for an area of 2acres 2roods 27perches. This equates to just over 1 hectare.[10] At the time of partition the block was vested in 7 owners including Samuel Chase (who the whānau trust and the applicant derive their interests from). The whānau trust currently has 4,268.86 shares in Paenoa Te Akau (Balance) and this roughly equates to 0.2972 ha. On the face of it the shareholding does not appear to be sufficient to warrant partition of the Rangatira 8A10B1C block.

[33] The original owners of Rangatira 8A10B1C have been subject to succession orders over the years, with the exception of George Chase who is still recorded as a current owner in the balance block. Those descendants, I gather, remain beneficial owners in Paenoa Te Akau (Balance) Block.

[34] As foreshadowed, it is difficult to see how the requirements of s 288(2)(a) and (b) have been satisfied, given the absence of consultation with all the owners of Rangatira 8A10B1C. Moreover, the whānau trust cannot claim the block exclusively and consequently a further meeting must be held between those persons with an interest derived from Rangatira 8A10B1C. The effect of any partition now would be that those owners could be excluded from the block in the future. That does not appear to have been the intention of those who attended the 2011 hui-a-tau. In summary, my conclusion is that there has not been sufficient opportunity for the owners to discuss and consider the application. Nor is there compelling evidence of sufficiency of support for the proposal beyond the applicant and her whānau.

Is the partition reasonably necessary?

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[10] 33 Taupō MB 243 (33 TPO 243)

[35] Having found that the application does not meet the pre-requisites under s 288(2)(a) and (b) of the Act, I am not required to consider the necessity of the application. That said, some observations may prove apposite.

[36] The applicant originally sought the partition for the purpose of joining the remaining whānau interests in Paenoa Te Akau (Balance) Block with Paenoa Te Akau A. For reasons which I have stated earlier the applicant now concedes that this not possible, as the area of lands adjoining Paenoa Te Akau A are historical blocks which, based on the precedent now established, will affect the ability of other owners and their whānau to partition in the future. Any order affecting the historical blocks could compromise any future plans of owners to have their whānau blocks returned to them via partition, consistent with the approach provided to the applicant.

[37] I understand that Mrs Chase-Seymour now says she is happy to have Rangatira 8A10B1C subject to partition where it is delineated by its historical boundaries. As foreshadowed, the plan supplied with the application only depicts Rangatira 8A10B. I do not understand the applicant to be asking for this entire block. However, there is simply no plan confirming to the Court what part of the land is sought by the applicants. Without such a plan it is difficult to determine the necessity for the application.

[38] The applicant submits that the partition is necessary so the whānau trust can manage its land independently. At this point, and in the absence of cogent evidence, it is difficult to see a necessity for a further partition. Any area that may be granted in any future successful partition application cannot be joined to their existing block, in the absence of agreement from the affected owners. Moreover, the applicant has not stated why a partition of Rangatira 8A10B1C is now necessary beyond a general assertion of better management.

Decision

[39] The application as it is currently framed cannot succeed as there has not been compliance with the tests set out in ss 288-289 of the Act.

[40] The applicant is directed to:

(a) Convene a meeting with those owners who have a historical connection with Rangatira 8A10B1C to consider the partition proposal, with or without the assistance of the deputy registrar;

(b) Provide a detailed plan depicting the portion of land sought to be partitioned as the plan for Rangatira 8A10B is simply not sufficient;

(c) Provide further details regarding the necessity of the partition given that the land cannot be joined to Paenoa Te Akau A Block without the support of the affected owners.

[41] The applicant has 2 months from the date of this judgement to comply with these directions. Failing that, and in the absence of any request for an extension, the application will be dismissed.

[42] The applicant, like any affected party, is entitled to seek directions at any time.

Pronounced at 5.10 pm in Whanganui on Monday this 18th day of April 2016

L R Harvey
JUDGE