IN THE MĀORI LAND COURT OF NEW ZEALAND
TAITOKERAU DISTRICT

A20160005567

UNDER	Section 19, Te Ture Whenua Māori Act 1993
IN THE MATTER OF	Otakanini Māori Reservation (Haranui Marae)
BETWEEN	JANE SHERARD Applicant
AND	CAROLE DEVEREUX, ARIANNA HART, TRACEY HILL, JOHN HOHEPA, DENISE HOHEPA-HAPETA, RIKI MANUKAU, TUMANAKO POVEY, JOSEPH TIMOTI, CHERITH VAHA'AKOLO, RATU WAATA AND KAPU WILCOX AS TRUSTEES OF THE OTAKANINI MĀORI RESERVATION (HARANUI MARAE) Respondents

Hearing: 28 October 2016
31 October 2016
(Heard at Whangarei)

Appearances: T K Williams and C Linstead-Panoho for the applicant
J Robertson, H Goodwin and C Robertson for certain respondents

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ORAL JUDGMENT OF JUDGE M P ARMSTRONG

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J Robertson, PO Box 295, Ostend, Waiheke Island

Introduction

[1] Jane Sherard has applied for an interim injunction per s 19(1)(b) of Te Ture Whenua Māori Act 1993 ("the Act"), seeking an order preventing the trustees of the Otakanini Māori Reservation from expending funds:

(a) Of more than $5,000.00 to any person or body by way of a single agreement or contract or a combination of agreements or contracts; or

(b) That would reduce the balance of the Trust's funds below $165,000.00.

[2] The application is opposed by seven of the trustees, Denise Hohepa-Hapeta, Tracey Hill, Carole Devereux (Povey), Arianna Hart, John Hohepa, Ratu Wata and Joseph Timoti, who are represented by Mr Robertson.

[3] The issue in this case is whether an interim injunction should be granted.

[4] As with all oral decisions, I reserve the right to amend this decision but any such amendments shall only be as to form not as to substance and not to change the outcome of the decision that I am about to make.

Background

[5] This reservation was set apart over the Otakanini Reservation Block by notice in the New Zealand Gazette on 26 October 1939:[1]

> …as a Native Reservation for the common use of the owners thereof as a meeting-place and as a site for a church, meeting-house, or other communal building or for the common use of the owners thereof in any other manner.

[6] The reservation is more commonly known as Haranui Marae. Although the Gazette notice declares that the beneficiaries of the reservation are the owners, the Marae operates for the benefit of Ngāti Whatua Tuturu, a hapū of Ngāti Whatua based at Otakanini. Ms Sherard is a beneficiary of the reservation.

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[1] *Setting apart Native Land as a Native Reservation* (26 October 1939) 133 New Zealand Gazette Notice 2969 at 2981.

[7] The trustees of the reservation are Arianna Hart, Carole Devereux (Povey), Cherith Vaha'akolo, Denise Hohepa-Hapeta, John Hohepa, Joseph Timoti, Kapu Wilcox, Ratu Waata, Riki Manukau, Tracey Hill and Tumanako Povey.[2]

[8] On 7 March 2016, the trustees received $267,848.17 from the Ngā Maunga Whakahii o Kaipara Development Trust ("the PSGE"), which is the post settlement governance entity for Ngāti Whatua o Kaipara.

[9] Part of the funds received have been applied towards renovation works, and other costs, in relation to the Marae. The current balance of those funds is $175,243.90. The trustees also hold relatively small balances in other accounts operated for the Marae.

[10] On 24 June 2016, Ms Sherard filed two applications. The first application seeks a review of the trust.[3] The second application seeks an injunction per s 19(1)(b) of the Act:[4]

> …to prohibit further spend and any further NEW major property works (external to those works already commenced as part of the Haranui Marae Rebuild).

[11] I note that a separate application has also been filed by Carole Povey seeking to enforce the obligations of trust, in relation to the reservation.[5] Mrs Povey is an existing trustee and is one of the respondents opposing the current application for an interim injunction.

[12] On 15 August 2016, I held a judicial conference in Albany in relation to the applications filed by Ms Sherard and Mrs Povey. After hearing from the parties I issued the following directions:[6]

> **Both of these applications will be adjourned.**
>
> **I direct that Mrs Povey is to file any application for special aid within one month of today's date. That application is then to be referred to me as a matter of urgency for determination on the papers in Chambers.**
>
> **I also direct Mrs Povey and Mr Wackrow on behalf of his client to file any amended applications within two months of today's date.**

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2 108 Taitokerau MB 76-107 (108 TTK 76-107).
3 A20160003841.
4 A20160003842.
5 A20140008387.
6 136 Taitokerau MB 270-293 (136 TTK 270-293).

> **This application is then to be set down for a further judicial conference here in Auckland to consider those applications and whether we are in a position to timetable the filing of evidence towards a hearing. Also if there are to be any interlocutory applications filed, whether that is seeking interim relief, or whether that is an application for strike out of any part of the pleadings, then I would direct that those are to be filed and served three weeks prior to the next judicial conference…**

[13] On 29 September 2016, Ms Sherard filed the current application seeking an interim injunction.

[14] On 18 October 2016, Ms Sherard filed her amended substantive application seeking the removal and replacement of trustees, and to enforce the obligations of trust.

[15] Mrs Povey has not yet filed her amended substantive application as directed on 15 August 2016. Mr Robertson advised that they have been unable to do so as they have been forced to respond to the current application seeking urgent interim relief.

The Law

[16] The Court has the power to grant both permanent and interim injunctions per s 19 of the Act.

[17] Generally, an applicant for an interim injunction must satisfy the Court that there is a serious question to be tried before the Court will proceed to weigh the needs of the applicant against those of the respondent to determine where the balance of convenience lies. However, this is not a rigid formula and in the end the fundamental question is where do the interests of justice lie.[7]

Is there a serious question to be tried?

[18] In determining whether there is a serious question to be tried it is necessary to consider the allegations before the Court, the applicable law and whether there is a tenable combination of resolution of the issues of law and fact on which the applicant could succeed.[8]

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[7] See *Klissers Farmhouse Bakeries Ltd v Harvest Bakeries Ltd* [1985] 2 NZLR 129 (CA), *Whitmarsh v A'mon Corporation Ltd* (1988) 2 PRNZ 576 at 583, *Bowkett v Action Finance Ltd* [1992] 1 NZLR 449, and *Lomax v Apatu – Awarua o Hinemanu Trust* (2013) 22 Takitimu MB 282 (22 TKT 282).

[8] See *Henry Roach (Petroleum) Pty Ltd v Credit House (Vic) Pty Ltd* [1976] VR 309, *Sutton v The House*

[19] In the present case, counsel for the applicant, Mr Williams, raised a number of allegations which are set out in the amended substantive application filed by Ms Sherard. This includes that:

(a) Five trustees have resigned, leaving six in office. Of those remaining trustees, four are administering the reservation to the exclusion of the other two active trustees.

(b) Some of those trustees who have resigned are continuing to act as trustees despite their resignations.

(c) The trustees have failed to hold an annual general meeting as required by the Māori Reservation Regulations 1994 ("the Regulations"), and have failed to provide financial reports to the beneficial owners either at an AGM or upon request from the beneficiaries.

(d) The trustees have abandoned long standing practices of the trust holding monthly meetings and providing regular reports to the beneficiaries.

(e) The trustees have abandoned the renovation project being undertaken as part of the Marae DIY programme and instead are undertaking this work internally.

(f) The trustees have failed to consult with kaumatua and kuia concerning the application of trust funds and the direction of the renovation project.

(g) The beneficiaries have passed a vote of no confidence in the trustees. They are concerned as to the application of the funds by the trustees and that if interim relief is not granted, the funds received from the PSGE may be lost.

[20] Mr Williams relies on an affidavit from Ms Sherard which deposes evidence supporting these allegations.

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of Running Ltd [1979] 2 NZLR 750 at 753.

[21] In response, Mr Robertson argues that it is for the trustees to administer the reservation. He contends that it is the trustees who make decisions as to the application of trust funds, and the direction of the renovation project, and there is no requirement to consult with the beneficiaries or to seek their approval in relation to the application of those funds. Mr Robertson argues that the trustees are undertaking important work carrying out the renovations of the Marae which is for the benefit of all of the beneficiaries and they should be allowed to continue with that work.

[22] Mr Robertson relies on affidavits from Carole Povey, Tracey Hill, and Denise Hohepa-Hapeta.

[23] There is merit in Mr Robertson's argument. The trustees have the power and the obligation to administer the reservation for the benefit of the beneficiaries. This is confirmed in reg 6 of the Regulations, and in general principles of trust law. However, that is not the extent of the allegations made.

[24] Ms Sherard's affidavit exhibits resignations from five current trustees, John Hohepa, Tumanako Povey, Joseph Timoti, Riki Manukau and Arianna Hart. Although these resignations have been tendered, an order has not been granted by this Court removing those persons as trustees.

[25] Regulation 3(e) of the Regulations states:

> **3 Trustees**
>
> Any trustee for the time being appointed, by order of the Court, in relation to any reservation,—
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> …
>
> (e) May retire from the office of trustee upon giving notice to that effect to the Court or to the other trustees:

[26] Mr Williams argues that these resignations constitute notice to the other trustees per reg 3(e), and as such, those resignations are effective. If Mr Williams is correct, this leaves six trustees in office, namely Denise Hohepa-Hapeta, Tracey Hill, Carole Povey, Kapu Wilcox, Cherith Vaha'akolo and Ratu Waata.

[27] I have also been provided with minutes from a trustee meeting dated 9 June 2016. At that meeting resolutions were passed by six trustees,[9] removing and replacing signatories to the trust bank account, and authorising the allocation of $5,000.00 to Eammon Harte (the project manager) to complete the re-build of the Marae. Two of the trustees who attended that meeting and who, on the face of it, participated in voting are Arianna Hart and Joseph Timoti, both of whom had tendered resignations prior to that meeting.

[28] Mr Robertson contends that some of those trustees who have resigned are nevertheless seeking to remain and / or act as trustees. In *Ngamoki Cameron v Koopu*,[10] Judge Harvey had to consider whether a member of the committee of management for the Mangaroa Incorporation was entitled to withdraw his resignation as a committee member. Judge Harvey found that the resignation in that case could only be withdrawn with the consent of the remaining members of the committee.

[29] While that decision concerned a Māori Incorporation, rather than a Māori Reservation Trust, it nevertheless provides some guidance for the purposes of this application.

[30] There is no evidence before me that those trustees who have resigned from this reservation have withdrawn their resignations, or that such a withdrawal has been accepted by the remaining trustees.

[31] A further issue arises as reg 17(c) and (d) of the Regulations provides:

> **17 Provisions applicable where trustees are not body corporate**
>
> Where the trustees are other than a body corporate as sole trustee, then, subject to any order of the Court,—
>
> …
>
> (c) No business shall be transacted at any meeting of the trustees unless a quorum is present:

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9 Joseph Timoti, Tracey Hill, Denise Hohepa Hapeta, Carole Povey, Arianna Hart and Ratu Waata.

10 *Ngamoki-Cameron - The Proprietors of Mangaroa & Other Blocks Inc* (2014) 91 Waiariki MB 279 (91 WAR 279).

> (d) Where the number of trustees is 2 or 3, 2 shall constitute a quorum and, where the number of trustees is more than 3, a quorum shall consist of at least one-half in number of the trustees:
>
> …

[32] In the present case there are eleven trustees. This means that the quorum required per reg 17 is at least six trustees. As noted five trustees have resigned, leaving six active trustees. Ms Sherard alleges that two of the remaining active trustees, Kapu Wilcox and Cherith Vaha'akolo, have been excluded from trustee meetings and trustee decision making. She further contends that decisions are being made by the remaining four active trustees, and on occasion, by trustees who have tendered resignations.

[33] As those resignations have been tendered, but orders have not been granted removing those trustees, the following issues arise:

(a) Are the resignations from those five trustees effective so that those trustees are no longer able to participate in trust business or decision making. If so, does this call into question the legitimacy of resolutions passed by the trustees authorising the application of trust funds, where trustees who have resigned have nevertheless participated in such decisions; and

(b) If the resignations are effective, does this affect the quorum requirements set out in reg 17. That is, does reg 17 require at least a majority of all 11 trustees in office to form a quorum, being six, notwithstanding the five resignations. If six active trustees are required to make a quorum, does that mean that resolutions have been passed without a proper quorum being met, if two of the remaining active trustees have been excluded?

[34] The allegation that the trustees have expended funds in breach of trust is also heightened by the allegation that the trustees have breached their obligation to provide financial information to the beneficiaries.

[35] Regulation 19(3) of the Regulations requires the trustees to call an annual general meeting of the beneficiaries where the trustees must:

> (a) Outline the position of the reservation, including the matters undertaken by the trustees in the preceding 12-month period; and
>
> (b) Report generally on the trustees' proposals for the administration of the reservation during the next 12-month period.

[36] There is a clear argument that the duty to report to the beneficiaries at an AGM per reg 19 includes providing a financial report.

[37] In addition to reg 19, a beneficiary has a general right to disclosure in relation to trusts. In *Foreman v Kingston,*[11] Potter J adopted the principles set out in *Schmidt v Rosewood Trust Limited,*[12] and held:[13]

> [97] Beneficiaries are entitled to receive information which will enable them to ensure the accountability of the trustees in terms of the trust deed…
>
> [98] These are fundamental rights of beneficiaries. They are not absolute rights… They will be subject to the discretion of the court in its supervisory jurisdiction when trustees seek directions, or beneficiaries seek relief against refusal by trustees to disclose.

[38] Mr Williams argues that an AGM has not been called since 2014. Mr Williams asserts that a financial report has not been provided at an AGM as required by reg 19, and that direct requests from beneficiaries seeking accounting records and information have been ignored.

[39] In response, Mr Robertson argued that these issues are not capable of resolution for the purpose of this interlocutory application and have to be determined at a substantive hearing. Mr Robertson contends that the evidence presented is untested, no proper determination can be made at the present time, and the Court should not rely on allegations and untested evidence.

[40] I accept Mr Robertson's argument that I cannot make a final determination on these issues without a substantive hearing. However, I am not being asked to do so. The question before me is whether Ms Sherard has demonstrated that there is a serious question to be tried.

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11 *Foreman v Kingstone* [2004] 1 NZLR 841.
12 *Schmidt v Rosewood Trust Limited* 2 AC 709 [2003] UKPC 26.
13 *Foreman v Kingstone* [2004] 1 NZLR 841 at [98]-[99].

[41] Mr Robertson did not advance his argument further on this point. I also note that Mr Robertson was unable to point to any evidence in the affidavits from his clients which disputed the allegations made by Ms Sherard.

[42] I consider that there is a serious question to be tried in this case. There is a sufficient foundation in both the law, and the affidavit evidence before me, that the trustees may have approved resolutions, including payment of trust funds, in breach of the Regulations and general trust law. There is also a sufficient foundation to show that the trustees may have breached their obligations to provide information to the beneficiaries by failing to hold an AGM, and by failing to respond to requests for financial records.

[43] These issues also need to be placed within the wider context of this proceeding, and in particular, concerns that the trustees are not aware of, and have not followed, proper processes in administering the reservation. Both sides referred to a trust deed prepared in 2008 which has not been approved by the Court, or adopted as a charter for this Marae. Both Mr Williams and Mr Robertson agreed that this deed is of no legal effect. Despite that, in her affidavit, Tracey Hill states:[14]

> Even though there are questions about the status of the Trust Deed, as a Trust Board we as trustees have followed the obligations of the Deed stated at Clause 8 which provides powers to the trustees. These are wide powers which allow us to get on with the job of running the Marae.

[44] Such evidence from the trustees only adds weight to the finding that there are serious questions in this case concerning the performance and conduct of the trustees.

Where does the balance of convenience lie?

[45] The balance of convenience requires balancing the injustice that will be caused to the applicant if an interim injunction is refused, and the applicant's case ultimately succeeds, against the injustice to the respondent that will result if the injunction is made, but then discharged in the substantive judgment. This has also been described as "the balance of the risk of doing an injustice".[15]

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14 Affidavit of Tracey Hill, sworn 19 October 2016, at [8].

15 See *Wellington International Airport Ltd v Air New Zealand Ltd* HC Wellington CIV-2007-485-1756, 30 July 2008 and *Cayne v Global Natural Resources plc* [1984] 1 All ER 225.

[46] Mr Robertson argues that the trustees are seeking to complete the renovations on the Marae which are desperately required, and which are for the benefit of all the beneficiaries. Mr Robertson contends that if an injunction is not granted, there can be no injustice or prejudice to the beneficiaries by the trustees continuing with those renovations.

[47] I do not agree.

[48] I accept that renovations to the Marae are ostensibly for the benefit of all of those associated with the Marae. However, the trustees have already spent over $92,000.00 of the funds provided by the PSGE. In her affidavit, Denise Hohepa Hapeta states that further urgent renovations are required to the ablution block which is estimated to cost $179,200.00. The current balance of the funds received from the PSGE is $175,243.90. It appears that if an interim injunction is not granted, the trustees will continue with the proposed works expending all remaining funds received from the PSGE.

[49] This means that if an injunction is not granted, and Ms Sherard's substantive application ultimately succeeds, the Court could find that all funds received from the PSGE have been applied by the trustees without proper quorum, without proper authorisation, in breach of the Regulations, and / or without proper accounting or reporting to the beneficiaries. There is potential prejudice and injustice to the beneficiaries if such findings were made.

[50] When weighing the balance of convenience, a further important consideration is whether alternative remedies, such as an award of damages, is available and appropriate. If damages are held to be sufficient, and the respondent is able to pay them, the balance of convenience leans against the grant of an injunction.

[51] If Ms Sherard's substantive case is upheld, and trust funds were expended in breach of trust, it is open to the Court to hold the trustees personally liable for those funds. As noted, the amount of trust funds already spent, and which it is proposed should be further spent, is high.

[52] In response to questions from the Court, Mr Robertson frankly admitted that the trustees are not in a position to meet an award of damages or to personally account for those funds. Such an admission supports the grant of an injunction.

[53] Surprisingly, Mr Robertson boldly argued that the ability to pay damages is irrelevant to the present application. Mr Robertson is plainly wrong.

[54] In *Wellington International Airport Ltd v Air New Zealand Ltd*, Wild J considered the principles applicable to the grant of an interim injunction. After considering whether there was a serious question to be tried, Wild J moved to the balance of convenience:[16]

> [5] The leading statement of "the balance of convenience" remains that of Lord Diplock at 408-409 in *American Cyanamid Co v Ethicon Ltd* [1975] AC 396. While stressing that the relevant factors and their weighting are case dependent, Lord Diplock suggested the following general approach.
>
> [6] Step 1: the adequacy of damages. In the context of this proceeding, I equate summary judgment with damages. This is a two way consideration. If summary judgment will adequately compensate WIAL, and Air NZ is good for the judgment, no interim injunction should normally be granted. The converse is equally applicable…

[55] I do not understand these principles to be controversial or the subject of judicial or academic criticism. Rather, these are conventional principles to which the Court has regard in considering an application such as that before me.

[56] Not to be disheartened, Mr Robertson further argued that a determination on damages cannot be made until a substantive hearing has been held. As already noted, I am aware that it is not possible or appropriate to make a final determination on substantive issues in the context of this application. I am not being asked to do so, nor have any such final determinations been made. I am simply having regard to conventional principles which apply to the grant of an interim injunction.

[57] As such, I consider that the inability of the trustees to meet an award of damages, or to account for funds applied in breach of trust, supports the grant of an injunction.

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[16] *Wellington International Airport Ltd v Air New Zealand Ltd* HC Wellington CIV-2007-485-1756, 30 July 2008 at [5]-[6].

[58] The trustees have also stated in evidence that if an interim injunction is granted, and the further renovations required cannot be completed, the Marae will have to be closed due to health and safety issues.

[59] I accept that the ongoing state of disrepair, and any health and safety issues which that poses to the trustees and the beneficiaries, is a relevant factor that must be weighed in deciding whether to grant an interim injunction.

[60] In the present case, there is no evidence that a notice has been issued by a local authority threatening to close the Marae if urgent renovations are not completed. It is clear that renovations have been undertaken, and there is evidence to suggest that further work is required. However, the evidence that the Marae will have to be closed if an injunction is granted appears to come from the subjective views of the trustees.

[61] This position is also undermined by the affidavit from Denise Hohepa Hapeta. At paragraph 11 she refers to the further work required but then states:

> …We are trying to keep the Marae open because Whānau still wish to have Tangihanga, weddings, and other important family milestones here…

[62] Surely if the Marae was in such a bad state of disrepair as alleged by the trustees, it would be incumbent upon them to close the Marae now until all renovations have been completed. That is not the case. Rather, the evidence demonstrates that the Marae has continued to operate both before and after the existing renovations have been completed. There is no explanation as to why the trustees are able to continue to keep the Marae open at the present time, but that it would have to be closed if an injunction is granted.

[63] For these reasons, I consider that the balance of convenience supports the grant of an interim injunction.

Does the overall justice of the case support the grant of an injunction?

[64] Having considered all of these matters I must stand back and consider where the overall justice lies in this case.

[65] The jurisdiction to grant an interlocutory injunction is governed by equitable principles. Accordingly, the prior conduct and dealings of the parties may be relevant to the exercise of the Court's discretion. An applicant should come to the Court with clean hands and delay, acquiescence or other inequitable conduct may go against the grant of an injunction.[17]

[66] Mr Robertson argued that, despite best efforts, he and his clients have been unable to properly consider and respond to the application for an interim injunction given the short notice and time pressure involved.

[67] I accept that it is always difficult to properly respond to an application such as this. Complex issues have been raised and Mr Robertson has had to prepare and respond to this application and the allegations made within a relatively short time frame. However, that is the nature of any application seeking urgent interim relief.

[68] I also note that Ms Sherard first filed an application on 24 June 2016 seeking an interim injunction preventing further payments concerning the rebuild.[18] That application was filed before Ms Sherard had retained counsel. At the judicial conference on 15 August 2016, Mr Wackrow, who acted as Counsel for Ms Sherard on that occasion, advised that his client was going to seek an undertaking from the trustees that funds were not to be disbursed over a certain level. Mr Wackrow further advised that if such an undertaking was not provided, his client would file an application seeking interim relief.[19]

[69] On 31 August 2016, Mr Wackrow wrote to the trustees seeking an undertaking from them on terms identical to the interim injunction which is now sought. That undertaking was signed by Cherith Vaha'akolo, Kapu Wilcox and Tumanako Povey, but not the remaining trustees.

[70] The current application seeking an interim injunction was then filed. Pursuant to directions from the Court, the application was served on the trustees and set down for hearing.

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17 See *New Zealand Fire Service Commission v Mitchell* CA36/99, 12 October 1999, *Unilever Plc v Cussons (NZ) Pty Ltd* [1997] 1 NZLR 433 (CA).

18 A20160003842.

19 136 Taitokerau MB 286 (136 TTK 286).

[71] As such, while Mr Robertson and his clients may have been under pressure to respond to this application, it cannot be said that Ms Sherard has acted inequitably or that her conduct disentitles her to equitable relief.

[72] It is also significant that Ms Sherard is not seeking to prevent all further payments by the trustees. The terms of the proposed injunction are to:

(a) limit payments to $5,000.00 to any one person or organisation; and

(b) prevent the overall balance of the trust funds from falling below $165,000.00.

[73] The proposed terms of the injunction are intended to allow the trustees to meet ongoing day to day costs, but to prevent large expenditure, until the substantive applications have been determined.

[74] It is also clear that this is a large amount of money for this Marae. It is said to be the largest amount ever received and it may well be the largest that ever will be received. There is a history of divisive and fractious relationships concerning this Marae. This is evident in the many different applications that have been filed, and the hearings held, concerning this Marae before this Court.[20]

[75] A large number of trustees have resigned. The reservation is currently being administered by a bare majority of trustees, or perhaps even a minority.

[76] Given the large amount of money involved, the fractious nature of dealings with this Marae, the concerns in relation to the overall administration of the Marae, and the outstanding applications before the Court, I consider that it is in the interest of justice that an injunction should be granted which will allow the trustees to meet day to day costs, whilst preserving the majority of the remaining funds until the applications are resolved.

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[20] For example see *Hill – Otakanini Maori Reservation* (2015) 108 Taitokerau MB 76 (108 TTK 76).

[77] I also consider that this approach is supported by the majority of the beneficiaries as demonstrated by an overwhelming vote of no confidence in the current trustees which occurred at the special general meeting on 23 July 2016.

[78] The final factor to consider in this case is whether the grant of an injunction would cause prejudice to any third parties.[21]

[79] In her affidavit, Carole Povey states that the Trust has outstanding accounts of $13,000.00 which are due for payment. Copies of those accounts, invoices, or contractual obligations on which those accounts are based, have not been filed. Instead, Mrs Povey has simply prepared a list of the amounts owing, and the creditors to whom she says the funds are owed.

[80] Mrs Povey has listed five accounts. Four of those accounts are for less than $5,000.00. On the face of it, payment of those four accounts would still be allowed even if the interim injunction is granted, given that the proposed terms of the injunction will still allow payments of up to $5,000.00 to any one recipient.

[81] The final account is for $9,000.00 which it is said is owed to Tribal Design. Payment of this account would be prevented by the grant of the proposed injunction. Mr Williams advised that his client has concerns as to whether this account should be paid.

[82] I have already found that there are serious questions around whether proper processes have been followed, and whether payments by the trustees have been properly authorised. Even if the trustees breached their duties when entering into contractual obligations with Tribal Design, if Tribal Design have acted in good faith from their end, they may still have a valid claim for payment against the Trust. Any resulting loss to the Trust could result in personal liability against the trustees. However, there is merit in the argument that Tribal Design, as an innocent third party, could be unfairly prejudiced by an injunction.

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[21] See *New Zealand Forest Products Ltd v New Zealand Stock Exchange* (1948) 2 NZCLC 99,051.

[83] While I have taken this into account, it is difficult to properly assess this issue as the trustees have not filed any contracts entered into with Tribal Design, minutes of trustee meetings approving such a contact, or invoices showing amounts due.

[84] I consider that any potential prejudice to third parties such as Tribal Design can be alleviated by granting the trustees leave to seek approval from the Court for payment of any urgent accounts that would otherwise be prevented by the injunction.

[85] I note that such leave is not intended to encourage the trustees to carry on 'business as usual' with a view to having additional payments approved by the Court. Such leave is intended to apply to an exceptional case where payment outside of the terms of the injunction is required to prevent a legitimate injustice. An avalanche of applications by the trustees seeking approval of a myriad of payments is unlikely to be met favourably.

[86] Mr Robertson argued that any such process for the approval of extraordinary payments is unworkable. Mr Robertson did not offer any real basis to this argument.

[87] An application seeking approval of a specific payment can be filed at short notice, and referred to me for urgent directions or determination. Mr Williams should be served with such an application, and if possible, counsel should confer to consider whether any such approval can be granted by consent. If agreement cannot be reached, the application can be heard in Chambers, and counsel can attend by telephone, to ensure that such issues are dealt with promptly. I consider that such an approach provides a workable and practicable solution to ensure that a serious injustice does not arise from the grant of an injunction.

Decision

[88] Pursuant to s 19(1)(b) of Te Ture Whenua Māori Act 1993, I grant an interim injunction preventing the trustees of the Otakanini Māori Reservation from expending funds:

(a) Of more than $5,000.00 to any person or body by way of single agreement or contract or a combination of agreements or contracts; or

(b) That would reduce the balance of the Trust's funds below $165,000.00.

[89] That injunction is to continue until further order of the Court.

[90] I grant leave for the trustees to seek approval at short notice of any urgent payments required which are prohibited by this injunction.

[91] This order is to issue forthwith pursuant to rule 7.5(2)(b) of the Maori Land Court Rules 2011.

Pronounced at Whangarei at 12:00pm on the 31st day of October 2016.

M P Armstrong
JUDGE