

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

**I TE KOOTI WHENUA MĀORI O AOTEAROA
TE ROHE O TE WAIARIKI**

A20180008949

UNDER Section 280, Te Ture Whenua Māori Act 1993

IN THE MATTER OF Torere 64 Incorporation

BETWEEN ESTELLA TAKU, GARRY WATSON AND
MURRAY PATCHELL AS MEMBERS OF THE
COMMITTEE OF MANAGEMENT FOR THE
TORERE 64 INCORPORATION
Applicants

Hearing: 18 December 2018
(Heard at Rotorua)

Appearances: C Bidois for Applicant

Judgment: 21 December 2018

JUDGMENT OF JUDGE C T COXHEAD

He hōnore, he kororia ki te Atua, he maungārongo ki te whenua, he whakaaro pai ki ngā tāngata katoa tētahi ki tētahi

E tangi tikapa ana te kanohi ora mō rātou kua hoki ki te marinotanga, ki te urunga tē taka, tāoki mai rā koutou. Heoi, me pēnei noa te whakatau, ko rātou ngā mate ki a rātou, ko tātou te kanohi ora ki a tātou.

Hei tīmatanga kōrero - Introduction

[1] The committee of management for the Torere 64 Incorporation has filed an application for orders per s 280 of Te Ture Whenua Māori Act 1993. The application seeks the appointment of an examining officer to review the Incorporation’s share register and provide a report to the Court as to whether the register can be relied upon for the purposes of an election of committee members.

[2] The application also seeks any further directions the Court thinks fit to make under s 280(7) of the Act in relation to the conduct of business of the Incorporation, given the current committee of management’s terms of office will expire on 31 December 2018.

[3] This application arises as part of proceedings relating to an earlier application filed by Edward Matchitt for an investigation into the affairs of the Torere 64 Incorporation.¹ During those proceedings, the Court requested an explanation as to why the Annual General Meeting (“AGM”) of the Incorporation for 2018 had been postponed. The present application was subsequently filed in response which addresses the reasons for delaying the AGM.

Ngā āhuatanga o te tono - The basis of the application

[4] Mr Bidois, as counsel for the Incorporation, submitted that the purpose of the application was to obtain directions for the conduct of committee of management elections where the committee and returning officer have no confidence that the share register is accurate. He noted the following grounds:

- (a) The applicants have identified names on the Incorporation’s share register for which no vesting or succession orders have been located, despite diligent

¹ Application A20180006483.

searches being made of the Incorporation records and the Māori Land Court records;

- (b) The former committee of management has admitted that since 2004 they had allowed the rights of deceased shareholders to be exercised by others who had not obtained succession orders;
- (c) The applicants have no confidence that the share register is an accurate record of shareholdings in the Incorporation and could not defend the register as accurate if they were challenged post-election; and
- (d) The application has the support of shareholders holding more than 10 per cent of the shareholding.

[5] Mr Bidois also referred to the affidavit of current committee member Estella Taku dated 7 December 2018, which details the research she undertook to ascertain certain shareholdings and identifies four persons listed on the share register for which no records could be found to confirm the source of their shares.

[6] Mr Bidois proposed that the Court carry out an initial investigation per s 280 of the Act by appointing a Deputy Registrar to carry out a search of the Court records in relation to certain persons identified together with a sampling of other shareholders, in order to see if the source of their shareholding could be confirmed. He further proposed that following such investigation, the Court could make directions per s 208(7)(e) as to the conduct of the elections and the business of the Incorporation, particularly in relation to the expiry of the term of the current committee.

Ko te ata titiro ki te rēhita - The investigation of the share register

[7] This matter was heard on 18 December 2018. At the hearing, I discussed with Mr Bidois and Mr Patchell the nature of the issues regarding the share register, the proposed investigation and the urgent need for the directions. At the conclusion of the hearing, I directed Court staff to carry out an investigation in two parts.

[8] The first part was to investigate the four owners identified in the affidavit of Estella Makere Taku, who are on the share register but for whom it is unclear from Māori Land Court records as to how they have become shareholders. Those four persons are Lai Materoa Butler, Michael James Ashley Mio, James Carroll Mio and Hikiorauru Richmond.

[9] The second part is to investigate six further owners (chosen randomly) who are on the share register, to see if Māori Land Court records show how they have become shareholders.

[10] I now have the first report prepared by Court staff. The report shows that staff were unable to find any evidence in the Māori Land Court records of succession to interests in Torere 64 Incorporation by the four persons identified.

[11] As I noted at the Court hearing, while the Court may be of assistance in that Court records will show succession and vesting orders and therefore whether a person has succeeded to shares through the Court, that may not paint the full picture as to how a person has become a shareholder, given that incorporations operate largely outside of the Court.

[12] For example, I am aware, and Court staff have advised me, of situations where a person has completed a share transfer and the Court is not involved at all. Section 264 of the Act sets out the method by which incorporation shares can be transferred, and essentially provides that incorporations can attend to share transfers without the need for a Court order. Accordingly, Court records will only be of assistance when the matter was brought before the Court such in the case of successions or transfer by vesting order.

[13] Therefore, the report provides part of the story but not the whole story. In other words, while the report shows the Court holds no records of the four shareholders succeeding to incorporation shares, that does not mean those persons are not shareholders, as they may have become shareholders through other means. It does show however, that there are some questions which need clarification with regards to the share register. I consider that where specific issues are raised regarding the accuracy of the share register, the committee of management will need to go through a process of validation of the share register in relation to such shares.

[14] Generally however, the starting position must be that the share register can be relied on as valid until proven otherwise. Section 263 of the Act provides that every Māori incorporation must establish a share register upon its constitution which shall constitute the official record of the shareholders. That section also prescribes that the share register shall be maintained by the incorporation. Other provisions detail how share transfers are to be entered on the share register, including those effected by Court order.²

[15] On the issue of errors on incorporation share registers, Judge Ambler in *Murray – Parengarenga B3 Residue* made the following observations:³

[107] This Court has a relatively limited jurisdiction to address errors in Court orders and incorporation share registers. Under s 86 of the 1993 Act the Court has the power to amend orders “to give effect to the true intention of any decision or determination of the Court, or to record the actual course and nature of any proceedings in the Court”. This is what is known as a “slip” provision and does not enable the Court to change the outcome of an order if the Court simply got the order wrong. The various orders with which we are concerned do not come under s 86.

...

[110] As far as the general problems with the incorporations’ share registers are concerned, although the two s 281 applications have brought the issues to the attention of the Court, s 281(2) only allows the Court to exercise the powers conferred on it by s 280(7) by way of remedies, which are rather prescriptive ...

[111] These powers do not enable the Court to expressly address the shareholding of an incorporation. On my reading of the 1993 Act, the Court only has the express power to address the shareholding of an incorporation when it is first incorporated (s 249) or where additional Māori land is included in an incorporation (s 251) or where incorporations are amalgamated (s 252). In all other respects it is the responsibility of the incorporation itself to maintain its share register (s 263) and to have a share register audited (s 277(6)(d)). Arguably, under s 280(7)(e) the Court could direct an incorporation to correct its share register under r 34 of the Māori Incorporations Constitution Regulations 1994 (“1994 Regulations”), if that were necessary. Here, the PI is more than willing to correct the problems with its share registers, so I cannot see that a direction under s 280(7)(e) is required.

[16] As I see it therefore, despite the issues that have been raised, the current register must be considered to be valid until proven otherwise. Otherwise the extreme position would be that all shareholders listed are considered to be invalid until they prove that they have validly been put on the share register.

² Te Ture Whenua Māori Act 1993, ss 264 – 266.

³ *Murray – Parengarenga B3 Residue* (2016) 128 Taitokerau MB 54 (128 TTK 54).

Kupu whakataau - Decision

[17] Having received the first report, the initial investigation has been completed. As I indicated at hearing I intended that a second part of the investigation is to be completed, whereby Court staff are to derive the shares of a random sample of six shareholders from the Incorporation's share register and further report to the Court. However, now that I have considered the decision of Judge Ambler in *Murray – Parengarenga B3 Residue* I do not now see a need for a further report. The second part of the investigation contemplated at hearing is not needed.

[18] In addition, as noted at the hearing, there is the further issue of the impending expiry of the current committee of management's term, due to expire on 31 December 2018. That would leave the Incorporation with no administrative body, which is a totally unsatisfactory position, particularly given the current potential issues with the share register.

[19] I consider that it is important to have a committee of management in place so that the potential issues (if any) relating to the share register can be addressed and so an AGM can take place to allow elections for new members to be held. Therefore pursuant to s 280(7)(e) of the Act, I make the following directions:

- (a) The current committee of management members of Torere 64 Incorporation are to continue their appointments for another three months from 31 December 2018 to:
 - (i) Investigate issues (if any) raised with the share register; and
 - (ii) Hold an AGM within the three-month time period.

[20] The application is adjourned to the next available sitting of the Court in 2019.

Pronounced at 10.00am in Rotorua on Friday this 21st day of December 2018.

C T Coxhead
JUDGE