

IN THE MĀORI LAND COURT
OF NEW ZEALAND
WAIARIKI DISTRICT

A20060013594

UNDER Section 239, Te Ture Whenua Maori Act 1993

IN THE MATTER OF Matata 63Z - Appoint and replace trustees

WALTON TE ARIKI GOLDSMITH
Applicant

Hearing: 29 August 2006, 110 Whakatane MB 278-285
(Heard at Whakatane)

Judgment: 6 September 2006

RESERVED DECISION OF JUDGE P J SAVAGE

[1] This is an application to appoint two new trustees to an ahu whenua trust in place of one trustee who has resigned. The application is opposed on the basis that the voting procedure at a the meeting was not proper.

[2] That meeting of owners was held on the 7th of April 2006 and the two proposed trustees were elected.

[3] The trust order provides that:

“At general meetings of the beneficial owners and where a vote has become necessary or desirable the matter shall be determined by a show of hands.”

[4] This is a common wording in ahu whenua trust orders. It is a reflection of the disquiet that this Court held over decades in relation to proxy wars, where those who were prepared to do the paper work could dominate meetings in the face of the owners who bothered to attend. The propriety of this provision for this trust is not called into question in these proceedings. Here proxies were used. The proxies were obtained by powers of attorney. Horsley's Meetings – Procedure, Law and Practice, 4th Edition, Butterworths at para 16.3, explains that proxies may be created by the usual instrument of proxy or by



appointment pursuant to a power of attorney. When a person appears at a meeting with a power of attorney they are a proxy per medium of that power of attorney.

[5] At this meeting 34 powers of attorney were presented and accepted as 34 votes. There were in the order of 40 people present who could show their hands. It will therefore be seen that the powers of attorney did make a difference. It also needs to be said that the meeting was advertised on the basis that powers of attorney would be available.

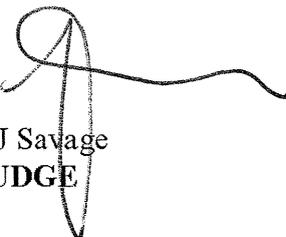
[6] The law is tolerably clear. (see Horsley Ibid at para's 14.12 sub paragraph 5 and 16.3). In this situation a person present at the meeting can show one hand only, either as person present or as a proxy, but cannot be counted on any basis as having more than one hand. Mr Pryor who had some thirty proxies purported to show his hand 30 times. That is invalid. (see also Horsley Ibid at 16.3).

[7] I am not bound by the results of a meeting of owners but in this case I cannot ignore the flawed procedure. I cannot be satisfied that these trustees would be broadly acceptable to the beneficiaries and as a matter of discretion, I would not make the appointments with the meeting having been conducted in this way.

[8] This trust has adequate trustees for it to function till the next meeting of owners when I have no doubt, the issue will arise again.

[9] The application is dismissed.

Dated at *London* this *6th* day of *September* 2006


P J Savage
JUDGE