

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

**A20120015687
71 Taitokerau MB 101
(71 TTK 101)**

UNDER Section 241, Te Ture Whenua Māori Act 1993
IN THE MATTER OF Mandoline Murray Whānau Trust
BETWEEN CINDY SUBRITZKY
Applicant

Hearing: 21 May 2013, 59 Taitokerau MB 95
3 July 2013, 65 Taitokerau MB 134 - 135
20 November 2013, 69 Taitokerau MB 105
(Heard at Kaitaia)

Judgment: 03 February 2014

RESERVED JUDGMENT AS TO COSTS OF JUDGE D J AMBLER

Background

[1] Cindy Subritzky filed the present application to terminate the Mandoline Murray Whānau Trust (“the Trust”) in December 2012. This was apparently to enable the sale of some of the land under the Trust. Cindy Subritzky is not a trustee of the Trust but is a beneficiary of it.

[2] The application was set down for an initial hearing on 21 May 2013. On 22 April 2013 Ms Subritzky sought an adjournment due to the unavailability of certain whānau members. On 13 May 2013 I agreed to adjourn the application. The application was called on 21 May 2013 and, as there were no appearances, I adjourned the matter to the July sitting of the Court.

[3] On 14 June 2013 Ms Cara Bennett, counsel for Ann Thompson, one of the trustees of the Trust, filed a Notice of Intention to Appear together with a Notice of Trustee Dissent setting out Ms Thompson’s opposition to the application. This is a five page document and goes into matters in some detail. Ms Bennett sought an adjournment of the next hearing which was scheduled for 3 July 2013. I directed that the applicant respond to the request for an adjournment. Ms Subritzky opposed the adjournment. I decided it was appropriate to grant the adjournment and I adjourned the application to the November sitting of the Court.

[4] On 9 October 2013 Ms Subritzky contacted the Court staff by email and requested that the application be withdrawn. She explained that she had brought the application on behalf of her uncle, Joe Allman, who had since passed away.

[5] On 20 November 2013 the application was called in Court. The parties had been notified of the request to withdraw the application and there were no appearances. I adjourned the application to Chambers for submissions on costs to be filed.

[6] Ms Bennett has now applied for costs on behalf of Ms Thompson. She cites the relevant authority and claims solicitor/client or indemnity costs totalling \$2,154.00 plus GST. Ms Subritzky opposes the application and counters that Ms Thompson had in fact offered to purchase the land from the Trust, which would have necessitated an application; that the majority of the beneficiaries and trustees who attended a whānau meeting on 9 September 2012 supported the application; and that Ms Thompson has had the benefit of the property and has been collecting rent on the homestead but has not accounted to the beneficiaries or trustees for those monies.

Discussion

[7] Underlying this application appears to be a disagreement between members of a small whānau who have come together under a whānau trust. The Trust holds shares in various land blocks and owns one block in its entirety. There was a proposal to sell that property. The application was to give effect to that proposal and a resolution of a meeting of beneficiaries held on 9 September 2012. Ms Thompson had attended that meeting and was apparently the only person opposed to the proposal.

[8] I cannot determine where the merits of the application lie. But it cannot be said that filing the application was inappropriate. The parties sought adjournments and avoided having to attend any hearings. Costs have therefore been minimized. While Ms Thompson has incurred costs in responding to the application, given the nature of the application, the relationship of the parties and the manner in which the application proceeded through Court, I do not consider this to be a case where costs are appropriate.

[9] I dismiss the application for costs. I also dismiss the application to terminate the Trust. Nevertheless, in light of the issues raised in the material filed by the parties, and given that the Trust has now been in existence for 10 years, I direct the trustees to apply for a review of trust pursuant to s 231 of Te Ture Whenua Māori Act 1993 within 12 months.

Dated at Whangārei this 3rd day of February 2014.

D J Ambler
JUDGE