

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

A20140001368

UNDER Section 231 of Te Ture Whenua Māori Act
1993

IN THE MATTER OF RAETIHI Y AHU WHENUA TRUST

BETWEEN MARIA ANNETTE PERIGO
Applicant

Hearing: 343 Aotea MB 18-21 dated 19 October 2015
(Heard at Turangi)

Appearances: J Chadwick, M Perigo and R Cribb in person

Date: 19 October 2015

ORAL JUDGMENT OF JUDGE L R HARVEY

Introduction

[1] Maria Perigo applied for a review of trust on 22 January 2014. The application as heard on 22 April 2014. She expressed concern as to the conduct of one of her fellow trustees and claimed that the trustees had not been receiving timely financial information. Mrs Perigo also questioned the distribution of trust income, the role of previous advisers and related matters. Those concerns were responded to by the trust chairperson, John Chadwick.

[2] Financial statements for the trust for the 2013 and 2014 financial years were eventually filed and a general meeting of owners was held earlier this year on 21 March 2015 at Te Puke Marae, Raetihi. At that meeting Mr Chadwick decided to stand down from his role as trustee. All of the current incumbents did the same but unlike Mr Chadwick they decided to stand for re-election. The draft minutes of the meeting record that Mrs Perigo, Gaye Whitu, T J Phillips, Elizabeth Kiriona and Robert Cribb were the successful nominees.

[3] Mr Chadwick subsequently filed a memorandum which set out a number of concerns as to the future administration and management of the land. In short, he considered that the

trust should be managed by a chartered accountant because there would be little for owner elected trustees to do given that the trust had not adopted Māori community purposes in its trust order.

[4] He also submitted that unclaimed dividends continued to be difficulty for the trust and reconciliation of past distributions needed to be undertaken to confirm the balances were accurate. He expressed concern at the proportion of dividends that remained unclaimed after each distribution. As the New Zealand Guardian Trust Company Limited no longer undertook distributions, the trustees, if they were still intent on having distributions instead of grants, would need to obtain the services of another agent. Mr Chadwick, I infer, took the view that the often complicated task of calculating, distributing and maintaining records for dividend payments was not a responsibility that should be lightly given to lay trustees without relevant experience and accountability practices.

[5] Mr Chadwick confirmed that a formal lease needed to be entered into between the trustees and the current lessee as a matter of priority. This would then provide security of tenure for both parties.

[6] Mr Chadwick confirmed that he still intended to resign but would be available to the trust as its legal adviser if that was the wish of the trustees.

[7] Mrs Perigo and Mr Cribb both submitted that they would prefer that Mr Chadwick remained as a trustee so that the trust could have the benefit of his expertise and knowledge. He was a trustee of long standing they said and retained important information on the trust.

[8] Those trustees present confirmed that all of the nominees, with the exception of Mr Phillips, had confirmed that they wished to be appointed even though they may not have all completed a consent form. Mrs Perigo noted that Mr Phillips was unavailable due to other commitments.

[9] Finally, Mr Chadwick pointed out internal inconsistencies with the trust order that would need a remedy. For example, the trust order referred to annual elections but only made general meetings mandatory at least every five years.

Discussion

[10] This is a small trust with modest income. The number of owners is also relatively modest. It is not a trust therefore that can sustain significant administrative and management costs. I understand that the trust income is approximately \$22,000 annually. From that must be deducted tax and other relevant standing charges. The short point is that this is a small trust that need not have an elaborate administrative structures and the attendant costs.

[11] Dealing with the appointment of trustees, while I acknowledge Mr Chadwick's submissions, the owners have determined at a properly convened general meeting that replacement trustees should be elected from amongst their number. Accordingly, and in the absence of more compelling reasons, taking into account section 222 of Te Ture Whenua Māori Act 1993 and the exercise of my discretion, I can see no reason why the proposed nominees should not be appointed. My only hesitation would be regarding Mr Phillips whom Mr Chadwick has said has been difficult to contact. Mr Phillips should therefore write to the case manager and confirm his availability for appointment as a trustee.

[12] As Mr Chadwick correctly points out, the priority task for the trustees is to have the informal lease with the current lessee signed as soon as possible. I direct the trustees to complete that task within two months from the date of this judgment. A copy of the lease should then be filed with the Registrar for noting. The trustees may also be minded to take up Mr Chadwick's offer of assistance to provide legal advice.

[13] In terms of dividends, I agree with Mr Chadwick that the trustees need to turn their minds to this issue once more. If his calculations are correct, and I have no reason to doubt them, it does seem less than ideal that when a distribution is made, approximately 2/3rds is held back in unclaimed dividends. As Mr Chadwick also confirmed, the owners have considered the adoption of a Māori community purposes clause in the trust order but acknowledge that this, at that time, did not find favour with them. I direct the trustees to raise this issue at the next general meeting of owners for further consideration.

[14] Finally, concerning the trust order, there is an obvious internal inconsistency that Mr Chadwick has identified. I direct the trustees to raise the issue of variations to the trust order at the next general meeting with a view to removing, with the support of owners, any internally inconsistent clauses. As Mrs Perigo has raised the issue of trustee accountability over some time, it may be appropriate to add a clause for annual meetings of trustees and triennial elections by lot in the absence of agreement.

Decision

[15] Maria Perigo, Robert Cribb, Elizabeth Kiriona and Gaye Whitu are appointed as trustees by way of replacement per section 239 of Te Ture Whenua Māori Act 1993. Mr Phillips should file a consent to appointment form within one month.

[16] The trustees are directed to finalise a formal written lease with the current lessee within two months from the date of this judgement.

[17] The trustees are also directed to include at the next general meeting of owners for discussion on the agenda variations to the trust order for annual general meetings and triennial trustee elections.

[18] The application for review of trust is concluded and dismissed.

These orders are to issue immediately, per r 7.5(2)(b), Māori Land Court Rules 2011.

Pronounced at 5.00 pm in Whanganui on Monday this 19th day of October 2015

L R Harvey
JUDGE