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

**268 Aotea MB 93**
**(268 AOT 93)**
**A20110002330**

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| UNDER | Section 19, Te Ture Whenua Maori Act 1993 |
| IN THE MATTER OF | Okawa A1B |
| BETWEEN | SUSAN PUE<br>Applicant |
| AND | RAY TAPATU, CHRISTINE TAPATU, IRENE TAPATU<br>Respondents |

Hearing: 265 Aotea MB 243 dated 15 April 2011
267 Aotea MB 246 dated 1 July 2011
(Heard at New Plymouth)

Appearances: Mr G Takarangi, counsel for the Applicant

Judgment: 8 July 2011

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**RESERVED JUDGMENT OF JUDGE LR HARVEY**

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**Introduction**

[1] The Applicant is a trustee of the Koro Pue Whānau Trust. The trustees are the majority owners of Okawa A1B. They seek an injunction against the Respondents on the basis of an alleged actual trespass by way of encroachment over the land. In particular, the Applicant claims that the Respondents have illegally erected, permitted to be erected and maintained on the land structures and trees including fences, a lean-to, out-houses and a water and septic system. All of which the trustees say prevent them and the beneficiaries of their trust from quiet and peaceful enjoyment of their land.

[2] The Applicant also says that the Respondents have been served with a trespass notice under s 3 of the Trespass Act 1980 but that this has been ignored. The Applicant claims that the Police have requested the Respondents and their whānau cease trespassing and remove the structures but to no avail. Consequently, the Applicant says that, while an amicable resolution of the trespass would be sensible, in the absence of engagement with the Respondents, an injunction which may then be enforced through the High Court is sought.

[3] The Respondents, and in particular Christine Tapatu or Godkin (Ms Godkin), claims right of occupancy and ownership by adverse possession. She also says that the current resident of the allegedly encroaching dwelling is her father Ray Tapatu also known as Te Kerei Whatitiri. Ms Godkin further says that Ray Tapatu has executed an enduring power of attorney in her favour.

[4] In the circumstances, I proposed to members of the Respondents' whānau that counsel be appointed to represent them, given the seriousness of the allegations. Orders were drawn to appoint Liana Poutu, solicitor of Wellington to act. However, that proposal was rejected and instead, Ms Godkin claimed to have been content on behalf of Ray Tapatu, to rely on the advice of her brother, Steven Tapatu who it was said has legal training or qualifications but is resident in Melbourne.

[5] More importantly, despite being required by summons to attend Court on 1 July 2011, Ms Godkin "declined" to participate. That failure is also considered in this decision.

[6] The principal issue for determination therefore is whether or not the tests for the issue of an injunction have been satisfied and whether or not an injunction on the terms as sought by counsel for the Applicant should be granted. At the hearing held on Friday 1 July

2011 at New Plymouth, upon hearing submissions from counsel, and evidence from the Applicant, I issued a brief oral decision granting the application for injunction with reasons in writing to follow.

**Background**

[7] According to the Court's records Renata Te Pue, the grandfather of Ms Godkin, owned approximately 93% of Okawa A1 block. The balance was owned by Hineakura Tainui.

[8] On 28 November 1955 Renata Te Pue gifted part of his share (1 rood and 8 perches or 0.1214 hectares) for a house site to Peggy Tapatu, his daughter and Ray Tapatu, his daughter's husband, equally as tenants in common. That section of the block was then partitioned into Okawa A1A.[1] The balance of the Okawa A1B block remained in the ownership of Renata Te Pue and Hineakura Tainui.

[9] On 9 April 2003 succession was made to the estate of Peggy Tapatu to those entitled with substitution of issue.[2] Ray Tapatu still owns a 50% share in Okawa A1A.

[10] On 24 February 1966 Renata Te Pue sold all his shares in Okawa A1B to his eldest son Koro Pue which made the latter the major shareholder with 12.2024 out of a total of 13.2024 shares.[3]

[11] Okawa A1B is a block of Māori freehold land created by partition order on 28 November 1955.[4] The land is 5.3039 hectares in area and as at 22 February 2011 there were 69 owners of the land holding 13.2024 shares.

[12] The Koro Pue Whānau Trust was constituted on 15 July 2004.[5] Sharon, Leonse, Warren and Denise Pue were appointed trustees. All of the whānau interests in Okawa A1B were then vested in those individuals as trustees of the Koro Pue Whānau Trust.

[13] The trustees thus hold 12.2024 shares in the land or over 92% of the shareholding. A status order determining Okawa A1B to be Māori freehold land was issued on 19 May

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1 63 Taranaki MB 395 (63 TAR395)
2 126 Aotea MB 179 (126 AOT 179)
3 75 Taranaki MB 133 (75 TAR 133)
4 63 Taranaki MB 396
5 141 Aotea MB 248 (141 AOT 248)

1995.[6] Following that, a further consolidated order as part of the Māori freehold land registration project was issued on 12 June 2009.[7]

**Procedural history**

[14] By application received on 22 February 2011 the Applicant, on behalf of herself and her fellow trustees, seeks an injunction to restrain the Respondents from continuing with any further trespass over Okawa A1B. She also requires the latter to remove their encroaching structures, fences and trees from the land forthwith. The Applicant says that on 2 February 2011 a trespass notice was served on the Respondents.

[15] Following the hearing held on 15 April 2011, written directions were issued on 13 May 2011 as follows:[8]

(a) the Registrar or case manager will liaise with the parties to undertake a site inspection of the affected property and, with the permission of the owners of the land, take all necessary photographs to assist the Court in determining the issues raised in the application;

(b) the Registrar will submit to the Court names of suitable counsel for appointment to assist the Respondents as soon as possible;

(c) once appropriate counsel has been appointed per ss70 and 98 of Te Ture Whenua Māori Act 1993, that counsel will liaise with Mr Takarangi on an urgent basis to determine if mediation or other forms of dispute resolution would be more appropriate by 15 June 2011; and

(d) within seven days of that date the Registrar will convene a telephone conference of the Court and counsel to deal with any other outstanding interlocutory matters should mediation not be deemed appropriate.

[16] On 25 May 2011 the Registrar submitted names of counsel in the district who may be available to assist the Respondents. Liana Poutu of Kahui Legal, Solicitors of Wellington

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6 48 Aotea MB 14 (48 AOT 14)
7 232 Aotea MB 173, (232 AOT 173) CIR 501816
8 266 Aotea MB 33 (266 AOT 33)

agreed to represent the Respondents and submitted an estimate of costs which was subsequently approved.[9]

[17] Following that on 7 June 2011 Ms Godkin sent an email to the case manager stating that her father was happy with the legal assistance provided by his son Steven Tapatu who has "an Australian Law Degree qualification." She also said that her father was happy for Steven Tapatu and herself to continue their fathers' course as legal owner under the common law doctrine of adverse possession of Okawa A1B and to register the land in his name. Ms Godkin then stated for this reason her father declined the services of Ms Poutu and "respectfully advises" non-attendance for the next Court date 1 July 2011 "without receipt of formal notice."

[18] A site inspection was completed on 9 June 2011 and various photographs were taken to assist the proceedings by Court staff. These photographs make it clear that the Respondents' fences, dwellings, trees and buildings are encroaching on Okawa A1B.

**Applicant's submissions**

[19] The Applicant asserts that on 23 December 2009 a survey of the land was approved and no objections to the proposed boundaries were made by the Respondents at that time. Despite the land being re-surveyed, the Respondents and their whānau have refused to accept the boundaries as surveyed and have continued to trespass on Okawa A1B. A number of structures have been built on the land and the Respondents, it is said, continue to enter the land illegally.

[20] The Applicants go on to say that on 2 February 2011 a trespass notice was served on the Respondents under the Trespass Act 1980. By refusing to adhere to the notices the Respondents and their whānau are therefore in breach of s 3 of the Trespass Act 1980 which states that *'every person commits an offence against that Act who trespasses on any place and, after being warned to leave that place by an occupier of that place, neglects or refuses to do so.'*

[21] The Applicants further claim that the Respondents have illegally erected or planted structures and trees on Okawa A1B which encroach upon the land and prevent the

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9 266 Aotea MB 180 (266 AOT 180)

beneficiaries of the Koro Pue Whānau Trust from having quiet enjoyment of their land to which they are entitled to as legal owners.

[22] On 29 June 2011 Ms Godkin was formally served with a summons to attend the sitting to be held at New Plymouth on 1 July 2011.

[23] Mr Takarangi submitted that, the issues were long standing and needed resolution. The Applicant had sought to resolve matters without recourse to litigation but those efforts had proved unsuccessful. He submitted it would still be preferable that the issue be resolved amicably without adjudication. That still remains the Applicant's preference but given the lack of engagement by the Respondents it was considered that an injunction and subsequent enforcement if necessary was the only option left to the Applicant.

[24] Equally importantly, Mr Takarangi underscored that the claim of adverse possession was rejected. Counsel referred to s21(b) of the Land Transfer Amendment Act 1963 which provides that no application for prescriptive title may be made in respect of Māori land within the meaning of Te Ture Whenua Māori Act 1993. Accordingly, Mr Takarangi submitted, it was appropriate that the Respondents' claims be rejected and that the application for injunction as sought be granted.

**Respondents' submissions**

[25] On 4 April 2011 Ms Godkin sent an email to the case manager setting out the Respondents' position. Ms Godkin states that she is 51 years of age a chartered accountant and a member of the Institute of Chartered Accountants of Australia. She also points out that she has resided permanently in New South Wales Australia between December 1985 and December 2009, some 24 years. Ms Godkin goes on to state that she is named as Irene Tapatu in the present proceedings and that she respectfully "requests that the Court consider the dilemma I find myself in through no fault of my own other than by a set of circumstances of which I have no control."

[26] Ms Godkin says that personal service of the proceedings was not made upon her person but that she has knowledge of the content of the application as service was made upon her father Ray Tapatu. She is authorised to act on behalf of her father for his Māori land. She says her father is Te Kerei Rangi Tapatu Whaitiritiri of 11 Everett Road New Plymouth.

[27] Ms Godkin then says that her father has an appointment for enduring power of attorney with Taranaki Community Law Trust on 13 April 2011. She says that her father understands this legal arrangement will allow her to carry out his intentions and wishes. Ms Godkin then says she has intimate knowledge of the reply her father expressed in his letter to Billings, solicitors of New Plymouth dated 27 March 2011 with a copy to the Court on 1 April 2011.

[28] Ms Godkin then says that she declared her position of "conflict of interest" during her telephone conversation with the case manager since she is named as an individual in the application and is also acting on behalf of Ray Tapatu. She then says that her father is seeking to better position himself as appropriate with an enduring power of attorney given his level of understanding and ability to communicate.

[29] As to the issue of legal advice, Ms Godkin says she has no personal legal representation and nor has she sought and nor does she intend to source legal representation in the future as she does not have available resources to commit to an obligation that she is unable to meet.

[30] Regarding the claim of adverse possession, Ms Godkin says her personal view is that her father is lawfully undertaking and carrying out his right and entitlement to do so as legal owner under the common law doctrine of adverse possession of Okawa A1B. She also says that Ray Tapatu is acting "in accordance with his legal advice." Ms Godkin then states that as she has "intimate knowledge" of her father's legal position as an owner under common law, she believes she has carried out lawful activities on his behalf. She then says that she "respectfully requests" consideration be given to relinquish her name being included in the application as she was unwilling to accept responsibility for any wrongful action "brought about under these conditions."

[31] As to security, Ms Godkin says she has concerns over her father's security and safety around "imposters gaining access to his property and then his person and then his private details" and refers to an incident she claims that occurred on 17 March 2011 set out in a letter to Billings dated 27 March 2011. Ms Godkin refers to an incident that occurred at Waitara in December 2010 where her father required hospital treatment for an assault.

[32] Finally Ms Godkin says that she was "available for service of documents" and requests the courtesy of a phone call to allow her opportunity to make arrangements to nominate a public venue, date and time to receive documents during working hours. She

then says that to allay any concerns for employment she sought "assistance from New Zealand Police" to understand the implications of the application. Finally, she says that for the reasons mentioned she declines the invitation by Mr Takarangi to meet on Friday 15 April at 11am, a time before the hearing set down for that date.

[33] Earlier that day Ms Godkin sent an email to the case manager confirming that she was authorised to act on behalf of her father, that he had hand delivered to him correspondence regarding these proceedings and that on 3 April 2011 her sister Christine Tapatu received service of documents from counsel for the Applicant dated 18 March 2011. Ms Godkin goes on to state that the documents were personally handed to her sister by herself and that Ms Godkin was left with the impression and understanding that her sister Christine did not intend to attend the meeting on 15 April 2011.

[34] Then on 13 April 2011 Ms Godkin wrote to the case manager again confirming her authority to act on behalf of her father. In this letter she advises that her father has "today obtained independent legal advice" from Sarah Frey of Taranaki Community Law Trust. She says that she was nominated as enduring power of attorney with a grand-daughter, Lisa Tapatu, as successor for the enduring power of attorney.

**The Law**

[35] It is trite law that an interlocutory injunction is a discretionary remedy designed to protect a plaintiff from injury to legal or equitable rights resulting from delay between the filing of a claim and trial for which damages are not an adequate remedy.[10] In *Roseneath Holdings Ltd v Grieve* the Court of Appeal summarised the essential purpose of an interim injunction: [11]

> The object of an interim injunction is to protect the plaintiff from harm occasioned by any breach of rights, that is the subject of current litigation, for which the plaintiff might not be adequately compensated by an award of damages by the Court, if successful at the trial. Against that object it is necessary to weigh the consequences to defendants of preventing them from acting in ways which the trial may determine are in accordance with their rights. The well established two stage approach to addressing applications for interim injunctions involves first, ascertaining whether there is a serious question to be tried and secondly, considering the balance of convenience if the relief sought is granted."

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10 *American Cynamid Co v Ethicon Limited* [1975] AC 396. New Zealand courts have followed this general approach. For example see *F Hammond Land Holdings Ltd v Elders Pasture* Ltd (1989) 2 PRNZ 232 and *Shivas v BTR Nylex Holding NZ Ltd* [1997] 1 NZLR 318.

11 [2004] 2 NZLR 168 at 176

[36] This case however is concerned with a permanent injunction. As a starting point for essential principles, although is a different context, in its judgment *Eriwata v Trustees of Waitara SD s6 and 91 Land Trust - Waitara SD s6 and 91 Land Trust*[12] the Māori Appellate Court sets out the principal role of trustees and their relationship with the owners or beneficiaries:[13]

> [5] When trustees are appointed to an ahu whenua trust, they take legal ownership. The owners in their shares, in the schedule of owners, have beneficial or equitable ownership but do not have legal ownership, and do not have the right to manage the land or to occupy the land. Trustees are empowered and indeed required to make decisions in relation to the land and they are often hard decisions. Their power and obligation to manage the land cannot be overridden by any owner or group of owners or even the Māori Land Court, so long as the trustees are acting within their terms of trust and the general law, and it reasonably appears that they are acting for the benefit of the beneficial owners as a whole. A meeting of owners cannot override the trustees. Decisions to be taken for the land are to be the decision of the trustees. They decide who can enter and who can reside there and how the land is managed.

[37] The Appellate Court then held that trustees will invariably have a right to an injunction to stop anyone including beneficial owners or beneficiaries from any unlawful trespass on the land:[14]

> [8] As a matter of general law, when legal ownership is vested in trustees they are prima facie entitled to an injunction if the land is trespassed upon whether by beneficial owner or not. It is for them to control the land. They have a power to permit occupation. That is the power that is vested in them. It is not vested in the Court, and so long as they are acting within the terms of their trust order, then the Māori Land Court will not interfere. The Appellant pointed to various provisions with the trust order, that related to the power to permit occupation and enjoyment by the owners and referred to the provisions in Te Ture Whenua Māori Act 1993, that relate to papakāinga housing. We remind ourselves that it is not every objective in a trust order, or power in a trust order, or objective in legislation that can be met in any particular case. Sometimes the circumstances of the owners or the nature of the land do not permit this and sometimes it is the general political atmosphere that makes it unrealistic. It is not sufficient for the Appellant to show that the Respondents have failed to exercise any particular power. She would have to show that the Respondent Trustees had turned their face from that possibility in an unreasonable and improper manner. There is no evidence of that and the Trustees simply wish to let the block as a whole. The Trustees are

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12 (2005) 15 Aotea Appellate MB 192 (15 WGAP 192)
13 Ibid, para [5]
14 Ibid, para [8]

> entitled to an injunction against the Appellant, unless there is some matter which should have moved the Lower Court to exercise its discretion to the contrary.

[38] A seminal statement of principle can be found in the decision *Shelfer v City of London Electric Lightening Co.*[15] In that case Smith LJ, after underscoring the orthodoxy that relief by way of injunction should be granted to a plaintiff whose rights have been affected, goes on to identify exceptions to this rule:[16]

> There are, however, cases in which this rule may be relaxed, and in which damages may be awarded in substitution for an injunction as authorised by this section. In any instance in which a case for an injunction has been made out, if the plaintiff by his acts or laches has disentitled himself to an injunction or to restrain a continuing nuisance, the appropriate remedy may be damages in lieu of an injunction, assuming a case for an injunction to be made out. In my opinion, it may be stated as a good working rule that – (1) If the injury to the plaintiff's legal rights is small, (2) And is one which can be adequately compensated by a small money payment, (3) And the case is one in which it would be oppressive to the defendant to grant an injunction – then damages as a substitution for an injunction may be given. There may also be cases in which, though the four above-mentioned requirements exist, the defendant by his conduct, as, for instance, hurrying up his buildings so as if possible to avoid an injunction, or otherwise acting with reckless disregard to the plaintiff's rights, has disentitled himself from asking that damages maybe assessed in substitution for an injunction. It is impossible to lay down any rule as to what, under the differing circumstances of each case, constitutes either a small injury, or one that can be estimated in money, or what is a small money payment, or an adequate compensation, or what would be oppressive to the defendant.

[39] More recently, in *Hokowhitu v Matauri X Incorporation*[17] the Appellate Court, summarising the position adopted in the English Courts and the High Court of New Zealand, held that a judge, in the exercise of the discretion to grant a permanent injunction, must turn his or her mind to whether, given all the circumstances of the case, the injunction would be unduly oppressive to the defendant and consider whether damages may be a more appropriate remedy.[18]

[40] Then in *O'Malley v Wyborn - Orokawa 3C2B* [19] the Appellate Court held that even where equitable considerations will be relevant in assessing the appropriateness of injunctive relief, the statutory objectives found in the Act must also be given consideration, if not precedence:[20]

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15 [1895] 1 Ch. 287, 322-323; [1891-4] All ER 838, 847-848
16 Ibid, 322
17 (2010) 2010 Māori Appellate Court MB 566 (2010 APPEAL 566)
18 Ibid, [38]-[40] citing *Jaggard v Sawyer* [1995] 2 All ER 189, 203 Sir Thomas Bingham MR & 208 Millet LJ
19 (2010) Maori Appellate Court MB 494 (2010 APPEAL 494)
20 Ibid, [38]

> [35] While equitable considerations, in particular those of hardship and balance of convenience, should therefore be weighed by the Court in deciding whether to make injunctive orders, these must be balanced against the statutory objectives set out in sections 2 and 17 of the Act; that is, the retention of Mäori land and General land owned by Mäori in the hands of the owners, and the effective use, management and development, by or on behalf of the owners, of Mäori land and General land owned by Mäori.
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> [36] We agree with the assertion by counsel for the appellant that in the exercise of this discretion these statutory objectives must be accorded just as much weight and often more than the well known equitable principles. Section 17 states that the statutory objectives shall be the primary objective of the Court. While they are therefore the primary consideration to be made in deciding whether to grant injunctive relief, they are not the sole consideration.

[41] The Appellate Court then declined to grant a permanent injunction but emphasised that in so doing their intention was not to grant an easement in perpetuity. Instead the respondents in that case were being provided with the opportunity to seek a legal solution or risk finding themselves increasingly vulnerable to a further application for injunction.[21]

**Discussion**

[42] The survey plans, photographic maps and related documentation make it plain that the Respondents' structures and trees are indeed encroaching on the Applicant's land. The site inspection also confirmed that fact. In such circumstances and in the absence of any tenable defence, the application for injunction should be granted. The short point is that the Respondents have no lawful right to encroach upon the land. They have been asked to remove their structures and trees but have failed or refused to do so at all, let alone within a reasonable timeframe.

[43] Moreover, the Respondents have been served with trespass notices and notices of these proceedings. They have even been offered legal assistance by way of counsel appointed using the Special Aid Fund but have refused that assistance. Instead they purport to rely on the "legal advice" from Steven Tapatu according to Ms Godkin, in pursuing a claim of adverse possession.

[44] Regrettably for the Respondents, that claim is not sustainable. There is a specific statutory exception to adverse possession as set out in s21(b) of the Land Transfer

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[21] Ibid, [58]

Amendment Act 1963. As foreshadowed, that provision provides that no application for prescriptive title may be made in respect of Māori land within the meaning of Te Ture Whenua Māori Act 1993. An important authority on this point is *Whaanga v District Land Registrar.*[22] According to the learned authors of *New Zealand Land Law* the Court in that case directed the Registrar not to issue a title based on adverse possession to the plaintiff under the powers in s 151(1c) of the Land Transfer Amendment Act 1963. Instead the High Court directed that a change of status of the land to Māori freehold land be registered.[23]

[45] There is no dispute that Okawa A1B is Māori land within the meaning of the Te Ture Whenua Māori Act 1993. My conclusion therefore is that the Respondents have no defence to the Applicant's claim. They continue to encroach upon Okawa A1B despite being asked not to on more than one occasion. As foreshadowed they refuse to remove their property from the land and have failed to attend hearings and site inspections despite being provided with every opportunity. Mediation has also been proposed but no response has been received other than a purported reliance on adverse possession. The trustees of Okawa A1B are therefore entitled to the issue of an injunction and accordingly the application is granted.

[46] This approach is consistent with the tenor of the *Eriwata* decision where ultimately, High Court enforcement proceedings were invoked and the Respondents were removed from the land along with their possessions and temporary living quarters with the assistance of the Police. Counsel will now submit to the Court for sealing a draft order setting out with precision the specific terms that are now being sought consistent with the application.

[47] It must be emphasised that the repercussions and effects of this decision for the Respondents are serious. They are required to move various structures from the land. This will involve considerable expense, inconvenience and disruption. Even so, given the Respondents failure and refusal to attend the hearings, and Ms Godkin's statement that she cannot afford a lawyer, it is difficult to see how damages would be an adequate or available remedy. In the circumstances therefore I see little point in issuing an interim injunction.

[48] At an earlier hearing, Lisa Tapatu a granddaughter of Ray Tapatu, underscored her concern for the safety and well being of her grandfather. She acknowledged that, while there may be fault on the part of the Respondents, what was important was that her grandfather could live out his remaining years on the land undisturbed. If those sentiments still apply

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22 HC Napier CP12/97, 2 November 2001

23 Bennion, Brown et al *New Zealand Land Law - Second Edition* (2009) Thomson Reuters, Wellington at 2.17.08

then it is all the more imperative for the Respondents to properly engage with the Applicant in a real effort to resolve the trespass and encroachment claim on some sensible basis.

[49] The Respondents, even at this late stage, still have the remedy of rehearing and appeal available to them. They have 28 days from the issue of this judgment to seek a rehearing, provided they can satisfy the relevant tests.[24] No doubt any such application would be opposed. The Respondents also have 2 months within which to appeal.[25]

[50] Before the final orders are sealed and the process for enforcement begins, and at the risk of belabouring the point, the Respondents are still able to bring this proceeding to a resolution by discussing the removal of the offending structures and trees from Okawa A1B or some equally acceptable solution. They should urgently seek legal advice from a solicitor with a current New Zealand practicing certificate who can advise them of their options given the serious implications of this judgment for the Respondents.

**Failure to answer summons**

[51] Ms Godkin has made it perfectly plain by her conduct and statements, that she understood the proceedings, that she was aware of their implications, that she had taken legal advice from her brother, that she and the Respondents had opportunity to take further independent legal advice from counsel appointed by the Court but refused that assistance and that despite her latest reference to not consult any person about the summons, read its contents and understood its meaning.

[52] In other words, Ms Godkin appears to be simply refusing to respond to the proceedings despite her earlier claims of authority to represent her father and to take steps to protect his interests. It should be noted that the summons on its face sets out the penalties for non-compliance including a fine or imprisonment or both.

[53] In any case s89 of the Act provides:

> **89 Failure to comply with summons, etc**
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> (1) Every person commits an offence who, after being summoned to attend to give evidence before the court or to produce to the court any papers, documents, records, or things, without sufficient cause—
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> (a) fails to attend in accordance with the summons; or

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[24] Te Ture Whenua Māori Act 1993 s43

[25] Ibid s58

(b) refuses to be sworn or to give evidence, or, having been sworn, refuses to answer any question that the person is lawfully required by the court to answer; or
(c) fails to produce any such paper, document, record, or thing.
(2) Every person who commits an offence against this section is liable on summary conviction to a fine not exceeding $300.
(3) No person summoned to attend the court shall be convicted of an offence against subsection (1) unless at the time of the service of the summons, or at some other reasonable time before the date on which that person was required to attend, there was made to that person a payment or tender of the amount fixed by the rules of court.

[54] This Court, like any other, cannot countenance having its orders flouted. Ms Godkin has been given more than one opportunity to present herself, to receive independent legal advice at no cost, to instruct counsel and to respond to the application. She has failed to do so and has refused to attend Court in response to a summons. If the Court were to permit such conduct without consequence then the effectiveness of our system would erode. I therefore direct the Registrar to take all such steps as are necessary to have Ms Godkin prosecuted for contempt of Court.

**Costs**

[55] The Applicants have prevailed in this proceeding, while noting the Respondents' lack of engagement. It is customary for this Court to follow the orthodox practice and order costs following the event.[26]

[56] Mr Takarangi is invited to file submissions on costs within 30 days. Once in receipt of those submissions, a copy will be sent to the Respondents for their reply within a further 30 days. Following that I will consider the parties' submissions before making a final decision on whether or not an award of costs is appropriate and if so at what level.

Pronounced at 1.05 pm in Taupo on Friday this 8th day of July 2011

L R Harvey
**JUDGE**

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[26] *Nicholls v Nicholls - Part Papaaroha 6B Block* (2011) 2011 Maori Appellate Court MB 64 (2011 APPEAL 64)