

IN THE MĀORI LAND COURT OF NEW ZEALAND
WAIARIKI DISTRICT

Place: Rotorua
Present: L R Harvey Judge
Date: 22 December 2003

Application No: A20030006051

Subject: Rangitaiki 28B1A2 & Other Blocks (Te Paroa Lands Trust) –
Replacement of Trustees
Section: 239/93

RESERVED DECISION

Introduction

On 11 December 2003, application was made by Wiremu Maunsell pursuant to s239 of Te Ture Whenua Maori Act 1993 ("the Act") for the appointment of Stanley Ratahi and Jim Studer as responsible trustees to Te Paroa Lands Trust ("the Trust"). Prior to the hearing of this matter in chambers on recall I inquired as to whether there was any objection to me hearing the application. No objections were voiced.

Background

The Trust was established by order of the Court on 1 July 1997, 90 Whakatane MB 74. Since that time, two trustees have resigned, and according to Mr Maunsell, the chairman of the trust, a further responsible trustee is intending to resign. That would then leave the number of responsible trustees at four.

Appointment of Trustees

Mr Maunsell, in both his application to the Court and his oral submissions emphasised the need for additional responsible trustees. According to him, trustees' meetings could not always be convened at convenient times due to the work and other external commitments of several of the trustees. Mr Maunsell, supported before me by several of his fellow trustees and beneficial owners, also underscored the need for what could be termed active trustees with fresh ideas and enthusiasm. Te Hau Tutua, one of the principal kaumatua from the beneficial ownership, while acknowledging the work of the existing trustees, also emphasised the need for a strategic development plan to be prepared for presentation to the beneficial owners at a general meeting. He considered that new trustees could also reinvigorate the Trust.

Evidence before the Court

The proposed nominees have experience in Maori land administration, business and community activities generally. Mr Ratahi, I was told, is the chairman of a local

LRH

marae committee and a member of another, the beneficiaries of whom have a primary affiliation to the Trust. In addition, he is a trustee of a successful family ahu whenua Trust and was recently elected a member of his iwi authority. The evidence before me makes it plain that Mr Ratahi continues to play a key role in the affairs of his hapu and the wider iwi, the members of whom are included among the beneficial owners in the Trust's land.

Evidence was also presented to the Court confirming that Mr Studer has been self employed for over a decade. He is a trustee of another local marae with principal affiliation to the Trust and its beneficial owners. Mr Studer is also involved in various farming and horticultural activities including maize cropping, a practice of particular relevance to the Trust. In addition, he is a member of a marae committee and has played a role in the affairs of the hapu affiliating with the marae – again the beneficiaries of whom affiliate to the Trust.

Meeting of Beneficial Owners

During the hearing, beneficial owners, while supporting the principle of appointing new trustees, expressed concern as to the lack of notice. I was advised that a general meeting of beneficial owners had been set down for the following Saturday and consequently I directed the trustees to furnish the Court with a copy of the minutes from that hui. I also noted that it was indeed preferable that the beneficial owners should be given opportunity to consider the prospective nominees and provide an indication as to their support or otherwise. A copy of the minutes of that general meeting of owners has now been filed. They confirm that the nominees, Mr Studer and Mr Ratahi were endorsed without opposition at the hui.

The Law

Section 239 of the Act provides:

“239. Addition, reduction and replacement of trustees – The Court may at any time on application, in respect of any trust to which this section applies, add to or reduce the number of trustees, or may replace the trustees or any of them by (where necessary) making a further order vesting the land that is subject to the trust, and any other assets that are subject to the trust, in any person or persons (with the consent of that person or those persons) upon and subject to the terms of the trust, whether or not that person or any of those persons was previously a trustee.”

In addition, section 222 of the Act provides:

“222 Appointment of Trustees – (1) Subject to subsections (2) and (3) of this section, the Court may appoint as trustee of any trust constituted under this Part of this Act –

- (a) An individual; or*
- (b) A Maori Trust Board constituted under the Maori Trust Boards Act 1955 or any other enactment, or any body corporate constituted by or under any enactment; or*
- (c) A Maori Incorporation; or*
- (d) The Maori Trustee; or*
- (e) The Public Trustee; or*
- (f) A trustee company within the meaning of the trustee Companies Act 1967.*

(2) The Court, in deciding whether to appoint any individual or body to be a trustee of a trust constituted under this Part of this Act, -

CRH

- (a) *Shall have regard to the ability, experience, and knowledge of the individual or body;*
- (b) *Shall not appoint an individual or body unless it is satisfied that the appointment of that individual or body would be broadly acceptable to the beneficiaries.*

(3) *The Court shall not appoint any individual or body to be a trustee of any trust constituted under this Part of this Act unless it is satisfied that the proposed appointee consents to the appointment...*

(Emphasis added)

Case Law

Where trusteeships are terminated, there are a number of Maori Appellate Court authorities that underscore the mandatory requirement for notice. For example, in *Re Ongarahu B – Uruamo* (1994) 3 Tokerau ACMB 230 the Maori Appellate Court held that a notice of meeting that did not specify an agenda was deficient. The existing trustees were not given notice that they were likely to be removed. The application for removal should have been made under section 239 and 240 or in conjunction with section 338 with notice being given to the existing trustees. If a further meeting of the beneficiaries was to be held and the proper procedures followed then the Court may give effect to the wishes of the marae over the appointment of new trustees. However, this would be subject to the right of existing trustees to attend the Court and to dispute their removal.

Another case of some relevance is *Re Tikirahi Block – McKinnon and Wara* (1995) 19 Waikato – Maniapoto ACMB 1. In that decision the Court distinguished between an election of trustees to a Maori Reservation where the meeting was notified by an advertisement in the local newspaper to elect trustees with a subsequent trustees' meeting which was not notified and where additional trustees were purportedly elected. The Lower Court made orders appointing trustees elected at the notified meeting and at the trustees' non-notified meeting. The Appellants complained that they had received insufficient notice of the trustees' meeting and sought that the appointments be revoked. The Court found that the first meeting was held broadly in accordance with the required procedures of the Act and the Reservation Regulations then in force. Consequently, the elected trustees retained their office. In any case, the Court noted this was a border line decision as only eight beneficiaries attended the meeting. However, those trustees appointed by their fellow trustees at the second meeting were not confirmed and their appointments were revoked. The Court then directed that the trustees call a general meeting within six months to elect further trustees setting out particular requirements in terms of notice.

Another Maori Appellate Court decision of relevance is *Re Part Maraetai 3B Cameron* (1996) 19 Waikato-Maniapoto ACMB 34. This case also concerned the election of trustees to a Maori Reservation where the Lower Court, following a hui of beneficiaries, made orders removing trustees and appointing replacements. The Appellant, who was a beneficiary, appealed both orders. The Maori Appellate Court held that as the trustees who were removed had expressed a desire resign, there was no issue with those orders. However, had any of the trustees disputed their resignations they would have ensured their objections were brought before the Maori Appellate Court. As this had not occurred, the Lower Court was entitled to make orders removing them. Regarding the new trustees, the Court held that the advertisements for the hui did not indicate new trustees were being sought. In addition, the panui sent out was from the incorporated marae society and not the reservation trustees themselves. Any beneficiary of that reservation not concerned about marae matters could be forgiven if after reading the advertisement or the panui then did nothing. The Court also noted that only eight persons were present at the hui and an issue of such importance required a large involvement of beneficiaries

CRH

and a clearly spelt out intention in the advertisement and panui to select further trustees. The Lower Court's orders removing trustees were affirmed while the orders appointing new trustees were revoked.

Discussion

The Court accepts the submissions of Mr Maunsell that additional responsible trustees are necessary. The business of the Trust is ongoing and should not be hampered by want of a quorum or by a lack of appropriate enthusiasm. Having reviewed the evidence before the Court, including the minutes of the general meeting of beneficial owners, I am also satisfied that the criteria set out in section 222 of the Act have been met. Firstly, that both nominees possess the relevant knowledge and experience of the subject matter and secondly, that they are broadly acceptable to the beneficial owners. While the precise requirements of notice for the election of trustees were not met, given that the nominees were nonetheless endorsed without opposition at the general meeting of owners, it is appropriate that they be appointed. I would also distinguish some of the authorities referred to previously where they concerned the removal of trustees. This is a case of adding trustees at the request of the existing trustees and following discussion of the issue at a general hui of the beneficial owners.

In any event, in response to submissions from Mr Tutua, I also suggested to the trustees that a review was overdue. Therefore, consideration might be given to governance issues generally, including the possibility of rotation of trustees and the appointment of advisory trustees to assist the responsible trustees in the performance of their duties. It will thus be appropriate for the Court to review the issue of trusteeships and the operation of the trust generally within twelve months.

Decision

Therefore, pursuant to sections 220, 222 and 239 of the Act, Stanley Hamilton Ratahi and Jim Studer, both of Whakatane are appointed by way of replacement as responsible trustees to Rangitaiki 28B1A2 and other blocks, being those administered by the Trust.

The trustees are also directed, pursuant to Sections 37 and 237 of the Act to prepare and present a strategic development plan to a hui of the beneficial owners on or before 30 June 2004.

Pursuant to Rule 66 of the Maori Land Court Rules 1994 these orders are to issue immediately.

Dated at *Rotorna* this *22nd* day of *December* 2003



L.R. Harvey
JUDGE