

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

A20130008562

UNDER Section 58, Te Ture Whenua Māori Act 1993

IN THE MATTER OF Horowhenua 11 (Lake) Block

BETWEEN PHILIP DEAN TAUEKI
Appellant

AND HOROWHENUA SAILING CLUB
First Respondent

AND HOROWHENUA ROWING CLUB
Second Respondent

AND HOROWHENUA LAKE DOMAIN BOARD
Third Respondent

AND DEPARTMENT OF CONSERVATION
Fourth Respondent

Hearing: 11 February 2014, 2014 Māori Appellate Court MB 22-59
(Heard at Wellington)

Court: Judge P J Savage (Presiding)
Chief Judge W W Isaac
Judge S Te A Milroy

Appearances: Mr Tom Bennion for the Appellant
Mr David Brown for the First Respondent
Mr Ross Kerr for the Second Respondent
Mr Roger Downey for the Third Respondent
Mr James Hardy for the Fourth Respondent

Judgment: 23 May 2013

RESERVED JUDGMENT OF THE MĀORI APPELLATE COURT

Copies to:

Mr T Bennion, Bennion Law, PO Box 25433, Panama Street, Wellington, Tom@bennion.co.nz
Mr D Brown, Horizons, Palmerston North, david.brown@horizons.govt.nz
Mr R Kerr, Coopers Law, PO Box 540, Levin 5510, cooperslaw@xtra.co.nz
Mr R Downey, Todd Whitehouse Solicitors, PO Box 34, Levin 5540, downey@toddwhitehouse.co.nz
Mr J Hardy, Department of Conservation, PO Box 5086, Wellington, jhardy@doc.govt.nz

Introduction

[1] This is an appeal brought by Phillip Taueki against the decision of the lower Court in declining to grant an injunction, pursuant to s 19 of Te Ture Whenua Māori Act 1993 (“the Act”) to compel the Horowhenua Rowing Club (“the Rowing Club”) to vacate buildings located on Horowhenua 11 (Lake) block.

Background

[2] The background and history of these proceedings has been succinctly set out in the lower Court judgments and we do not propose to further traverse that material, save for a brief summary.¹

[3] Phillip Taueki applied to the Māori Land Court for an injunction seeking to compel the Horowhenua Rowing Club (among others) to vacate buildings situated on land in the Lake Horowhenua domain (“the domain”). The Horowhenua Lake Domain Board (“the Domain Board”) has authority under the Reserves Act 1977 (“the Reserves Act”) and the Reserves and Other Lands Disposal Act 1956 (“the ROLD Act”) to manage the domain, including the power to grant licences to use land and buildings on the domain. That authority is to be exercised in consultation with the trustees of the Lake Horowhenua Trust (“the trustees”). The lower Court previously made a determination that the legal owners of the land, being the trustees, were also the owners of the buildings located on the land and that no one had a current right of occupation.² Despite that determination, the Rowing Club was still using the buildings on the land.

[4] The lower Court declined to grant an injunction requiring the Rowing Club to vacate the buildings, and dismissed the application. Mr Taueki now appeals that decision.

Grounds of appeal

[5] The grounds of appeal set out in the application are as follows:

¹ 298 Aotea MB 263 (298 AOT 263), 304 Aotea MB 288 (304 AOT 288)

² 298 Aotea MB 263 (298 AOT 263)

- (a) The Court earlier determined that there was no legal basis for occupation of the buildings by the second respondent, the Rowing Club, so that an injunction should, prima facie, have been granted;
- (b) The Court acted erroneously in receiving further evidence that was irrelevant to the Court's determination after the adjournment of the hearing on 17 June 2013; and
- (c) The Court erroneously found that the trustees of Horowhenua 11 (Lake) block, as owners of the building, could lawfully allow its continued occupation by the second respondent, despite that occupation having no legal basis.

[6] The appellant sought an annulment or revocation of the order of the lower Court and an injunction requiring the second respondent to vacate the buildings on the Horowhenua 11 (Lake) block.

[7] The appellant counsel also attempted to challenge the preliminary decision of the lower Court in granting an adjournment of the proceedings on 17 June 2013, for the purpose of allowing the trustees to obtain further information from the Domain Board regarding proposed leases or licences of the buildings on the block. This challenge was dealt with at the hearing of the appeal on the basis that, as no leave was sought by counsel pursuant to s 59 of the Act to appeal the preliminary decision, we would not consider the matter further.

Appellant's submissions

Counsel for the appellant, Mr Bennion submitted that:

- (a) Mr Taueki has standing to bring the injunction application pursuant to s 19 of the Act. He is a beneficial owner in the land and is motivated by his concern to protect the lake from further degradation, and by the poor management of occupation and use arrangements with the Rowing Club;

- (b) The Māori Land Court has already determined that there is no existing legal right for the respondents to occupy the buildings at the Lake Horowhenua Domain. Therefore, the fact that the Rowing Club continues to occupy the buildings illegally, should have been sufficient grounds for the lower Court to grant the injunction as sought;
- (c) Section 19(1)(a) of the Act provides that if there is an actual or threatened trespass there is a prima facie entitlement to an injunction order. The lower Court wrongly relied on the respondents' claims that special circumstances existed, which would override the appellant's entitlement to an injunction. There are no special or compelling circumstances in this case;
- (d) Section 2 of the Act requires that discretions under the Act shall be exercised, as far as possible, in a manner that facilitates and promotes, inter alia, control of Māori land by Māori owners, their whānau, hapū, and their descendants. This section has particular application in circumstances where the injunction is being sought by a beneficial owner against a non-owner;
- (e) The lower Court incorrectly relied on the proposition that beneficial owners cannot seek to remove persons who have been allowed to occupy land by the trustees in whom the land is vested. If Judge Harvey's decision is allowed to stand then beneficial owners could never challenge an occupation of land approved by the trustees, regardless of its legality;
- (f) The lower Court was also wrong in finding that the Court did not have jurisdiction to consider the legislation relating to reserves and to review the Domain Board's actions in light of that legislation. The storage of boats by the Rowing Club amounts to exclusive use and occupation of an area of the reserve, which is strictly controlled by ss 53 and 54 of the Reserves Act. The Court of Appeal commented in *Taueki v R*³ that it was commonly accepted that the Domain Board had no power to attempt to roll over the terms of previous licences to occupy land or buildings on the domain. In terms of s 53 of the Reserves Act, the Domain Board has only limited power

³ [2012] NZCA 428

to grant exclusive use rights. If the Domain Board is not acting in accordance with the relevant provisions, the Māori Land Court can intervene; and

- (g) The material filed with the Court regarding the view of the Trust as to the occupation by the Rowing Club was received after the conclusion of the substantive hearing. As such it was received on an informal and untested basis and should not have been relied on by the lower Court.

[8] In summary, Counsel submitted that the appellant, Mr Taueki is a beneficial owner of the land who is interested in the welfare of the lake. The Rowing Club remain in illegal possession of a building on the land, despite a determination by the Court that there is no legal basis for their occupation. There is no provision in the legislation to allow such informal occupation by the Rowing Club and the trustees cannot sanction it. Further, once a basic case was made out, the Court's discretion should have been exercised in favour of Mr Taueki, because no exceptional circumstances exist which would operate against the issue of an injunction.

Submissions for the Rowing Club

[9] Counsel for the Rowing Club submitted that:

- (a) The lower Court was correct in the exercise of its discretion in declining to grant an injunction. There are no sufficient reasons to overturn that decision;
- (b) Mr Taueki has the statutory standing to bring an injunction application and is entitled to be concerned regarding the condition of the lake. However, he is not a trustee of the land and there is no formal evidence of support by other owners or beneficiaries for his application. As such the weight and significance of the proceedings is questionable;

- (c) Mr Taueki's allegations regarding the detriment the Rowing Club is causing to the lake, and the timing of such allegations, are also questionable in light of the long-term usage of the lake;
- (d) Mr Taueki has been the subject of several complaints and arrests by the police in relation to this land. In fact, the trustees have previously brought proceedings against him to terminate his occupancy on the land. He does not come to the Court with "clean hands" or with sufficient merits to warrant the grant of an injunction;
- (e) Questions regarding the legal powers of the Domain Board, and the scope and impact of rights that could be granted under the Reserves Act and the ROLD Act remain primarily within the jurisdiction of the High Court; and
- (f) On 4 February 2013 the Domain Board made a resolution to allow the Rowing Club to store their boats in the building on an interim basis, pending further discussions between the Domain Board and the trustees. The Rowing Club applied to the Domain Board for a new occupation agreement on 14 February 2013. To date there has been no formal decision on the application so that the Rowing Club's occupation remains temporary.

Submissions of the Domain Board

[10] The Domain Board submitted that:

- (a) At common law, possession of the land is an essential element to trespass. Only persons who had possession of the land at the time of the trespass are entitled to sue in trespass;
- (b) Mr Taueki, was not in possession of the land as he was not occupying or exercising actual control over the public domain: *Taueki v R*; ⁴

⁴ [2013] NZSC 146

- (c) In relation to the current occupation of the land by the Rowing Club, the earlier decision of Judge Harvey determined that no one had a current legal right to occupy the land and that correct processes for the issue of new licences, which should include consultation with the trustees, had not been followed.⁵ This was the basis of the Domain Board's resolution at their meeting on 4 February 2013, to allow the continued storage of the boats until consultation with the trustees;
- (d) Once consultation commenced with the trustees, occupation by the Rowing Club became lawful. Both the trustees, as the legal owners, and the Domain Board, as the administering body, authorised the occupation on an interim basis;
- (e) Judge Harvey consistently maintained that the Māori Land Court had no jurisdiction to examine the extent of the powers of the Domain Board to grant occupation rights under the Reserves Act;
- (f) Section 53 of the Reserves Act entitles the Domain Board to allow shared and non-exclusive use of the boat storage building and other boating amenities by boating clubs and individuals, and to grant exclusive occupation rights for a specified number of days each year;
- (g) The Court was entitled to receive further evidence following the adjournment, which gave the Domain Board and the trustees an opportunity to negotiate terms of a memorandum of understanding regarding future management of the relevant building;
- (h) The lower Court's decision in declining to grant the injunction is in accord with the overall interests of justice. The continued occupation of the buildings will generate income to cover maintenance, security and insurance costs. There is also a danger that any eviction could have a detrimental effect on the buildings if they remain unoccupied; and

⁵ 294 Aotea MB 236 (294 AOT 236)

- (i) The lack of an injunction has no injurious or harmful consequences to the appellant, beyond his argument that he is unable to occupy the building himself and his allegation of detriment to the lake.

Submissions for the Director General of Conservation

[11] Counsel for the Director General of Conservation submitted that:

- (a) While it is accepted that the buildings are located within the public domain at Lake Horowhenua, which is Māori freehold land, and vested in trustees for the Māori owners, s 18(7) of the ROLD Act gives the Domain Board control of the domain, including the Māori freehold land. The Domain Board manages the domain pursuant to the ROLD Act and the Reserves Act;
- (b) The ROLD Act was enacted with the intention of resolving historical issues concerning rights and responsibilities between the Domain Board and the Māori owners of the land comprised in the domain. Section 18(8) of the ROLD Act clearly prescribes that the Domain Board is to be comprised of four iwi members, and four members representing local councils and the Department of Conservation, thus ensuring iwi inclusion in decision-making concerning the domain;
- (c) The Domain Board and the trustees are actively working together to resolve issues in relation to the lake, including the occupation and use of the buildings. The Domain Board is responsible for decision making concerning occupation and use of buildings but continues to consult with the trustees in this regard;
- (d) It is not disputed that the Rowing Club's licence for the building has expired and that the roll-over rights have also ended. However, the Domain Board has now offered non-exclusive rights to the Rowing Club, which are terminable at will. No further decision has been made concerning future use and occupation rights;

- (e) On the issue of trespass, while the applicant has an interest in bringing these proceedings, he has no possessory rights that give rise to a claim in trespass. To be successful in a claim for trespass the applicant must be able to prove both possession and unjustified direct interference with the land. The person entitled to sue for trespass is the person who had possession of the land at the time of the trespass. The Supreme Court decision of *Taueki v R*⁶ has confirmed that the appellant does not have possession of the kind that would give rise to trespass. While the appellant is a beneficial owner with protected rights of access, he does not have the requisite control of this land necessary to bring an action in trespass. *Eriwata v Trustees of Waitara SD S6 and S91 Land Trust*⁷ is authority to show that a single beneficial owner is not able to override the role of the trustees as the lawful owners;
- (f) In any event injunctions are a discretionary remedy and there exist special circumstances to negate any presumption that the appellant is entitled to relief. Until such time as the trustees and/or Domain Board abrogate their responsibilities there are no grounds for an injunction;
- (g) The Rowing Club has the authority of the Domain Board and the trustees to temporarily use the building. This is a lawful activity and as such there is no jurisdiction for the Court to grant an injunction. The resolution made by the Domain Board on 4 February 2013 to allow the Rowing Club to continue to store their gear clearly demonstrates that a distinction was made between occupation rights and the non-exclusive storage rights that were offered to the Rowing Club;
- (h) The jurisdiction to restrain the Domain Board from the purported exercise of power under the Reserves Act does not fall within the jurisdiction of this Court. If the Court considers it does have the jurisdiction to determine such matters, the circumstances of this case do not warrant the interference of the Court with the decision of the Domain Board;

⁶ [2013] NZSC 146

⁷ (2007) 15 Aotea Appellate MB 261 (15 WGAP 261)

- (i) There was no error of law in the manner in which the Court obtained and considered the views of the trustees – this particular information was necessary to ensure a just decision. The Court has wide powers per s 69 of the Act to receive evidence. The Court solicited the views of the trustees and whilst those views were not open to scrutiny by other parties, all the Court received was purely factual material concerning their view; and
- (j) Should the Court decide to uphold the appellant’s claim regarding the receipt of further evidence, the matter should be sent back to the lower Court to have that information received in open court and allow all parties an opportunity to respond.

[12] In conclusion, the lower Court’s decision does not reveal any error in the merits of that decision, nor any error in law, and as such the application must fail.

The Law

[13] Under s 19 of the Act the Court may issue an order by way of injunction “on application made by any person interested.”

[14] The relevant part of s 19 of the Act provides as follows:

19 Jurisdiction in respect of injunctions

- (1) The Court, on application made by any person interested or by the Registrar of the Court, or of its own motion, may at any time issue an order by way of injunction—
 - (a) Against any person in respect of any actual or threatened trespass or other injury to any Maori freehold land, Maori reservation, or wahi tapu; or
- ...
- (3) Any injunction made by the Court under this section may be expressed to be of interim effect only.
- (4) Every injunction made by the Court under this section that is not expressed to be of interim effect only shall be of final effect.

[15] In applying for a permanent injunction, applicants must also fulfil the legal elements relating to the action of trespass before the Court will exercise its jurisdiction to grant the remedy. These elements are set out below:⁸

The action for trespass to land is primarily intended to protect possessory rights, rather than rights of ownership. Accordingly, the person prima facie entitled to sue is the person who had possession of the land at the time of the trespass. Actual possession consists of two elements: the intention to possess the land and the exercise of control over it to the exclusion of other persons. Either element alone is not sufficient...

[16] Once the elements for the trespass action are made out, the Court then considers what remedy is appropriate. The prima facie rule is that a landowner is entitled to an injunction to restrain a trespass.⁹ However, the Court still has discretion as to whether to grant the injunction or not. Matters affecting the exercise of the discretion include the parties' conduct.¹⁰

[17] In *Te Hokowhitu v Proprietors of Matauri X*, the Court discussed the law as follows:¹¹

[35] The test to ascertain whether the learned judge properly exercised his discretion whether to grant the injunction or not, is that which applies to permanent injunctions.

[36] Mr Taylor referred us to *The Law of Torts in New Zealand* and we repeat the following quote from those learned authors:

... the injunction is a discretionary remedy and even in the case of a continuing trespass a court may refuse an injunction if the circumstances of the case bring it within L Smith LJ's "good working" rule" in *Shelfer v City of London Electric Lightening Co*, and possibly in other "exceptional circumstances." If an injunction is refused, equitable damages may be awarded.

...

[39] There are limited Māori Appellate Court authorities on this point. But some guidance can be taken from the Māori Appellate Court decision of *Eriwata v Trustees of Waitara SD Sections 6 & 91 Land Trust* (2005). Although involving a Māori Land Trust, the principles concerning the rights that attach to legal owners apply equally to Māori land Incorporations. The Court found that legal ownership prima facie entitles the trustees to an injunction where a trespass has been committed. This rule applies whether the tort of trespass is committed by a stranger or beneficial land owner of a trust. The Māori Appellate Court did note that an injunction may not issue where there was some matter that could have influenced the exercise of discretion to the contrary.

⁸ Stephen Todd (ed) *The Law of Torts in New Zealand* (6th ed, Brookers Wellington 2013) at [9.2.04]

⁹ Ibid at [9.2.07 (5)]

¹⁰ Andrew Butler (ed) *Equity and Trusts in New Zealand* (2nd ed, Thomson Reuters Wellington 2009) at [25.2.2]

¹¹ [2010] Maori Appellate Court MB 566 (2010 APPEAL 566)

Discussion

Trespass

[18] As a beneficiary of the trust which owns the Maori land falling within the domain, Mr Taueki has an interest greater than that of an ordinary member of the public, and he therefore has standing to make application for an injunction under s 19 of the Act. However, in order to obtain that remedy he must show that there is an actual or threatened trespass against the land. As set out above the requirements of the trespass action are that the applicant must have actual possession or exercise exclusive control of the land.

[19] Mr Taueki as a beneficial owner cannot, in that capacity, sustain a claim that a trespass is being committed because, as noted by the Court of Appeal in *Taueki v R*¹², he is not in lawful possession of the land. The trustees of the Maori land are the legal proprietors of the land, while the Domain Board, pursuant to statutory authority, exercises control over the land. Both groups have consented to the Rowing Club using buildings on the land to store equipment. On that basis it would seem that Mr Taueki has no direct or immediate trespass action that he can take against the Rowing Club.

[20] However, Mr Taueki's argument does not end there. He rests his claim to an injunction on what he alleges are the failures of the trustees and the Domain Board to carry out their respective obligations correctly. His line of reasoning is that, where the appropriate authorities fail to carry out their responsibilities, other interested parties can then ask the Court to take action that will produce the proper results.

[21] Mr Taueki submitted that the Rowing Club was illegally occupying the buildings and that by allowing such illegal use, the Domain Board and the trustees were not fulfilling their legal obligations. In Mr Taueki's view the proper result is for the Rowing Club to vacate the buildings so that they can be used by other members of the public, including Mr Taueki himself.

[22] A key point is that there is a material difference between the arrangement the Domain Board has with the Rowing Club and an illegal occupation. The Rowing Club's

¹² [2013] NZSC 146

position is analogous to the situation where an agent acting for a landlord allows a lessee to remain in occupation of a property after the expiry of the formal lease, and while negotiations continue as to whether a new lease will be granted or not. Such occupancies are informal, but not illegal; the lessee has some colour of right to continue in the property, even if the occupancy is tenuous and can be taken away at will.

[23] In this case the Rowing Club, against whom the injunction proceedings are being taken, has a temporary right to use the buildings for storage with the consent of the Domain Board and the trustees as owners of the land. It may be that if proper procedures are followed by the Domain Board and the trustees, a more permanent arrangement can be agreed with the Rowing Club. There is evidence before the Court that the Domain Board and the trustees are engaging in discussions about the management of the domain. That will no doubt include finding a permanent resolution of the situation with the Rowing Club. In the meantime the Rowing Club can be said to have some colour of right to use the buildings, and is not a trespasser.

[24] That leaves the question of whether Mr Taueki has some ground for complaint against the trustees or the Domain Board which could give rise to a remedy of injunction against the Rowing Club. We deal first with the trustees' responsibilities and then with those of the Domain Board.

Trustees' Responsibilities

[25] In respect of the trustees, the first point to note is that the trustees' responsibilities do not include the power or authority to grant rights of use or occupation over the lands within the domain. The reserves legislation gives that authority to the Domain Board. The Domain Board should consult with the trustees, and it is important that the trustees engage in that consultation to ensure that the interests of the beneficiaries can be taken into account. From evidence put before the Court, it appears that, after some delays, a consultation process is being put in place.

[26] A major difficulty with Mr Taueki's argument is that even if it could be proven that the trustees were failing to carry out their obligations, a trespass action does not address the actions of the trustees. As a beneficiary, he would need to make an application against the

trustees; for example under s 231 of the Act for a review of trust, or under s 238 for enforcement of trust obligations. Those are clearly not the applications which are before us in these proceedings.

[27] Counsel for the appellant also submitted that if Judge Harvey's decision was allowed to stand then the beneficial owners could never challenge an occupation of land approved by the trustees, regardless of its legality. We consider that this goes too far – the applications referred to in the previous paragraph are clearly still available to the beneficiaries. If such an application was filed, there are a number of remedies which could be deployed to ameliorate any illegal occupation. In the current circumstances a trespass action is simply the wrong application.

[28] We will now go on to consider whether Mr Taueki can bring any action against the Domain Board in the Māori Land Court.

Jurisdiction over the Domain Board

[29] Counsel for the appellant pressed us to accept that the Māori Land Court has jurisdiction to review the actions of the Domain Board in carrying out its responsibilities pursuant to the Reserves Act and the ROLD Act. However, he failed to provide any statutory authority for such jurisdiction.

[30] In his decision of 18 December 2012, Judge Harvey declined to consider whether, pursuant to the reserves legislation, the Domain Board had authority to grant open-ended licences or enter into agreements with the Rowing Club over use of the buildings. He doubted that the Court was possessed of the necessary jurisdiction to look into those matters.¹³

[31] In his judgment of 28 February 2013, Judge Harvey stated that it was trite law that if a power is exercised by an authority “outside of the jurisdiction of this Court” then such a decision is not amenable to review by the Māori Land Court. However, he went on to say that, if the Domain Board's actions interfered with the rights of the beneficiaries' under

¹³ *Taueki v Horowhenua District Council – Horowhenua (11) Lake Block* (2012) 294 Aotea MB 236 (294 AOT 236) at [27]

their fishing easement, or were defective to the extent that they adversely affected the trust, then it would be proper for the Court to consider its jurisdiction.¹⁴

[32] Clearly the High Court does have jurisdiction to review the Domain Board's actions. There are specific provisions in Te Ture Whenua Maori Act 1993 which deal with circumstances where the Māori Land Court has been given the jurisdiction of the High Court, such as ss 21-23 and s 237. These sections do not apply to the case before us.

[33] The preamble and s 2 of Te Ture Whenua Maori Act 1993 require the Court to exercise its jurisdiction in a manner that facilitates and promotes the retention, use, development and control of Māori land by the Māori owners. However, by virtue of the reserves legislation, the Domain Board has been given specific authority to grant access and use of the Lake Horowhenua domain, and this puts it in a different position from either the Māori trustees or the beneficiaries of the land. There is no provision in the reserves legislation for the exercise of jurisdiction by the Māori Land Court.

[34] As a creature of statute the Māori Land Court has no more authority than the statute gives us. The question of whether and in what circumstances the Māori Land Court has jurisdiction over the Domain Board is therefore a difficult and complex issue. But, like Judge Harvey, in the absence of clear statutory authority we do not consider that the Court has jurisdiction to review the Domain Board's decision to grant a temporary use or occupation of the buildings to the Rowing Club.

[35] For the purposes of this application, we do not need to finally decide in what circumstances the Māori Land Court could exercise jurisdiction to control actions of the Domain Board that affect the trust. It is sufficient for our purposes that, even if Mr Taueki could show that the Domain Board exceeded its authority in entering into the temporary arrangement with the Rowing Club, that would not entitle Mr Taueki to an injunction on the basis of trespass.

[36] As an aside, we note that even where trespass is found the remedy of injunction is a discretionary one. In circumstances where neither the trustees nor the Domain Board

¹⁴ *Taueki v Horowhenua District Council – Horowhenua (11) Lake Block* (2013) 298 Aotea MB 263 (298 AOT 263) at [8]-[9]

sought or supported the injunction application, we would also have had to determine whether Mr Taueki came to the Court with “clean hands”. That would require us to examine his past actions on the land.¹⁵

Further Evidence

[37] The appellant contested the decision of the Māori Land Court to receive further information from the trustees after conclusion of the hearing on 17 June 2013, on the basis that the information sought was not relevant to the trespass action. The substance of the further evidence concerned the trustees’ views on the Rowing Club’s situation, and the attempts by the Domain Board and the trustees to engage in a consultation process as to the management of the domain.

[38] This evidence was clearly contemplated during the hearing and provision made at that time for receipt of the information by the Court. No objection could therefore be taken on the grounds that the appellant was unaware that the additional information would be provided to the Court.

[39] Judge Harvey was of the view that there was no evidence before the Court as to the trustees’ position regarding the use of the buildings by the Rowing Club. As such, depending on the outcome of consultation, Judge Harvey considered it would be premature to grant the injunction when it was possible that the Domain Board and the trustees could come to some agreement regarding an arrangement with the Rowing Club.

[40] Taking a narrow approach, it could be said that information as to whether the Domain Board and the trustees were working through a consultation process was irrelevant if Mr Taueki was indeed entitled to an injunction. However, the Court is directed by s 17(2)(f) of the Act “to promote practical solutions to problems arising in the use or management of any land”.

[41] We agree with Judge Harvey that the practical course in the circumstances before him was to give an opportunity to the Domain Board and the trustees to resolve these

¹⁵ *Taueki v R* [2013] NZSC 146

issues. The Court was therefore justified in accepting the further evidence as it informed the exercise of discretion as to whether an injunction should be granted.

[42] The evidence sought could only come from the Domain Board and the trustees. Although Mr Taueki might argue that the rules of natural justice require that he be given the opportunity to make submissions in relation to that evidence, that would simply mean that the matter would be referred back to the lower Court, so that he could be given that opportunity. Mr Taueki would still have no basis for an injunction for trespass. We consider that the overall interests of justice do not require that the matter be referred back to the lower Court.

Decision

[43] For the reasons given above the appeal is dismissed. Costs are reserved.

This judgment will be pronounced in open Court at the next sitting of the Māori Appellate Court

P J Savage
PRESIDING JUDGE

W W Isaac
CHIEF JUDGE

S Te A Milroy
JUDGE