

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

**A20150001626**

UNDER	Sections 19 and 319, Te Ture Whenua Māori Act 1993
IN THE MATTER OF	Horahora 1A1, Horahora 1A3B and Horahora 1A4C
BETWEEN	TAHAU MAHANGA Applicant
AND	VIOLET SADE Respondent

Hearing: On the papers  
(Heard at Chambers, Whangarei)

Judgment: 26 April 2017

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**JUDGMENT OF JUDGE M P ARMSTRONG**

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## **Introduction**

[1] Tahau Mahanga seeks an order for discovery of certain documents in the possession or power of Violet Sade. Ms Sade opposes any such order. The issue for determination is whether an order for discovery should be granted.

## **Background**

[2] Mr Mahanga has filed substantive applications seeking:

- (a) An injunction preventing Tahu Estate Ltd (“Tahi”) from conducting business on the Horahora 1A1, Horahora 1A3B and the Horahora 1A4C blocks (“the Horahora blocks”); and
- (b) Compensation from Ms Sade and the Horahora Roding Committee in the amount of \$16,867.01 concerning funds paid by Mr Mahanga to Dickson Transport & Quarries Limited (“Dickson Transport”).

[3] These applications were last heard on 30 August 2016, where Mr Mahanga sought discovery from Ms Sade of “any lease document or business contract” between Tahi, Ms Sade and/or the beneficial owners of the Horahora blocks. Ms Sade opposed the application for discovery. I adjourned the matter and issued directions timetabling the filing of submissions concerning discovery. I also indicated that I would determine the application for discovery on the papers.

[4] Ms Sade filed submissions opposing the application for discovery. Mr Mahanga responded by filing further applications seeking discovery of:

- (a) Bank statements for the bank account of the Horahora Roding Committee; and
- (b) The names of all persons to whom keys have been sold by Ms Sade concerning a gate on the Horahora blocks, and how much each person paid for a key.

[5] Ms Sade filed a submission in reply, opposing the further applications for discovery.

[6] On 30 March 2017, the applications for discovery were referred to me for determination.

### **The Law**

[7] Rule 6.20 of the Māori Land Court Rules 2011 (“the Rules”) states:

#### **6.20 Discovery**

- (1) On the application of any party to a proceeding, the Court may order any other party to the proceeding to give discovery of the documents, whether in hard-copy or electronic form, that are or have been in that other party's possession or power and that are relevant to any matter in question in the proceeding.
- (2) The order must be in form 6 and signed by the Registrar.
- (3) The order must be served by the applicant or, at his or her discretion, by the Registrar on the party against whom it is issued.
- (4) A party who has been ordered to give discovery must,—
  - (a) within 10 working days after being served with a copy of the order, file in the Court an affidavit of documents in form 7 and serve a copy of the affidavit on the party who obtained the order; and
  - (b) allow the party who obtained the order to inspect any document except a document for which privilege is claimed.
- (5) If privilege is claimed for any document, the Court may inspect the document for the purpose of deciding whether the claim of privilege is valid and may rule on the claim.

[8] When considering an application for discovery, the following general principles apply:<sup>1</sup>

- (a) A document should be discovered if it is relevant to matters which will actually be in issue before the Court;
- (b) Relevance is determined by the pleadings; and

<sup>1</sup> See *Robert v Foxton Equities Limited* [2015] NZAR 1351, *ANZ National Bank Limited v Tower Insurance Limited* (2009) 15 ANZ Insurance Cases 61-816 (HC), and *Southland Building Society v Barlow Justice Limited* [2013] NZHC 1125.

- (c) The Court retains an overriding discretion as to whether to grant an order for discovery.

### **Discussion**

[9] In determining whether discovery should be granted in this case, I must consider whether the documents sought are relevant to matters which will actually be in issue before the Court. Relevance is determined by the pleadings, being the applications filed by Mr Mahanga. Ultimately, I have an overriding discretion as to whether to grant the order sought.

[10] As discovery of three separate categories of documents are sought, each category is considered in turn.

#### *Contractual arrangements with Tahi*

[11] In his substantive application, Mr Mahanga seeks an injunction preventing Tahi from conducting business on the Horahora blocks. To support that application, Mr Mahanga seeks discovery of any lease or contract entered into with Tahi concerning the Horahora blocks.

[12] Ms Sade opposes discovery of these documents on the grounds that:

- (a) The contract entered into is a personal arrangement between Ms Sade and Tahi;
- (b) The contract is restricted to the land contained within the area of Ms Sade's occupation order on Horahora 1A1; and
- (c) She has no obligation to provide Mr Mahanga with copies of personal contracts she has entered into.

[13] In determining the application for discovery, I am not being asked to decide whether any arrangement entered into between Ms Sade and Tahi is valid. That is a question for the substantive application. Clearly the existence of any lease, licence or other

contractual arrangement is relevant to whether an injunction can or should be granted preventing Tahī from conducting business on the Horahora blocks.

[14] The discovery sought under this category is relevant to a matter in question in this proceeding. I also consider that discovery of these documents is required in order to properly determine this issue and an order for discovery should be granted.

*Horahora Roding Committee bank statements*

[15] In around 2011, Dickson Transport were engaged to form a road across the Horahora blocks. Dickson Transport subsequently filed proceedings in this Court seeking a charging order for costs it claimed were outstanding concerning the formation of this road.<sup>2</sup> During the course of those proceedings, the Horahora Roding Committee was formed by some of the owners of the Horahora blocks (including Ms Sade), to try and resolve the issue. An agreement was entered into with Dickson Transport for payment of the debt and the application was dismissed by consent.

[16] Mr Mahanga claims that he paid \$16,867.01 to settle this debt. Mr Mahanga seeks compensation from Ms Sade and the Horahora Roding Committee for paying the debt. Mr Mahanga now seeks discovery of any bank statements for the Horahora Roding Committee to support his application.

[17] Ms Sade opposes discovery on the grounds that these documents relate to the Horahora Roding Committee and Mr Mahanga has not attended any meetings concerning the Committee.

[18] As there are no particularised pleadings in this case, it is difficult to determine exactly what is in issue in this substantive application. Mr Mahanga will need to demonstrate that he paid the debt owed to Dickson Transport as this is the basis of his claim for compensation. The bank statements for the Horahora Roding Committee may be relevant to demonstrate that the Horahora Roding Committee did not pay the debt.

[19] There is a reasonable basis upon which Mr Mahanga requires discovery of these documents to prosecute his application. No proper grounds of opposition have been raised

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<sup>2</sup> A20120009450.

by Ms Sade. In these circumstances, I consider that an order for discovery of these bank statements should be granted.

*The sale of keys*

[20] Mr Mahanga seeks discovery of documents identifying the names of persons to whom keys have been sold by Ms Sade for a gate on the Horahora blocks, and how much each person paid for a key. Ms Sade opposes discovery of these documents on the basis that this information has already been provided to Mr Mahanga and to the Court.

[21] As noted, Mr Mahanga has filed substantive applications seeking an injunction against Tahi, and compensation with respect to the debt to Dickson Transport. There is no clear link between these issues and the sale of keys by Ms Sade to a gate on the Horahora blocks. While the gate itself may be located across the road formed on the Horahora blocks, the sale of keys appears to be a separate issue.

[22] I am not satisfied that this category of documents is relevant to matters in issue in this proceeding and as such discovery of these documents should not be granted.

*What form of discovery should be provided?*

[23] Rule 6.20 of the Rules provides that where an order for discovery is granted, the party providing discovery must file an affidavit of documents in Form 7, and allow the other party to inspect the documents listed in the affidavit except where privilege is claimed.

[24] Ms Sade does not have legal representation in this proceeding which may make it difficult for her to comply with preparing and filing an affidavit of documents in the prescribed form. In these circumstances, Ms Sade can provide discovery by providing copies of any relevant documents to Mr Mahanga, in lieu of filing an affidavit of documents.

**Decision**

[25] I grant an order that Violet Sade is to provide discovery of the following documents:

- (a) Any lease, contract or other arrangement that she has entered into with Tahurangi Estate Limited concerning Horahora 1A1, Horahora 1A3B and/or Horahora 1A4C; and
- (b) Bank statements for any bank account held by the Horahora Rounding Committee.

[26] Ms Sade must provide discovery of these documents by:

- (a) Filing an affidavit of documents, and allowing inspection of those documents, per r 6.20 of the Māori Land Court Rules 2011; or
- (b) Providing copies of the relevant documents to Mr Mahanga.

[27] I set these applications down for a telephone conference on a date to be determined by the Registrar. The purpose of the conference is to monitor compliance with this discovery order and to consider whether any further directions are required to timetable the substantive applications towards hearing.

Pronounced in open Court in Whangarei at 2:30 pm on Wednesday this 26<sup>th</sup> day of April 2017.

M P Armstrong  
**JUDGE**