IN THE MĀORI APPELLATE COURT OF NEW ZEALAND
WAIKATO MANIAPOTO DISTRICT

A20180001769
APPEAL 2018/2

UNDER	Section 58, Te Ture Whenua Māori Act 1993
IN THE MATTER OF	Koromatua 3A Block and others
BETWEEN	GEORGE TAMA NICHOLLS Appellant
AND	MARK STEVEN NICHOLLS, AIRINI PIRIHIRA TUKIRANGI, DALLAS WILLIAM JAMES, KAHUTOROA MATAIA TUKIRANGI, TAMA NICHOLLS, ANITA MARI NORMAN, SARAH JANE NICHOLLS as trustees of the W T Nicholls Trust Respondents

Hearing:	11 May 2018, 2018 Māori Appellate Court MB 294-348 (Heard at Hamilton)
Court:	Judge C M Wainwright (Presiding) Judge L R Harvey Judge M P Armstrong
Appearances:	J Kahukiwa, for Appellant D Wackrow and C Linstead-Panoho, for Respondents
Judgment:	7 December 2018

JUDGMENT OF THE COURT

Copies to:
J Kahukiwa, Corban Revell Lawyers, DX DP92558, Auckland jkahukiwa@corbanrevell.co.nz
D Wackrow and C Linstead-Panoho, Wackrow Williams and Davies Ltd, DX CP20503, Auckland
Don@wwandd.co.nz; coral@wwandd.co.nz

Introduction

[1] On 21 December 2017, the Māori Land Court determined that George Nicholls and William Nicholls are liable to account to the trustees of the W T Nicholls Trust for revenue received from the Oamaru Bay Holiday Park in Coromandel.[1] Judge Coxhead ordered that:

(a) both George and William Nicholls must account to the trustees for revenue received prior to the creation of the trust, in the amount of $442,593.00 (less their share);

(b) George Nicholls to account to the trustees for revenue received after the trust was created, in the amount of $391,824.00; and

(c) interest of five percent was payable on both sums.

[2] George Nicholls appeals that decision.

Background

[3] We rely on the facts recited in the decision of the Māori Land Court. The WT Nicholls Estate held the lands and assets originally owned by Wiremu Tawhi Nicholls and Vivienne Tamatehura Nicholls. The estate consisted of several properties including the Oamaru Bay Holiday Park ("the camp ground") in Coromandel, which is located on Māori freehold land.

[4] In 2007, the appellant and his family moved back to the land at Oamaru. William Nicholls operated the camp ground until the appellant took over in 2010.[2]

[5] On 15 August 2011, the WT Nicholls Trust was established.[3] The responsible trustees are Mark Nicholls, Airini Tukerangi, Delace James, Kahutoroa Tukerangi, Viv Nicholls, Anita Norman and Sarah Nicholls. Land owned by the WT Nicholls Estate was vested in the trustees. This land included the camp ground.

[6] On 24 October 2012, the trustees filed proceedings seeking an injunction against the appellant and others, recovery of the land; and recovery of the rental from the camp ground or an award of mesne profit.[4]

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1 *Nicholls v Nicholls – Koromatua 3A Block* (2017) 154 Waikato Maniapoto MB 128 (154 WMN 128).
2 50 Waikato Maniapoto MB 10 – 16 (50 WMN 10-16).
3 27 Waikato Maniapoto MB 107-169 (27 WMN 107-169).
4 A201200013588.

[7] On 21 December 2012, an injunction was granted prohibiting the appellant and others from entering or occupying the land owned by the trust.[5] The trustees also contended that William Nicholls and the appellant had to account for the revenue they received from operating the camp ground both before and after the creation of the trust in 2011. Judge Coxhead granted the orders sought that are now the subject of this appeal.

Issues

[8] The issues can be divided between the revenue received pre and post-trust.

[9] The following issues arise concerning revenue received pre-trust:

(a) Was a duty owed to account to the co-owners?

(b) Was any right concerning the duty to account transferred to the trustees at any time?

(c) Should deductions have been made for expenses, profit and effort?

[10] The following issues arise concerning the revenue received post-trust:

(a) Was a duty owed to account to the trustees?

(b) Should deductions have been made for expenses, profit and effort?

[11] The appellant also challenges the award of interest on both sums.

Discussion

Was a duty owed pre-trust to account to the co-owners?

[12] Co-owners have unity of possession and are all concurrently entitled to use and enjoy the land, or if they are not in occupation of it themselves, to receive the rents and profits.

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5 50 Waikato Maniapoto MB 10-16 (50 WMN 10-16). An appeal against that decision was subsequently dismissed *Nicholls v Nicholls – Papaaroha 6B* [2013] Māori Appellate Court MB 598 (2013 APPEAL 598).

However, co-owners do not stand in a fiduciary relationship to one another.[6] The authors of *New Zealand Land Law* describe the duty to account as follows:[7]

> Where one co-owner has received more than his or her share of the rents of revenues from the common property, the Statute of Anne imposes a liability to account for the excess so received to the other co-owner(s). In *Henderson v Eason* a distinction was drawn between rents and other revenues actually received from a tenant or third party, which must be accounted for, and, on the other hand, profits a co-owner might make through his or her use and occupation of the co-owned property, which he or she may retain…

[13] The duty of co-owners to account was also considered in *Henderson v Eason*:[8]

> There is no doubt as to the law before the statute of 4 Ann. c. 16. If one tenant in common occupied, and took the whole profits, the other had no remedy against him whilst the tenancy in common continued, unless he was put out of possession, when he might have his ejectment, or unless he appointed the other to be his bailiff as to his undivided moiety, and the other accepted that appointment, when an action of account would lie, as against a bailiff of the owner of the entirety of an estate.
>
> Until the Statute of Anne this state of the law continued. That statute provides by section 27, that an action of account may be brought and maintained by one joint tenant and tenant in common, his executors and administrators, against the other, for receiving more than comes to his just share or proportion, and against the executor and administrator of such joint tenant or tenant in common; and the auditors are authorized to administer an oath.
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> Declarations framed on this statute vary from those at common law, as it is an essential averment in them that the defendant has received more than his share. This was held in the case of *Wheeler v. Home* (Willes, 208), and in *Sturton* v. *Richardson* (13 M. & W. 17).
>
> Under the Statute of Anne he is bailiff only by virtue of his receiving more than his just share, and as soon as he does so, and is answerable only for so much as he actually receives, as is fully explained by Lord Chief Justice Willes in the case above cited. He is not responsible, as a bailiff at common law, for what he might have made without his wilful default.
>
> It is to be observed that the statute does not mention lands or tenements, or any particular subject. Every case in which a tenant in common receives more than his share is within the statute; and account will lie when he does receive, but not otherwise.
>
> It is to be observed, also, that the receipt of issues and profits is not mentioned, but simply the receipt of more than comes to his just share; and, further, he is to account when he receives, not takes, more than comes to his just share. What, then, is a "receiving" of more than comes to his just share, within the meaning of that provision in the Statute of Anne?

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6 G W Hinde, N R Campbell and P Twist *Principles of Real Property Law* (2nd ed, LexisNexis, Wellington, 2014) at [13.002].

7 Bennion, Brown, Thomas and Toomey *New Zealand Land Law* (2nd ed, Brookers, Wellington, 2009) at [6.6.07].

8 *Henderson v Eason* (1851) 117 ER 1451.

> It appears to us that, construing the Act according to the ordinary meaning of the words, this provision of the statute was meant to apply only to cases where the tenant in common receives money or something else, where another person gives or pays it, which the cotenants are entitled to simply by reason of their being tenants in common, and in proportion to their interests as such, and of which one receives and keeps more than his just share according to that proportion.

[14] George and William Nicholls ran the camp ground to the exclusion of the other owners. They received revenue from third parties, being guests using the camp ground. This was not a profit they made through their own use and occupation of the property, but rather was revenue derived from use of the property by another. While they were entitled to keep a share of the revenue equal to their interest or shareholding in the land, they had to account to the other owners for revenue received beyond their share. Otherwise, they would be retaining money that belonged to the other owners. In short, we agree with Judge Coxhead that the appellant and William Nicholls owed a duty to account to the other owners for the revenue they received in excess of their share.

Was any right concerning the duty to account transferred to the trustees at any time?

[15] Section 220(1) and (2) of the Act states:

> **220 Vesting order**
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> (1) On constituting any trust under this Part of this Act, the Court may, by order, vest the land and other assets in respect of which the trust is constituted in the responsible trustees or a custodian trustee upon and subject to the trusts declared by the Court in a separate trust order.
>
> (2) **The vesting order shall take effect according to its terms to vest the land or other assets in the person or persons named in the order**, solely or as joint tenants, as the case may require, without any conveyance, transfer, or other instrument of assurance, **together with all rights and remedies (if any) to which the owners were entitled in respect of the land immediately before the vesting** but subject to any lease, licence, mortgage, charge, or other encumbrance to which the land or assets may be subject at the date of the making of the order, and the fact that the land or other assets is or are held by that person or those persons on trust shall be stated in the vesting order.
>
> …
>
> [Emphasis added]

[16] When this trust was constituted, the Court vested the camp ground land in the trustees under s 220 of the Act.[9] The question here is whether this transferred to the trustees any right or remedy concerning the duty to account revenue received *before* the constitution of the trust.

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9 27 Waikato Maniapoto MB 107-169 (27 WMN 107-169).

[17] The same issue arose in the decision of this Court in *Monschau v Bamber,* where the trustees of an ahu whenua trust sought an order that one of the owners had to account for rent received from a lease to a third party prior to the constitution of the trust. The Māori Land Court found the co-owners in that case had rights in respect of money but not in respect of the land. Judge Savage determined:[10]

> [20] …The transaction that created that right involved the land, but the right to the money is not a right in relation to the land. The right would continue even if the co-owners no longer had any rights in relation to the land. There is no link.
>
> I therefore hold that the Court could not pass these co-owners' rights to the incoming trustees in the circumstances of this case.

[18] Judge Savage went on that, even if he was wrong in his interpretation of s 220, the vesting order did not vest the owners' rights to make such claims in the trustees. As the vesting order in that case was silent in respect of these rights, Judge Savage found no such rights passed to the trustees.

[19] On appeal, this Court considered ss 215 and 220 of the Act must be read within the broader context of the legislation as set out in the Preamble and s 2:[11]

> [49] …Thus the scheme of the Act supports the view that trustees of an ahu whenua trust on the constitution of the trust, assume all legal rights and remedies of ownership of the land, which they may exercise or pursue on behalf of the owners. That interpretation is reinforced in the Court's standard ahu whenua trust order which, apart from express restrictions, gives the trustees the power to deal with the assets of the trust as they see fit for the purposes of the trust.
>
> [50] We therefore agree with counsel for the appellants that ss 215 and 220 of the Act must be interpreted in the wider context of the Act as a whole. We consider that ss 215 and 220 empower the trustees to pursue any prior remedies in respect of the land, as well as to manage and utilise the land for the future.

[20] This Court acknowledged the remedy sought was a monetary remedy but considered that the remedy depends on interests in the land and this connection makes it a claim in respect of the land within the purpose and meaning of s 220. The Māori Appellate Court also found it was not necessary for the vesting order to expressly vest any such rights and remedies in the trustees, but rather this was the effect of a vesting order in light of the provisions of s 220(2).

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10 *Monschau v Bamber – Tahorakuri A No 1 Section 33A2* (2015) 125 Waiariki MB 260 (125 WAR 260).

11 *Monschau v Bamber – Tahorakuri A No 1 Section 33A2* [2016] Māori Appellate Court MB 286 (2016 APPEAL 286).

[21] In this case, the Court below followed this Court's decision in *Monschau*. Mr Kahukiwa contended we are not bound by *Monschau* and argued we should adopt the approach at first instance in that case. He further relied on the decision of the High Court in *Crawford v MacGregor*, as authority for the proposition that the vesting order did not transfer such rights to the trustees.[12]

[22] It is trite law that the Act must be interpreted and applied in a manner that furthers the principles and objectives set out in the Preamble, ss 2 and 17. These include the retention of land in the hands of the owners, and the effective use, management and development of the land by or on behalf of the owners. An ahu whenua trust is established where the Court is satisfied that the constitution of the trust would promote and facilitate the use and administration of the land in the interests of the persons beneficially entitled to the land.[13] We affirm the principle in *Monschau* that s 220 must be considered in light of the principles and objectives set out in the Preamble, ss 2 and 17 of the Act, and also in accordance with the purpose of an ahu whenua trust per s 215(2).

[23] The difficulties of administering multiply-owned Māori land where no management structure is in place is well known to this Court. The principles of unity of possession between co-owners can often give rise to disputes between owners as to the utilisation, occupation and development of the land. The constitution of an ahu whenua trust is intended to empower the owners through the election of trustees with the authority to achieve the effective utilisation of their lands. Section 220(2) provides that the land or other assets are vested in the trustees "together with all rights and remedies (if any) to which the owners were entitled in respect of the land immediately before the vesting". We have found that the owners were entitled to revenue arising from the operation of the camp ground before the vesting. This is a right and remedy contemplated by s 220(2), which transferred to the trustees because of the vesting order.

[24] In *Crawford v McGregor*, the High Court considered an action for damages for breach of a lease that had expired prior to the constitution of the trust in that case. Ongley J found that only those powers necessary for facilitating the use, management or alienation of the land were vested in the trustees. He considered the power to seek damages for breach of the lease could not pass to the trustees, as that right was not necessary for the purpose of the trust.

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12 *Crawford v MacGregor* HC Palmerston North A87/81, 29 July 1985.
13 Te Ture Whenua Māori Act 1993, s 215(2).

[25] The *Crawford* decision was based on an analysis of s 438 of the Māori Affairs Act 1953. That legislation was replaced by the current Act. Section 438(2) of the 1953 Act refers to an order vesting the land in the trustees. There was no equivalent provision under that legislation vesting the land together with all rights and remedies to which the owners were entitled prior to the vesting. The decision in *Crawford* can be distinguished as it did not address the interpretation of the key legislative provision that applies in this case, being s 220(2) of the current Act.

[26] Mr Kahukiwa argued that any right to an account of revenue is not a right in respect of the land but is a right *in personam*. We do not agree. Where one owner has a duty to account to the other co-owners, the remedy is an award of money. However, that remedy arises because of the parties' ownership of the land itself, and not because of a separate contractual or personal arrangement between the parties. Accordingly, where an owner has a duty account to his or her co-owners, both the right and the remedy are "in respect of the land".

[27] Counsel further argued that because the vesting order in this case did not expressly vest any such rights and remedies in the trustees, no such rights or remedies were transferred. We do not find this argument persuasive.

[28] Section 220(2) states:

> The vesting order shall take effect according to its terms to vest the land or other assets in the person or persons named in the order… together with all rights and remedies (if any) to which the owners were entitled in respect of the land immediately before the vesting….

[29] The vesting order takes effect according to its terms to vest the land or other assets in the trustees. The vesting order must expressly vest the land in the trustees which it does in this case. The vesting order need not make express the preservation of rights or remedies; this is the effect of s 220(2) once the land or assets are vested in the trustees.

[30] We consider that this is the correct interpretation of s 220(2) and gives effect to the principles and objectives of the Act as well as the purpose of an ahu whenua trust. We also consider this is the logical effect of this provision, as a duty to account to co-owners is a right in respect of the land. In summary, the vesting order preserved for the trustees the same rights and remedies concerning the duty to account for any use of the land before the constitution of the trust.

Should deductions have been made from any award pre-trust?

[31] In the alternative, Mr Kahukiwa contended that if an award is to be made requiring the appellant to account to the trustees, proper deductions should be made for expenses incurred in the operation of the camp ground, and an allowance for the appellant's effort.

[32] We accept that where revenue is recoverable by other co-owners, the respondent co-owner may have a claim for the expenses incurred in generating that income.[14] Requiring the respondent co-owner to account for the gross revenue may result in an unjust enrichment for the other co-owners. We also accept that, in some circumstances, an allowance may be made for the owner's effort and contribution in generating the income.[15]

[33] However, the appellant did not lead evidence in the Court below establishing and quantifying the costs incurred that he says should be deducted. Nor did he lead evidence, expert or otherwise, quantifying a deduction for effort.

[34] Mr Kahukiwa contended that the failure to file this evidence lies with the Court below. He submits the Judge should have framed the case on this basis, and directed or at least signalled to the appellant that this evidence was required. We do not agree. It was always for the appellant to frame and prepare his case, not the Judge. As the person owing the duty to account, he should have led clear and cogent evidence of where reasonable deductions should be made. He did not.

[35] The Judge did order the production of all relevant financial information concerning the camp ground from the bank, and the accountant, and ordered discovery by the appellant and others.[16] The appellant was clearly on notice that these financial records were relevant, and was ordered to give discovery of the documents in his possession or control.

[36] The Judge also engaged an accounting firm, Jefferies Nock & Associates, to carry out a review and analysis of the camp ground financial records, and provide a report regarding its

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14 G W Hinde, N R Campbell and P Twist *Principles of Real Property Law* (2nd ed, LexisNexis, Wellington, 2014) at [13.002].

15 See and refer to the *Adlam* cases in the Māori Land Court, the Māori Appellate Court and the Court of Appeal for a discussion on such an allowance where the defaulting party is a trustee. *Savage v Adlam – Lot 39A Sec 2A Parish of Matatā* (2014) 95 Waiariki MB 176 (95 WAR 176); *Adlam v Savage – Lot 39A Sect 2A Parish of Matatā* [2015] Māori Appellate Court MB 59 (2015 APPEAL 59); *Adlam v Savage* [2016] NZCA 454. See also *Adlam v Savage* [2017] NZSC 11.

16 *Nicholls v Nicholls – Koromatua 3A Block* (2017) 154 Waikato Maniapoto MB 128 (154 WMN 128) at [2].

income, expenditure and overhead obligations.[17] This report does list some expenses incurred. However, Mr Jefferies states in his covering letter that he could not accurately ascertain expenditure items as he was not provided with source documents. These expenses have been carried forward from draft general ledgers, prepared by Hauraki Taxation Services ("HTS"). HTS did not receive a lot of required information or documents and so their analysis was not finalised. It is not clear what source documents or information HTS relied on. We cannot be satisfied that the expenditure noted in the Jefferies report was actually and properly incurred in running the camp ground.

[37] The same applies to any proposed deduction for effort. We are not convinced this is a case where such a deduction should properly be made. Even if it were, the appellant has not produced evidence demonstrating what a reasonable deduction should be. In short, there is a similar lack of evidence of the time and effort that the appellant put into running the camp ground.

[38] We cannot be confident about the proper quantum of deductions for either expenses or effort, and therefore make none. Nor do we consider it necessary or appropriate to send the matter back to the Court below for further hearing. There is a need for finality in litigation. The appellant had the opportunity to furnish the information earlier in the process. These proceedings have consumed the time and resources of the parties for many years, and so it is necessary that they are concluded.

[39] In any event, the obligation is on the defaulting party to produce cogent evidence demonstrating where reasonable deductions should be made. The Court below attempted to obtain this information by ordering the production of documents, ordering discovery, and by appointing Mr Jefferies to prepare his report. He attempted to do so but was unable to verify expenditure as no source documents were provided. The appellant cannot now seek a further hearing to try and fill the evidential holes in his earlier case. There is no basis to send this back for further hearing when the appellant had full opportunity to present this evidence. This is also consistent with the decision of this Court in *Wihongi v Samson - Otarihau 2B1C*.[18]

[40] Finally, Mr Kahukiwa contended a further deduction should be made for profit earned by the appellant. He cited *Henderson v Eason* which drew a distinction between rent and other

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17 *Nicholls v Nicholls – Koromatua 3A Block* (2017) 154 Waikato Maniapoto MB 128 (154 WMN 128) at [3].

18 [2018] Māori Appellate Court MB 469 (2018 APPEAL 469).

revenue received from a tenant or third party, which must be accounted for, and profits a co-owner might make through the use or occupation of the co-owned property, which he or she may retain.[19] The revenue in this case was obtained through use of the property by a third party namely the guests staying at the camp ground. This was not a profit the appellant made through his own use and occupation. The appellant is entitled to retain his share of the revenue based on his shareholding as an owner in the land. Judge Coxhead provided for this in his decision that the appellant is to account for the revenue less his share (as co-owner) calculated on a pro-rata basis. The appellant is not entitled to retain additional revenue as profit.

Was a duty owed to account to the trustees following the constitution of the trust?

[41] The duty to account for revenue generated from the land arises due to the rights and obligations between the co-owners of the land. When the trust was created, the trustees became the legal owners of the land, with the previous co-owners having beneficial ownership. There is no corresponding duty for a beneficial owner to account to the legal owner for revenue derived from the operation of the land. Rather, the legal owner determines how the land is managed and utilised on behalf of the beneficial owners.[20]

[42] These principles were recognised in the Court below where the well-known decision *Eriwata* was followed. Judge Coxhead concluded that once the trust was constituted, the appellant no longer had rights as a co-owner, as the legal title was vested in the trustees. He determined the appellant no longer had power to control the use and occupation of the land and had no right to receive the rental income.[21] However, he then found:[22]

> [48] In terms of the claim for income received after the trust was constituted, I make orders pursuant to ss 215 and 220 of the Act that George Nicholls is to account to applicants for the amount of $391,824.00.

[43] Thus, although he recognised the proper principles that applied following the constitution of the trust, the Judge nevertheless granted an order requiring the appellant to account to the trustees as if he owed a duty to account for revenue. This was an error. The principles in *Eriwata* establish that a beneficial owner making use of the land without authority from the trustees commits a trespass. The Court below previously found the appellant had

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19 *Henderson v Eason* (1851) 117 ER 1451

20 *Eriwata v Trustees of Waitara SD Sections 6 and 91 Land Trust* (2005) 15 Whanganui Appellate Court MB 192 (15 WGAP 192).

21 *Nicholls v Nicholls – Koromatua 3A Block* (2017) 154 Waikato Maniapoto MB 128 (154 WMN 128) at [28].

22 Ibid, at [48].

trespassed in this case when it granted an injunction prohibiting the appellant from entering or occupying the camp ground land.[23] In *Law of Torts in New Zealand* the authors state: [24]

> Where the defendant wrongfully makes use of the plaintiff's land, the plaintiff is entitled to recover by way of damages (generally called "mesne profits") a reasonable rate of remuneration for the full period of unlawful use, regardless of any actual loss suffered by the plaintiff or any actual benefit derived by the trespasser. The strict "user principle" is justified by the need to remove any financial incentive to interfere with the possessory rights of others.

[44] Mesne profits have been awarded for wrongful use of land.[25] In the present case, the trustees brought a claim for mesne profit against the appellant. A report was filed as prepared by Deane & Co Ltd Accountants assessing mesne profits from the camp ground. That report says the total mesne profit for the period 15 August 2011 to 14 January 2014 (post trust) was $394,216.00. On mesne profits Judge Coxhead found:

> [64] While I am satisfied that the grounds for an award of mesne profit have been made out given that the applicants have already been successful in their claim for recovery of rental I decline to make orders for the award of mesne profit. To do so would essentially require the respondents to pay twice, where the losses overlap.

[45] He went on to order the appellant to account to the trustees for $391,824.00, which was the revenue received by the appellants after the constitution of the trust.

[46] The Judge ought to have calculated the amount that the appellant owed the trustees as mesne profit based on his trespass. The award of mesne profit, based on the Deane report, would have been higher than the existing order to account for revenue. So, although the Judge's approach was technically in error, we decline to make a higher award because the difference is negligible.

Should deductions have been made from any award post-trust?

[47] Like the situation pre-trust, Mr Kahukiwa argued that deductions should have been made from the award post-trust for expenses and effort. However, the same evidential problems apply. The appellant failed to take the opportunity to provide any relevant evidence before the Court below. Accordingly, we decline to make deductions in these circumstances.

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23 50 Waikato Maniapoto MB 10-16 (50 WMN 10-16).

24 Steven Todd, *The Law of Torts of New Zealand* (7th Ed, Thomson Reuters, Wellington, 2016) at 9.2.07 (4).

25 *Omahu 2M3* (2000) 161 Napier MB 109 (161 NA 109), *Trustees of Motiti North E9 v Aukaha – Motiti North E9* (1997) 59 Tauranga MB 2 (59 T 2), *Trustees of Ihaka Whaanga Whānau Trust v Whaanga – Town Section 90 and Town Section 91 Mahia Block* (2014) 42 Tairāwhiti MB 292 (42 TRW 292), *Roberts v Rodney District Council (No 2)* [2001] 2 NZLR 402 (HC).

Was interest properly awarded?

[48] The notice of appeal challenges the award of interest in this case. This was not pursued at the hearing before us. The pleadings clarify there is no challenge to the amount of interest, or the commencement date. Rather, the appellant challenges the principal award and contends, as a principal debt is not owed, an award of interest is not justified.

[49] We have rejected the appellant's arguments about his debt to the owners and the trustees, and his appeal against the award of interest must also fail.

Decision

[50] The appeal has been partially successful in that the Judge did make an error when ordering the appellant to account to the trustees following the constitution of the trust. However, for the reasons outlined, we do not consider it necessary or appropriate to disturb the decision as it will result in an increased award against the appellant.

[51] As the appellant succeeded to this limited extent, we consider that costs should lie where they fall. Although we have not heard from the parties, we are apprised of all the relevant circumstances, and consider it necessary, as already stated, that the balance of the appeal is dismissed.

Pronounced at 4.00pm Wellington on Wednesday this 7th day of December 2018

C M Wainwright (Presiding)	L R Harvey	M P Armstrong
JUDGE	**JUDGE**	**JUDGE**