IN THE MĀORI LAND COURT OF NEW ZEALAND
WAIKATO MANIAPOTO DISTRICT

A20160002562

UNDER	Section 289 of Te Ture Whenua Māori Act 1993
IN THE MATTER OF	TE MATA E3
BETWEEN	CRAIG ANTHONY SOLOMON AND VANESSA EVELYN WILKINSON Applicants
AND	RIKIRANGI REX JOHNSON AND HECTOR CONNOR Respondents

Hearing: 2-3 November 2016
(Heard at Hamilton)

Appearances: Ms Kelly Dixon and Ms Alisha Castle, Counsel for the applicants
Mr Curtis Bidois, Counsel for the respondents

Judgment: 02 May 2017

RESERVED JUDGMENT OF JUDGE S TE A MILROY

Copies to:

K Dixon and A Castle, Dixon & Co Lawyers, P O Box 10081 Dominion Road, Auckland, kelly@dixonandcolawyers.com and alisha@dixonandcolawyers.com
C Bidois, East Brewster Lawyers, P O Box 1742, Rotorua 3040, curtis.bidois@eastbrewster.co.nz

Table of Contents

Introduction

[1] Craig Solomon and Vanessa Wilkinson ("the applicants") seek a determination that the agreement they entered into with Te Haumarangai Hector Ngapu Connor ("Te Haumarangai") to purchase one hectare of the Māori freehold land known as Te Mata E3 is a binding contract. In addition, the applicants seek an order vesting an interest in Te Mata E3 in their names and a partition order severing the one hectare section from the balance of Te Mata E3.

[2] Te Haumarangai Connor died on 8 November 2011 at Coromandel. In 2014, Rikirangi Rex Johnson and Hector Johnson ("the respondents"), the deceased's whāngai children, succeeded to Te Haumarangai's Māori land interests. Those interests were in turn vested in the Te Haumarangai Whānau Trust. The respondents are the trustees of that trust.

[3] The respondents oppose the application. They assert that Te Haumarangai never intended the land to be the permanent residence of the applicants and their descendants. The respondents say that at best the applicants only had a licence to occupy the land which was terminable at will by the owner of the land.

[4] On 18 March 2016 the respondents issued a notice of termination to the applicants, per s 210 of the Property Law Act 2007, requiring the applicants to vacate the land within 20 working days. The applicants have not done so. The respondents therefore seek orders from this Court requiring the applicants to vacate the land and for payment of mesne profit damages.

Background

[5] Te Mata E3 is situated near Manaia in the Coromandel peninsula and comprises 54.0685 hectares more or less. The land for the most part is covered in heavy bush.

[6] Te Haumarangai was the sole owner of Te Mata E3. Upon succession to Te Haumarangai's estate the Te Mata E3 interests were vested in the respondents as trustees of the Te Haumarangai Whānau Trust.[1]

[1] 81 Waikato Maniapoto MB 149-156 (81 WMN 149-156).

Issues

[7] The issues for determination are:

a) did the applicants and Te Haumarangai enter into an agreement for sale and purchase of one hectare of Te Mata E3 ("the section");

b) if so, is that agreement enforceable under the law of contract; and

c) if an enforceable agreement has been entered into, should the Court make an order per s 164 in favour of the applicants.

[8] The applicants also seek a partition of the section from the Te Mata E3 block, however it was agreed that the partition application would be heard once the Court made a decision in regard to the above issues.

[9] The respondents raised a preliminary issue regarding the applicants' statement of claim and the scope of the Court's enquiry. I will address this issue first before moving to consider the evidence and the substantive issues.

Scope of Court's enquiry

[10] Mr Bidois, for the respondents, argued that the scope of the Court's enquiry should be confined strictly to the specific wording in the applicants' statement of claim dated 8th July 2016. Paragraph 10 of the statement of claim alleges that the applicants "entered into a verbal contract" with Te Haumarangai Connor in 2004 for the purchase of a section of Te Mata E3 for the purpose of a permanent dwelling.

[11] Mr Bidois submitted that the applicants' own evidence is that consideration, which is an essential term of a contract, was not agreed in 2004, but rather in 2009. Therefore there could be no contract as at the date specified in paragraph 10 of the statement of claim.[2] If there was no contract then the whole of the applicants' case fell away, as there could be no legally enforceable basis for the agreement alleged between Te Haumarangai and the applicants.

[2] McMorland *Sale of Land* (3rd ed Cathcart Trust, Auckland) at 3.06.

[12] Counsel for the applicants submitted that on a proper reading of the statement of claim in its entirety it was clear that the case for the applicants was that there was an agreement between the applicants and Te Haumarangai, but that agreement had been reached over time and at the pace set by him. The applicants' evidence attached to the statement of claim is that the purchase price for the land was not finally agreed until 2009. Thus the respondents had clear notice of the full case for the applicants. Counsel for the applicants also sought to amend the statement of claim to clarify the position.

[13] During closing submissions I discussed with Mr Bidois whether the applicants could amend their pleadings to show that the essential terms of the contract were finalised in 2009 in line with the applicants' evidence, with time given to the respondents to provide further evidence or make further submissions. Mr Bidois responded that the applicants should be confined to their statement of claim and opposed any amendment of pleadings on the grounds that it would cause irreversible prejudice to his clients. When I pressed Mr Bidois as to the prejudice to his clients, he explained that the respondents had given full and frank evidence and effectively shown their hand. As such, Mr Bidois argued that it should not be possible for the applicants to correct their case at such a late stage in the proceedings.

[14] This Court retains a wide discretion in relation to the conduct of its proceedings per s 66 of Te Ture Whenua Māori Act 1993 ("the Act") and the provision of evidence per s 69 of the Act. Pursuant to s 66 of the Act the Court may conduct proceedings in such a way as will best avoid unnecessary formality. Section 69 specifically allows the Court to receive evidence which may not otherwise be admissible.[3]

[15] In my view, while amending the pleadings would certainly have removed one of the respondents' planks in terms of their legal arguments, I do not see that it could have affected the evidence produced by the respondents.

[3] *Trustees of Te Ngae Farm Trust v Trustees of the Ngati Rangiteaorere Koromatua Council - Te Ngae Farm Trust* (2015) 118 Waiariki MB 92 (118 WAR 92).

[16] In terms of the content and timing of the agreement between the applicants and Te Haumarangai, Rikirangi Johnson's evidence is that he did not know what the agreement might have been between his father and the applicants, but from what he knew of their father he would not have sold land, and if Te Haumarangai intended to gift the land to the applicants, then he would have ensured that his sons knew that. I do not see how evidence of this nature could be affected by amendment of the statement of claim as to when the contract was entered into. In any event, I do not consider that amendment of the statement of claim is necessary.

[17] On a careful reading of the applicant's statement of claim and the accompanying affidavit from Craig Solomon I consider that the substantive basis for the applicants' claim is that an agreement was reached by the applicants and Te Haumarangai over time. In my view the wording used at paragraph 10 of the statement of claim is intended to indicate only that in 2004 the applicants and Te Haumarangai had taken the initial steps in the agreement. The full terms of the agreement would be determined in a progressive way, rather than at a particular point in time. Certain terms could be agreed upon at a later date.

[18] This view is supported by the evidence of Craig Solomon attached to the statement of claim. Mr Solomon says that in 2004 Te Haumarangai told them they could have the Te Mata E3 section, and on being asked what price he had in mind "his response was that we were to build our house first and discuss the price later."[4] The affidavit then sets out the time and circumstances when the purchase price was finally set.

[19] Furthermore, this interpretation of the nature of the claim is indicated to some degree in the Memorandum of Counsel dated 8 April 2016 and application for a partition order dated 30th April 2016 which initiated these proceedings. The application states that:[5]

> an agreement was made with the previous owner, Haumarangai Hector Ngapu Connor ("Hector") for the gift of a small section of Te Mata E3 land block in return for compensation in 2004. Based on this agreement the applicants proceeded to build their home. The applicants and Hector were in the process of making arrangements to partition the land when Hector unfortunately became ill and passed away…

[4] Affidavit of Craig Anthony Solomon dated 2 April 2016 at [14].
[5] Memorandum of Counsel for the applicants dated 8 April 2016 at [4].

[20] In addition, I held a teleconference on 14 June 2016 with both counsel to determine the scope of the application and the relevant issues. In their memorandum filed prior to the teleconference, counsel for the applicants indicated that the issues for the Court were whether there was "agreement for the transfer of interests in a section of Te Mata E3 for the purpose of a permanent dwelling…"[6] The statement of the issue did not specify a particular timeframe in which the negotiations for the agreement were begun or concluded.

[21] I made clear in my direction of 14 June 2016 following the teleconference,[7] and in my opening remarks at hearing, that I considered that the scope of the enquiry encompassed whether there was an agreement between Te Haumarangai Connor and the applicants for the transfer of interests in a section of Te Mata E3, without confining the enquiry to any particular timeframe.

[22] If the applicants were attempting to enforce an agreement where no purchase price had been agreed upon by the time of Te Haumarangai's death or by the time the application was filed, then I consider Mr Bidois' submission would have more weight. That is not the case here, where the purchase price was agreed in 2009, while the application was filed in 2016.

[23] In summary I consider that the respondents have had adequate notice of the true nature and substance of the claim being made. In these circumstances it is in the interests of justice to treat paragraph 10 of the applicants' pleadings as indicating only that, in 2004, the parties were entering into contractual relations, not that all terms of the contract were finalised at that time.

Did the applicants and Te Haumarangai Connor enter into an agreement to purchase one hectare of Te Mata E3?

[24] At the outset I address the evidence presented by the parties regarding the existence of an agreement to purchase the land, and make factual findings on the evidence before addressing whether the applicants entered into a legally binding agreement with Te Haumarangai Connor.

---

[6] Memorandum of Counsel for the applicants dated 10 June 2016 at [3].
[7] 122 Waikato Maniapoto MB 23-26 (122 WMN 23-26) at 24.

Applicants' evidence

[25] The applicants' evidence is as follows:

a) The applicants grew up in Manaia and have lived there most of their lives. In 2002 they were living at Goldfields Road in Manaia when their house was destroyed by severe flooding. The applicants, with their two young children, were forced to find refuge at the homestead of Vanessa Wilkinson's grandmother, Te Raumahoe Tukerangi. Te Haumarangai was a nephew of Te Raumahoe and the applicants treated him as an uncle;

b) In 2004 the applicants needed more room than could be provided at the homestead. Vanessa Wilkinson asked Te Haumarangai whether there was any land they could have to build a home on. He offered two possibilities – an area on the Pumoko block or the area now occupied by the applicants on Te Mata E3. In July 2004 the applicants indicated to Te Haumarangai Connor that they preferred the Te Mata E3 section. Te Haumarangai Connor agreed that this section would be theirs. When asked about payment for the section he told the applicants to start building, with the purchase price to be determined later once the house was completed;

c) The applicants began clearing the land in 2004. Clearing took over a year to complete due to the nature of the bush, with many old man pines as well as thick gorse, bracken and blackberry. Excavation work was also needed to remove stumps;

d) Building work began in 2005. Craig Solomon built the house himself with assistance from Rodney Renata. The work was done over the weekends as Craig Solomon worked during the week. The building was also done by hand, as there was no power until the applicants brought power to the site as part of completing the dwelling. The cost of installing power to the site, based on a quote from North Power, was $21,373.00 exclusive of GST. This quote did not include costs for digging of trenches for the cables. The applicants also reached a mutual agreement with the neighbour for the supply of water;

e) The applicants were required to obtain resource consent as well as a building consent from the Thames-Coromandel District Council. The resource consent was needed because of the coastal location of the block. Around $5,000.00 was charged by the Council for development fees, and these were paid by a weekly contribution;

f) Craig Solomon acknowledged that the Council had issued proceedings against him before the applicants began to work with the Council to obtain the necessary consents, but the matter did not proceed to hearing as he then complied with Council requirements;

g) The building progressed as and when the applicants could afford it, and they moved into the house in October 2008;

h) In June 2009 they advised Te Haumarangai Connor that they were now able to make payments, and a purchase price of $25,000.00 was agreed on. The purchase price was to be paid off over time;

i) The purchase price was based on the rating value of the land and the price at which H Gujer JP, a farmer neighbouring Te Mata E3, had sold some sections. At that time the total rating value of the land was stated as being $240,000.00 (not including the applicants' house). The section is approximately 1.8 per cent of the land. A letter from Mr Gujer indicated that Craig Solomon asked him how much he had sold his sections for as Craig wished to buy a piece of land from his uncle, Te Haumarangai Connor. Although Mr Gujer does not mention the date of this conversation it appears to have been around the time the applicants were about to start clearing the section as "the following year" the applicants visited Mr Gujer with a house plan and asked for his consent to build close to the boundary;[8]

[8] Affidavit of Craig Anthony Solomon dated 2 April 2016 at Appendix "C".

j) The applicants filed a valuation report dated 8 July 2016 from Jordan Valuers (registered valuers). The report valued the section at $175,000.00 and the remainder of the block at $900,000.00. The report gives the rating value of the whole land as $303,000.00.

k) Once the purchase price was agreed Te Haumarangai accompanied the applicants to the ANZ in Thames to open an account into which the purchase payments were to be made. The applicants made an initial payment of $500.00 and then continued to pay $100.00 per week from June 2009 until June 2012, ceasing payments about seven months after Te Haumarangai's death. The money was paid into a bank account known as the "Te Mata Block 3 Account". Te Haumarangai was able to withdraw money from the account but the applicants could not do so and were only able to access information about the state of the account. At the time of the closing of the account the applicants had paid $16,500.00 in total;

l) At the time of Te Haumarangai's death in November 2011 there was approximately $6,000.00 left in the bank account. The reason the payments were stopped after Te Haumarangai's death was that the applicants grew concerned that all the money paid into the account was being drawn out almost immediately by Rikirangi Johnson. They were uncertain whether Hector Johnson was receiving any of the money and they were also uncertain as to who would succeed Te Haumarangai Connor. The succession orders were not made until 29 May 2014. The first correspondence the applicants received from the respondents' whānau trust came in October 2014 by text. At a meeting with the trust members on 21 February 2015 the applicants were asked to vacate the land;

m) During Te Haumarangai Connor's life the applicants paid a koha of $1,000.00 to contribute towards the rate payments, although the applicants noted that Te Haumarangai refused to provide them with the rates information on a number of occasions.[9] Te Haumarangai advised them that his cousin's son, David Harmon was grazing a herd of cows on the

[9] Affidavit of Craig Anthony Solomon dated 2 April 2016 at Appendix "H".

land and that some of that revenue was used for payment of rates. He also advised that Merilyn Connolly of Whenua Kete Limited was responsible for paying the rates;

n) Craig Solomon produced email correspondence between himself and Paul Majurey dated 11 June 2010, seeking a meeting between the parties. Craig stated in the email that "…Uncle Hector Tukued (*sic)* us a portion of land here on the block [Te Mata E3]…"[10] The meeting was for the purpose of Mr Majurey assisting them to work through the task of "creating an Ahu whenua trust or similar for the block with a management plan, occupation order and partition orders". Paul Majurey confirmed to the applicants' lawyer in an email dated 15 March 2016 that a meeting had taken place and that "Uncle Hector" supported Craig and Vanessa's desires as expressed in the email of 11 June 2010 ;

o) On 10 August 2010 the Māori Land Court made an order pursuant to s 18(1)(a) of the Act determining that the applicants owned the house, comprising some 288 square metres (including decking), the power supply, and the implement sheds of some 90 square metres. Te Haumarangai supported the s 18(1)(a) application and attended the hearing of the matter;[11]

p) Mr Solomon also produced a written statement from Lynley Majurey dated 2 August 2016. Lynley Majurey is a very experienced staff member of the Māori Land Court. In her written statement she says:[12]

> 1. I met with Uncle Hector, Craig Solomon and Vanessa Wilkinson in 2010 to discuss the situation relating to Craig and Vanessa's house on Te Mata E3;
>
> 2. I advised Craig and Vanessa to make an Application for a Determination Order under section 18(1)(a) Te Ture Whenua Māori Act 1993 as a first step in order to secure ownership of the house;
>
> 3. I can confirm that at that time the intention of Hector was that Craig and Vanessa have that section of Te Mata E3 to live on forever;

[10] Ibid at Appendix "L".
[11] Ibid at Appendix "M".
[12] Brief of Evidence of Craig Anthony Solomon dated 9 August 2016 at Appendix "I".

> 4. We also discussed further options that I had provided including an Occupation Order, License to Occupy and a Partition Order and Hector, Craig and Vanessa were to go away and discuss these further;
>
> 5. I recall that the partition option was the favoured option as it gave Craig and Vanessa security for the house and area that they would be occupying.

q) The reason different options were being looked at was because the applicants believed that the cost of survey for a partition was in excess of $20,000.00, but the overall intention was to secure a permanent site to protect the house and section. The applicants were uncertain of the best and easiest way to do this and it was at the behest of Te Haumarangai that they sought advice from Mr Majurey and Court staff.[13] The other options of an occupation order or ahu whenua trust and licence to occupy were presented to them by Ms Majurey.[14]

r) When queried as to why the applicants had not pressed to have the matter finalised before Te Haumarangai's death, Craig Solomon mentioned that Te Haumarangai became ill during 2010 and the applicants took things at his pace. They did not want to "be pushy" when he was sick and felt it would have been rude to see him in hospital and ask him to sign papers. They were waiting for him to recover before pursuing matters further.[15]

s) The applicants also produced written statements from Rodney Renata, Michael Baker, Martin Mikaere (principal of Manaia School) and Suzanne Williams (who is the Chairperson of the Board of Trustees of Manaia School). Rodney Renata was the only one to give evidence in person;

t) Rodney Renata's letter refers to a conversation with Te Haumarangai in 2007 in which Te Haumarangai commented that he had gifted the section to the applicants. To Mr Renata this was an act of 'whangaia' (providing for them).[16] In his oral evidence Mr Renata stated that Te Haumarangai would have seen the transfer of the land to the applicants as a tuku

---

[13] 135 Waikato Maniapoto MB 140-283 (135 WMN 140-283) at 185.
[14] Ibid at 204.
[15] Ibid at 187-189.
[16] Affidavit of Craig Anthony Solomon dated 2 April 2016 at Appendix "H" at [6].

whenua, a gift. The applicants, as a matter of utu, would then have had to balance that up, which they did by offering to buy the land.[17]

u) Martin Mikaere wrote that Te Haumarangai was a master of Te Reo and steeped in tikanga. He stated that Te Haumarangai's "knowledge of Māori Land Tenure and Māori Law allowed him to speak with authority when it came to traditional practices and protocols." He also stated that Te Haumarangai's reputation in these fields "was well known and deferred to in questions of this nature". Mr Mikaere's view was that: [18]

> when Hector invited Craig and Vanessa to move their home onto land he owned after their own home had been devastated by flooding, coupled with his aroha and kinship ties to this young family, Hector knew full well the implications of making the gift. I am of the view when Hector allowed Craig and Vanessa to build on his land he wanted them to stay on the land. I am convinced he would not expect them to uplift their home after his death.

v) Suzanne Williams' statement dated 19 October 2015 referred to a conversation with Te Haumarangai in which he mentioned that he was going to gift land to the applicants to build on. She went on to say that the memorable feature of the conversation, for her, was that:[19]

> from that day on I assumed incorrectly that Vanessa was of Ngati Whanaunga descent, as I have always associated Uncle Hector as being Ngati Whanaunga. It is only very recently that I have learned Uncle Hector is connected to these lands (on which Vanessa and whānau currently reside) through his Ngāti Maru lineage and Vanessa herself is of Ngāti Maru descent.

w) Michael Baker wrote that he worked with Te Haumarangai on many projects involving representing Pare Hauraki, Ngāti Whanaunga, Tainui Waka, Kingitanga in relation to Te Reo me ona Tikanga.[20]. He referred to a tuku of land by Te Haumarangai to the applicants as a "practical expression of helping this whānau/extended family". He also said the act of tuku whenua "was a practise *(sic)* of our Iwi/Tribe and there have been many examples…" Mr Baker cited Ngāti Pūkenga in Manaia, Ngāti Porou in Mataora and Harataunga, as well as Tuhourangi at Wharekawa. The

[17] 135 Waikato Maniapoto MB 140-283 (135 WMN 140-283) at 216.
[18] Affidavit of Craig Anthony Solomon dated 2 April 2016 at Appendix "Q".
[19] Ibid at Appendix "K".
[20] Ibid at Appendix "J".

tikanga/practise was 'based on "He mana ko te kupu" "the bond of leader's word", and "e kore te tuha e hoki ki te waha" "that this once made, would never be broken" as well as "Aroha teetahi ki teetehi" "the bond of charity to one another."' Mr Baker also stated:[21]

> Te Haumarangai consulted with Toko Renata Te Taniwha over the tuku whenua practise *(sic)* and from there the decision was considered and the gift was agreed to. In this case it was fully endorsed by the Iwi, whaanau, and hapuu as a very great act of our Iwi that it was and is referred [to] with pride.

x) In terms of whether the applicants are within the preferred class of alienees, Vanessa Wilkinson and Te Haumarangai Connor were of Ngāti Maru, Ngāti Whare and the Marumaru whānau. Vanessa descends from Whare, and Vanessa's grandmother in that line is Te Raumahoe. Te Haumarangai descends from Whare's sibling, Moana. Vanessa looked upon Te Haumarangai as an uncle, and he was part of their whānau circle in Manaia. Te Haumarangai spent a lot of time with this whānau due to his relationship with Te Raumahoe, who was Te Haumarangai's aunt. Te Haumarangai was like a brother to Robert Wilkinson, Vanessa's father and Te Raumahoe's son from another marriage. On this basis the applicants claim that Vanessa is a whanaunga of Te Haumarangai;

y) Craig Solomon is a descendant of Tipene Pita Makiri and Tiri Te Piwai Paraone. Tiri's sibling Hakere Paraone is an ancestor of Kahu-o-te-Rangi Paraone, the parent of Tui Collier, a former owner in the Te Mata block. Kahu-o-te-Rangi was married to Hohepa Mataitaua, also known as Hohepa Tutonu. Hohepa Tutonu had another marriage to Mere Reweti, and the descendants of this marriage included Miriama Kipa and Haimona Mataitaua who were both former owners in the Te Mata block and the whāngai mother and brother of Te Haumarangai respectively;

z) Te Haumarangai received his interests in Te Mata E3 from his whāngai mother, Miriama Kipa and his whāngai brother Haimona Hohepa Mataitaua.

---

[21] Affidavit of Craig Anthony Solomon dated 2 April 2016 at Appendix "J".

[26] The applicants refuted any allegations that they acted improperly or illegally or without consent in respect of Te Mata E3.

Respondents' Evidence

[27] The respondents' evidence is as follows:

a) Te Haumarangai Connor was a well-known and well-respected kaumātua on the Coromandel. The respondents were raised as whāngai children by Te Haumarangai and are the natural children of siblings of Te Haumarangai's wife. Te Haumarangai left no Will but prior to his death he indicated to the respondents that two blocks of land received through his mother from the Renata line were to be given to particular persons. He did not leave any instructions in respect of Te Mata E3;

b) When the respondents applied for succession to Te Haumarangai the matter was widely known and discussed amongst the families in Manaia and the Coromandel. From the record of the succession application there was much support from the community for the respondents to succeed to their father's lands, even though they had no blood relationship to him.[22] The reasons given in various statements provided by community members for such support were the respect in which Te Haumarangai was held, the knowledge that he raised the respondents as if they were his sons, that Te Haumarangai had a father's aroha for the respondents, and that it was the tikanga of the area that in such circumstances whāngai could succeed to land interests;

c) Te Haumarangai taught the respondents their responsibilities as kaitiaki for the land. The respondents never knew an instance where Te Haumarangai sold land, although Te Haumarangai had exchanged land at Te Kouma with a Pakeha, called Bill Johnson. The respondents believe that their father would not have "dropped the values he had carried for a lifetime" for the sake of selling land to the applicants. On one occasion when

[22] 77 Waikato Maniapoto MB 85-102 (77 WMN 85-102) and 81 Waikato Maniapoto MB 149-156 (81 WMN 149-156).

Te Haumarangai spoke to Rikirangi Johnson about giving the applicants some shares in Te Mata E3 Rikirangi objected and Te Haumarangai did not raise the issue again;

d) Te Haumarangai would not have had a problem with giving the applicants permission to settle on the land, but that would have been an informal agreement for use not sale. Te Haumarangai referred to the account into which the applicants were paying $100.00 per week as the "rental account";

e) The applicants made no enquiries of the respondents in respect of the rates situation after Te Haumarangai's passing, and made no approach to the respondents, as would be expected if the applicants thought they owned a share of Te Mata E3 and wished to complete a partition;

f) In respect of the whakapapa connections between Vanessa Wilkinson and Hector, Vanessa's grandmother, Te Raumahoe, was connected to Te Haumarangai by her marriage to Reupene Renata, so that there is no close blood connection between the Wilkinsons and Te Haumarangai. The tikanga at Manaia is that only blood relatives were entitled to receive land. Robert Wilkinson and Te Haumarangai were not raised like brothers, because Te Haumarangai's closest relationship was with Tuke Renata, and they were an older generation to Robert;

g) There are rates arrears on Te Mata E3 which had built up during their father's lifetime. The applicants made no approach to the respondents to sort out the rates, which is not consistent with a claim of ownership of the land;

h) Craig Solomon did not "work with" the local council to obtain resource consent, as claimed, but had to be threatened with prosecution before he complied with Council requirements. He also trespassed or allowed others to trespass on Te Mata E3 and the neighbouring block.

Discussion

[28] I have carefully considered the evidence presented. I found no serious reason to question the good faith of any of the witnesses who gave evidence before me. While they hold different views of events I consider they were honestly held differences of opinion. I also note that the events which form the basis of this case occurred over a period of some 14 years up to the time of hearing, so that it is to be expected that there might be some minor errors or inconsistencies in the evidence. Any such errors do not appear to me to be relevant to the main issues before the Court.

[29] The Court's own records are always available to the Court, over and above the evidence presented in the hearing, and I have made use of records regarding the succession to Te Haumarangai, the s 18(1)(a) application to determine the ownership of the house and ownership records for Te Mata E3 and parent blocks. In relation to the statements, letters and the like which were presented to the Court by the applicants as part of the evidence, I rely on s 69 of the Act, which allows the Court to receive and act on any statement, document, or information that will allow the Court to deal effectively with matters before it, whether such evidence is legally admissible or not. That said, I have given careful consideration to the weight to be given to letters or statements where the authors were not present to be cross-examined.

[30] In my view it is beyond doubt that Te Haumarangai intended that the applicants could build a permanent residence on the section of Te Mata E3. Te Haumarangai was fully aware of the extent of their efforts and the permanent nature of the house. The applicants would not have expended so much time, effort and money to build a house of 288 square metres, with all necessary services and ancillary buildings, unless they were sure that the section would be theirs to use and pass on to their children and grandchildren. Nor is it credible that Te Haumarangai, a very well-respected and knowledgeable kaumātua, would have allowed them to proceed so far with the clearance of the section and the build unless he intended that the section and house would be their permanent home. The work on the section and house took about 4 years to complete, so there was ample opportunity for Te Haumarangai to have warned them not to put too many resources towards the build, if it was only to be a temporary situation. There is no suggestion by any party that he did so.

[31] I also consider that there is sufficient evidence to establish that the arrangement was to be one where the applicants would pay for the section in due course. The purchase price and the payment schedule may not have been finally decided upon in 2004, but Mr Gujer's letter suggests that even in 2004 the figure of $25,000.00 was being considered, at least by the applicants. That the applicants were talking of sale figures is consistent with the view that the discussion between Te Haumarangai and the applicants was about a permanent occupation secured by an eventual purchase of an interest in the land. While the only evidence of the final purchase price comes from Craig Solomon, I am satisfied with his evidence on this point. I also accept that the price is based on a portion of the rating valuation of the entire block, and the price for which Mr Gujer sold his sections. There may also have been some element of gift in the fixing of the final purchase price, bearing in mind the value of the section as set out in the applicants' valuation report of $175,000 as at the present time, and also that Te Haumarangai let the applicants have the use of the land for free during the building stage and did not require them to pay rates. That said I note that the applicants did in fact contribute $1,000.00 to the rates in 2009.[23]

[32] Te Haumarangai's consent to the application to determine the ownership of the house strengthens the conclusion that he intended the applicants to own the section. The judge in that hearing expressed concern that the situation in respect of the ownership of the land on which the house stood should be formalised. He advised the applicants and Te Haumarangai that "it's all well and good while Hector is alive, what's to happen when Hector passes on? Because …you own the house, but you don't have a legal interest as such to actually be occupying the land."[24] At no time during the hearing did Te Haumarangai indicate that the judge's concern was unnecessary because the occupation was only intended to be of a temporary or informal nature.

[33] The written statements of Paul Majurey and Lynley Majurey are also supportive of the view that the parties sought to give effect to the permanent residence of the applicants. The written statements of other Manaia community members cannot be direct evidence of Te Haumarangai's intentions, but it is clear that their understanding of the situation was that Te Haumarangai had given the applicants a section to live on.

---

[23] Affidavit of Craig Anthony Solomon dated 2 April 2016 at Appendix "H".
[24] 9 Waikato Maniapoto MB 111 – 115 (9 WMN 111-115) at 113.

[34] I also find the applicants' reasons for not pressing Te Haumarangai to finalise the legal arrangements convincing. It would be difficult for anyone to ask a sick kaumātua to sign papers, especially if they thought that he would improve so that they could complete formalities later.

[35] The respondents' objection that Te Haumarangai would never have sold land does not lessen the weight of the applicants' evidence, based as it is on what Te Haumarangai actually allowed and supported the applicants to do, and the discussions that he and the applicants had with court staff and legal advisers. Rikirangi Johnson conceded that he had not been present at any of the discussions between Te Haumarangai and the applicants.[25] In response to questions from the bench Rikirangi Johnson said that whenever he talked with Te Haumarangai about the applicants' situation, his father simply said "They'll do the right thing." Later in his evidence Rikirangi stated that he was not sure what was in his father's mind.[26]

[36] The respondents' view that, at best, the applicants were given a licence to occupy, terminable on notice at the will of the owner of Te Mata E3, and that the applicants' weekly payment of $100.00 amounted to no more than rental, is not consistent with the overall facts. Craig Solomon's statement that he would not have put the first pile in the ground if he thought that he was only going to be renting rang true. I find it difficult to believe that a man of Te Haumarangai Connor's knowledge and stature in the community would have accepted payment as if it were rental when the applicants thought it was towards settlement of the purchase. The applicants, who are best placed to know what was discussed with Te Haumarangai in relation to the agreement, are adamant that the agreement was about acquiring a separate section for them to live on permanently.

[37] Nor do I consider that the agreement between Te Haumarangai and the applicants would necessarily have contravened the value that Te Haumarangai put on retention of land. A transfer of land to kin as an act of aroha following the applicants being flooded out of their home is quite a different thing from a commercial sale arrangement.

---

[25] 135 Waikato Maniapoto MB 140-283 (135 WMN 140-283) at 238.
[26] Ibid at 243.

[38] I take the respondents' point that as sons of Te Haumarangai Connor, they would have expected him to discuss the applicants and the section with the respondents when he was in hospital. Nevertheless there are plausible reasons why he might not have done so which are consistent with the applicants' view of the matter. For instance, Rikirangi Johnson had already told Te Haumarangai that he was not in favour of giving the applicants shares in the land. Moreover, the applicants were already on the land with the consent of Te Haumarangai, so that he may well have considered that his wishes were clear and did not need to be reiterated.

[39] As the respondents pointed out, the applicants did not make enquiries about the rates situation on the land once their father had died, and there are now significant rates arrears on Te Mata E3. It would be consistent with ownership for the applicants to have investigated with the Council as to the rates situation. However, the applicants' response that they had been told by Te Haumarangai that the rates were "taken care of" and that they were hoping to have some discussion with the respondents once the succession to Te Haumarangai's land interests was settled is a reasonable response.

[40] Mr Bidois sought to throw doubt on Craig Solomon's credibility, as in his evidence Craig indicated that the applicants "worked with" the local council to fulfil the resource consent requirements, without mentioning that that had come about only after the council issued proceedings. I have not given much weight to that submission as Craig Solomon was not convicted, and the necessary council requirements were fulfilled. The failure to comply initially with council requirements is not relevant to the issue of whether there was an agreement between Te Haumarangai and the applicants.

Factual Finding

[41] Looking at the evidence as a whole I conclude that Te Haumarangai's intention was to transfer to the applicants the section on Te Mata E3 as a permanent residence, and to sort out the legalities once the building was complete. The applicants' offer to start paying for the section in 2009 and the agreement between the parties of a purchase price of $25,000.00 was the starting point for taking the necessary steps to transfer the section to the applicants. All parties were conscious of the need to engage with the Court to ensure the applicants' occupation could continue permanently, as is shown by the discussions that

took place with legal advisers and court staff. The question is whether the agreement between the applicants and Te Haumarangai is a legally enforceable agreement for sale and purchase of the section.

Is the agreement enforceable at law?

[42] The respondents submit that there was no enforceable agreement for the sale and purchase of the section. They argue that there was no consensus ad idem; no intention to create legal relations; and there was no certainty as to how the agreement would be carried out - that is whether it would be by partition or some other option.

Legal principles

[43] There are five major matters with which the courts may be concerned in determining the existence of a contract. These are:[27]

> (a) the making of an offer;
>
> (b) the fact of acceptance of an offer so that an agreement has been reached;
>
> (c) the communication of that acceptance;
>
> (d) the requirement of certainty — whether the agreement reached by the parties contains a sufficiently definite statement of the terms by which the parties are to be bound that a court may accord legal effect to the agreement; and
>
> (e) whether the creation or continuance of the obligations so undertaken is expressly or impliedly conditional on some event or some action by some person.

[44] The learned authors of *Law of Contract in New Zealand* note that some New Zealand decisions have shown a willingness to forgo sole reliance on the traditional offer and acceptance analysis and instead to determine whether or not the totality of the dealings between the parties should be regarded as having resulted in a contract having come into existence. This wider approach is described in that text as follows:[28]

> The real question … is whether an implied contract can be spelt out of the words and acts of the parties. As indicated in *Boulder Consolidated Ltd v Tangaere* and having regard to the authorities there cited, I would not treat difficulties in analysing the dealings into a strict classification of offer and acceptance as necessarily decisive in this field, although any difficulty on that head is a factor telling against a contract. The acid test in a case like the

[27] John Burrows, Jeremy Finn and Stephen Todd, *Law of Contract in New Zealand* (5th ed, Lexis Nexis New Zealand Ltd, Wellington, 2016) at 37.
[28] Ibid at 38.

> present is whether, viewed as a whole and objectively from the point of view of reasonable persons on both sides, the dealings show a concluded bargain.

Offer, acceptance and consideration

[45] An offer, capable of being converted into an agreement by acceptance, must consist of a definite promise to be bound provided that certain specified terms are accepted. In determining whether a statement amounts to an offer the court must consider whether there is both an indication of a willingness to undertake legal liability on defined terms and a sufficiently clear indication of the terms of the prospective conduct.[29]

[46] The respondents' argue that there was no consensus ad idem (agreement on the same thing) necessary for a binding contract. The respondents' argument is based on whether Te Haumarangai Connor intended to sell the applicants an interest in Te Mata E3, and whether the applicants intended to purchase that interest, being the section that they had cleared, rather than the arrangement being an offer of a licence to occupy. I have already made factual findings to the effect that by 2009 the agreement was about the purchase of the section by the applicants from Te Haumarangai Connor. However in light of the statements from various parties that Te Haumarangai "gave" the section to the applicants it is necessary to consider this further below.

[47] In the present case there are indications that there was an overlay of the tikanga of tuku whenua in the agreement between Te Haumarangai and the applicants. This case involved a situation where someone in need, who looked upon Te Haumarangai Connor as an uncle and revered kaumātua, approached him to see if he had a section they could live on. He provided them with a section and sought no payment of any kind from them until a price for the section was agreed in 2009. There is clearly a strong element of generosity and gift in this transaction, given the terms on which the applicants went into possession of the section and the payment of the purchase price by instalments. Nevertheless, the overlay of tuku whenua, in these circumstances, is not inconsistent with a legally enforceable contract being entered into between the parties, especially as they came to grips with the requirements of the Act and what was needed to achieve a legal interest such as would support a permanent occupation of the section.

---

[29] Ibid at 41.

[48] Rodney Renata offered an explanation as to how the tikanga of tuku whenua operated in this case. Mr Renata has been the Chair of the iwi representative body of ngā hapū of Ngāti Whanaunga (Ngāti Whanaunga Incorporated Society) for the past 24 years. He is also the Treaty Claims Manager and an elected Treaty Negotiator for Ngāti Whanaunga as a member of the Tamaki, Hauraki and Marutūahu Collectives. Mr Renata gave powerful evidence of Te Haumarangai Connor's place in the Renata whānau by referring to where he was buried in relation to Mr Renata's tūpuna. Mr Renata is also a shareholder in various land blocks of Ngāti Waihinu, Ngāti Whare and Ngāti Moana of Ngāti Maru at Manaia, including blocks where Te Haumarangai Connor was also an owner.

[49] Mr Renata noted that Te Haumarangai had not left a Will and that as far as he was aware the applicants were the only persons to whom Te Haumarangai gave any land. In Mr Renata's view, Te Haumarangai would have been acting under the tikanga of tuku whenua as a whānau member. Mr Renata confirmed that the section on Te Mata E3 had been offered to Mereana Peke, Vanessa's aunt, with the implication that it was not surprising that the same land should therefore be offered to Vanessa.

[50] Mr Renata then went on to say that the purchase price put forward by the applicants would have been in the nature of utu – a balancing of the obligations between Te Haumarangai and the applicants. The respondents offered no serious challenge to Mr Renata's explanation of tikanga in these circumstances.

[51] I note that, even if the tikanga of tuku whenua operates in this case, the legal requirements for enforcement of such transactions must still be fulfilled.

[52] In my view a consensus ad idem was reached between Te Haumarangai Connor and the applicants either in 2004, when Te Haumarangai and the applicants agreed on the transfer of the section for compensation to be determined later; or in 2009, when the purchase price was finally agreed upon. Such a finding does not mean that there was no overlay of tuku whenua in the transaction between the parties – only that so far as the legal requirements are concerned the parties were of one mind by 2009 that the section was being purchased for $25,000.00.

Intention to create legal relations

[53] The intention of the parties is to be objectively ascertained, that is, the court is concerned with outward and apparent manifestations of an intention to create, or not create, a contract.[30]

[54] Normally the intention of the parties is evidenced by a written agreement supported by consideration. However, it is quite common that agreements to transfer interests in Māori land are unwritten until such time as an application is filed with the Court for an order transferring the shares per s 164 of the Act.

[55] In this case the applicants say that they were following through a process at Te Haumarangai Connor's speed. They point to the fact that they approached the Court through Lynley Majurey and also, at the insistence of Te Haumarangai, made contact with Paul Majurey to give them advice about the process. The applicants and Te Haumarangai attended meetings with both Paul Majurey and Lynley Majurey to work through the legal requirements. In addition, Te Haumarangai Connor's support of the s 18(1)(a) application and attendance at the Court hearing is consistent with an intention to be legally bound. Ms Majurey's letter of 2 August 2016 shows that the parties were engaged in the legal process in terms of considering the options of an occupation order and partition orders. These facts are sufficient, in my view, to show an intention on the part of all parties to be legally bound.

Sufficient Certainty

[56] Mr Bidois argued that as at 2004, when the applicants say the agreement was entered into, there was insufficient certainty as to price and the manner in which the applicants were to secure tenure of the section.

[57] In terms of price, Mr Bidois referred me to the following excerpt from McMorland *Sale of Land*:[31]

---

[30] John Burrows, Jeremy Finn and Stephen Todd, *Law of Contract in New Zealand* (5th ed, Lexis Nexis New Zealand Ltd, Wellington, 2016) at 156.
[31] McMorland *Sale of Land* (3rd ed Cathcart Trust, Auckland) at 3.06.

> **3.06. Certainty as to price.** Like all other aspects of the contract, the principal requirement here is certainty. The general principle applies that there must either be agreement upon the price itself, or upon a means by which the price is to be fixed on objective criteria independently of the future agreement of the parties themselves. For example, the parties may agree to the calculation of the price on a unit basis, such as price per hectare or per frontage metre, provided the formula is sufficiently certain. If the price is left for later subjective agreement between the parties, the contract is not enforceable. It will not be implied that the purchaser will pay a reasonable price, a market value or some other measure, or that some machinery or other will be used to fix the price.

[58] As stated earlier there is sufficient evidence to establish that the arrangement between the parties was to be one where the applicants would pay for the section, with the price of $25,000.00 being based on a portion of the rating valuation of the entire block as at 2004, and the price for which Mr Gujer sold his sections. I also accept that the parties agreed the price would be paid off by weekly instalments of $100.00. I am satisfied that certainty as to price was reached in 2009.

[59] The respondents submitted that there was never any agreement as to whether there would be a partition of the land to provide the section for the applicants, or whether there was some other option which would be taken. The respondents referred to the comments made by Craig Solomon during the s 18(1)(a) hearing where Mr Solomon says that they were "looking into all that kind of now".

[60] I agree with Mr Bidois that the parties were still "kicking around the options" as to exactly how the section was to be separated from the main block and transferred to the applicants – that is, whether by partition or occupation order or some other possibility. That said, any of the proposed options are at the discretion of the Court. As Craig Solomon says, partition was the preferred option, but a court might not grant a partition. Therefore other options had to be kept on the table. I do not see this as fatal to the contract.

[61] In all its essential terms the agreement was complete in 2009, when the section was cleared, the house built and the purchase price agreed upon. From that point on the parties were in the hands of the Court, and the agreement would have to be conditional upon the relevant Court orders being obtained.

Form of the agreement

[62] Section 24 of the Property Law Act 2007 provides that contracts for the disposition of land are not enforceable unless in writing:

> **24 Contracts for disposition of land not enforceable unless in writing**
>
> (1) A contract for the disposition of land is not enforceable by action unless—
>
> (a) the contract is in writing or its terms are recorded in writing; and
>
> (b) the contract or written record is signed by the party against whom the contract is sought to be enforced.
>
> (2) In this section, disposition does not include—
>
> (a) a short-term lease; or
>
> (b) a sale of land by order of a court or through the Registrar.

[63] However, s 26 of that Act also provides that s 24(1) does not affect the law relating to part performance. I must now consider whether the doctrine of part performance is applicable to this case.

Part Performance

[64] Through the operation of the doctrine of part performance a litigant may seek to enforce an oral contract by obtaining from the court a decree of specific performance even though that oral contract fails to comply with the Property Law Act.[32]

[65] In *TA Dellaca Ltd v PDL Industries Ltd* the Court of Appeal formulated the following test for part performance:[33]

> In a part performance case the Court must consider three points which I would frame as follows:
>
> 1. Was there a sufficient oral agreement such as would have been enforceable but for the Act?
>
> 2. Has there been part performance of that oral agreement by the doing of something which:
>
> a) clearly amounts to a step in the performance of a contractual obligation or the exercise of a contractual right under the oral contract; and

[32] John Burrows, Jeremy Finn and Stephen Todd, *Law of Contract in New Zealand* (5th ed, Lexis Nexis New Zealand Ltd, Wellington, 2016) at 300.
[33] *TA Dellaca Ltd v PDL Industries Ltd* [1992] 3 NZLR 88 (CA) at 50-51.

b) when viewed independently of the oral contract was, on the balance of probabilities, done on the footing that a contract relating to the land and such as that alleged was in existence.

3. Do the circumstances in which the part performance took place make it unconscionable (fraudulent in equity) for the defendant to rely on the Act?

[66] The respondents submitted that if the agreement was seen as entered into in 2004, but the essential term of price was not agreed until 2009, then all the performance prior to that time would not be sufficient to render the agreement enforceable at law. However, the respondents conceded that if the agreement for sale and purchase was considered to be fully formed in 2009 then the instalment payments of the purchase price after that date constitute part performance.

[67] I am satisfied that in all its essential terms the agreement was complete in 2009 when the purchase price was agreed upon. But for the requirements of s 24 that the agreement be in written form, the oral agreement would have been enforceable under ordinary contract law.

[68] The applicants made regular instalments of the purchase price from 2009 to 2012 at which point they stopped making payments due to the passing of Te Haumarangai Connor and uncertainty over his succession. Te Haumarangai allowed the applicants into possession of the section up to the time that he passed away, which included the period after the agreement was fully formed in 2009. I consider those actions to be in performance of contractual obligations to pay the purchase price and to give possession of the land under the oral contract. When those actions are considered independently of the contract, I consider that a reasonable person, on the balance of probabilities, would conclude that such actions were done on the basis that a contract for sale and purchase as alleged by the applicants was in existence. The licence to occupy scenario favoured by the respondents does not appear to me to explain all the circumstances; particularly the very considerable time and effort expended by the applicants to clear the section and build the house, the weekly payment of $100.00, which would be a lot to pay for rental of a section when all work done to make the section liveable was done by the applicants, and, finally, their koha of $1000.00 to assist Te Haumarangai Connor with the rates.

[69] Te Haumarangai and the respondents have had the benefit of use of the payments made by the applicants. Te Haumarangai supported the applicants in their endeavours in relation to the house and section, as well as supporting them in court on the s 18(1)(a) application and in their discussions with advisers and court staff regarding the requirements for partition or occupation through Te Ture Whenua Act processes. In the circumstances, I consider that it would unconscionable for the respondents to rely on the fact that the agreement was not in writing and did not meet the requirements of s 24 of the Property Law Act 2007 as a basis on which to void the agreement.

Specific Performance

[70] The remedy of specific performance is available where the Court considers it necessary to constrain a contracting party to do that which they promised to do.[34] An award of specific performance is favoured for contracts for the sale of land.[35]

[71] If specific performance is not granted the applicants would be required to attempt to remove their home, which was never built to be removable. It is likely that, even if it could be removed, damage would occur to the dwelling and considerable costs would be incurred to reinstate the house, even if another section could be found on which it could be placed. Nor is it reasonable to ask the applicants to move when they have occupied the section and house as their home with their children for so many years. It might well mean that they would have to leave the vicinity of Manaia to find somewhere else to live, with consequent disruption to their lives. The respondents, on the other hand, are still entitled to the balance of the purchase price and will have the use of the remainder of Te Mata E3. I consider that the hardship to the applicants if the contract is not enforced outweighs that of the respondents if specific performance is granted.

[72] I also consider that there is nothing in the conduct of the applicants that disentitles them to a grant of an equitable remedy. The applicants, in their dealings with Te Haumarangai, acted in good faith and in fulfilment of the obligations between them. Although the respondents made allegations that Craig Solomon had trespassed on their land or allowed others to do so for hunting purposes, they produced no evidence to support

---

[34] John Burrows, Jeremy Finn and Stephen Todd, *Law of Contract in New Zealand* (5th ed, Lexis Nexis New Zealand Ltd, Wellington, 2016) at 872 citing *Foreman v Hazard* [1984] 1 NZLR 586.
[35] Ibid.

such allegations. Mr Solomon's response was that he had never trespassed on the land himself, nor allowed or encouraged others to do so. In respect of a beekeeping enterprise on the respondents' land, Mr Solomon said that he had told the person wishing to place hives on the land to see Rikirangi Johnson, and was simply looking to facilitate an arrangement between the parties. However, at all times he knew and acted on the fact that the respondents' consent was needed to any use of their land.

[73] The respondents submitted that the applicants were tardy in not seeking to sort out the rates situation in respect of Te Mata E3 after Te Haumarangai's death, and that equity does not assist where there has been undue delay. I note that rates for Te Mata E3 are not just the responsibility of the applicants. If there are rates arrears on the block, the respondents also bear some liability. If, as the respondents have submitted, the applicants' arrangement with Te Haumarangai was a licence to occupy, then it would have been reasonable for the respondents to use some of the instalment payments to pay rates, and to approach the applicants when the instalment payments ceased in 2012 to discuss the rates situation.

[74] I do not think the applicants can be greatly faulted for not approaching the respondents prior to the succession orders being made on 29 May 2014. Until the Court made its decision as to whether the whāngai children could succeed to Te Haumarangai's lands, it was uncertain who would be the appropriate person with which to discuss the rates situation. The applicants also believed, from what Te Haumarangai had told them that the rates payments were in hand. The applicants were then approached by Rikirangi Johnson's partner, Ms Wellington, on behalf of the respondents' whānau trust in October 2014. There was a series of texts and other communications up to mid-March 2015, including meetings with Ms Wellington and the respondents, in which various options were put to the applicants, including removing their house from the section. On 19th March 2015 the applicants were told that further correspondence would be through the respondents' lawyer. The applicants then proceeded to obtain legal advice, and further correspondence was conducted through the lawyers. In my view there is no culpable delay on the part of the applicants.

[75] Therefore I find that there is a legally enforceable contract between the applicants and the Estate of Te Haumarangai Connor and that, in accordance with ordinary contract law, specific performance would be available to carry out the agreement. I must now consider whether the agreement complies with the requirements of Te Ture Whenua Māori Act 1993.

Was confirmation of the agreement required?

[76] Counsel for the respondents submitted that, pursuant to s 156 of the Act no instrument of alienation that is required to be confirmed shall have any force or effect until it is confirmed by the Court. As there was no confirmation of the agreement for sale and purchase between the applicants and Te Haumarangai, Mr Bidois argued that the agreement was void. Counsel did not refer me to any authority on this point.

[77] The relevant parts of section 156 provide:

> **156 Effect of confirmation**
>
> (1) No instrument of alienation that is required to be confirmed under this Part shall have any force or effect until it is confirmed by the court under this Part.
>
> (2) Subject to subsection (3), on confirmation being granted, an instrument of alienation shall (if otherwise valid) take effect according to its terms, subject to the requirements (if any) of registration under the Land Transfer Act 1952, as from the date on which it would have taken effect had confirmation not been required.
>
> (3) The confirmation of a resolution of assembled owners shall not—
>
> (a) constitute a contract between the owners and any other persons; or
>
> (b) impose any obligations or confer any rights upon the owners, or upon an intending alienee or other person.

[78] I have found that there was an oral agreement for sale and purchase of the interest in Te Mata E3. As such there is no instrument to be confirmed.

[79] Even if the agreement was in writing, but there was no confirmation by the Court, there is still an agreement: it is simply unenforceable by virtue of s 156(1) until the Court has granted confirmation.

[80] In any case, pursuant to s 4 of the Act dispositions effected by order of the Court are not alienations for the purpose of s 156 of the Act. Te Haumarangai and the applicants were seeking to give effect to their agreement through the Court. That is evidenced by their consultations with Paul Majurey and Lynley Majurey and the options suggested to the parties by those advisers, as well as by the s 18(1)(a) proceedings. In any event, the current applications before the Court are not affected by s 156 of the Act.

Should the Court make an order per s 164 in favour of the applicants?

[81] The applicants have applied for orders under s 164 for the transfer of shares, and then, if the Court sees fit, for partition orders or other appropriate orders to secure their tenure of the section.

[82] Section 164 of the Act states:

> **164 Transfer of land or undivided interest by court vesting orders**
>
> (1) The court may, in accordance with this section, make a vesting order for the transfer of any Maori freehold land or any undivided interest in any such land to and in favour of any person or persons to whom that land or interest may be alienated in accordance with the provisions of Part 7.
>
> (2) An application for a vesting order may be made by—
>
> (a) a party to a contract or arrangement relating to the proposed transfer; or
>
> (b) a donor of the land or interest; or
>
> (c) a trustee for a person entitled to the land or interest.
>
> (3) The provisions of sections 152 and 158, so far as they are applicable and with any necessary modifications, shall apply to an application for a vesting order as if it were an application for confirmation of an instrument of alienation.
>
> (4) Every contract or arrangement entered into for the purposes of this section shall be executed and attested, and proven in writing, in accordance with the rules of court, but shall not be enforceable as a contract.
>
> (5) Where any money is payable by way of consideration for the proposed transfer, the court shall not sign or seal a vesting order unless and until it is satisfied that the money has been paid to the Māori Trustee or the court appointed agent or trustees appointed under this Act, or to the alienor.
>
> (6) Where a vesting order is sought to effect a gift of any land or share having a value in excess of $2,000, the court may decline to make the order without evidence in support of the application from the alienor, either in person or in any other manner authorised by the rules of court.

> (7) Where a vesting order is sought to give effect to a proposed transfer and one of the parties to the transfer has died, the court may make the order if it is satisfied that proper agreement had been reached before the death of that party.
>
> (8) A person who is entitled to a beneficial interest in the land, or who will be entitled to such an interest if the order is made, shall be entitled to appear and be heard on an application for a vesting order, whether or not that person is a party to any contract or arrangement to which the application relates.
>
> (9) This section shall be read subject to section 165 of this Act, section 4A of the Maori Vested Lands Administration Act 1954, and section 10 of the Maori Reserved Land Act 1955.

[83] The Court's discretion per s 164 is a general one which is to be carried out having regard to the directions contained in the Preamble, section 2 and section 17 of the Act.[36]

[84] I note that s 164(9) is not relevant to this application.

[85] The purpose of s 164(4) is a protective one and corresponds to s 24 of the Property Law Act 2007, with the added condition that even where the written agreement is properly executed and attested it is still not enforceable as a contract. Thus, where an otherwise enforceable contract is intended to be effected through s 164 of the Act, the Court may still refuse to give effect to the contract if it does not comply with the requirements of the Act as to alienations of Māori land interests. Those requirements in respect of undivided Māori land interests are set out in ss 148, 150, and 152 of the Act.

[86] I consider that s164(4) may be read in conjunction with s 164(7), so that where the transferor has passed away, as in this case, the Court may make a vesting order even if there is no written, executed and attested agreement, so long as the Court is satisfied that proper agreement was reached. It makes sense that if an oral agreement has been found to be supported by part performance and is an enforceable agreement under ordinary contract law, as I have found in this case, that the Court should be able to give effect to the agreement pursuant to s 164(7), despite s 164(4), so long as all other requirements of the Act are fulfilled. I do not see the provisions of s 164 as being more protective than s 24 of the Property Law Act 2007, except as they relate to the other requirements of Te Ture Whenua Māori Act 1993 already referred to. To hold otherwise would be unnecessarily paternalistic, would not add further support for the principles in the Preamble and s 2, and may undermine the objectives set out in s 17(2)(a), (e) and (f) of the Act.

---

[36] *Barnes – Te Horo 2B2B2B* (2008) 125 Whangarei MB 11 (125 WH 11) at [28].

[87] At the outset I note that I am satisfied that the application for a vesting order seeks to give effect to the agreement entered into between the parties prior to Te Haumarangai Connor's death (s 164(7)). In addition I am satisfied that the respondents, as persons entitled to a beneficial interest in Te Mata E3, have had an opportunity to appear and be heard in relation to this matter (s164(8)).

[88] The next hurdle for the applicants to meet is whether they fall within the class of persons to whom the interest may be alienated (s 164(1)). If they meet this requirement I will then consider the application of ss 152 – 158 of the Act (s 164(3)).

Do the applicants fall within the class of persons to whom the interest may be alienated?

[89] The relevant part of s 148 of the Act states:

> **148 Alienation of undivided interests**
>
> (1) An owner of an undivided interest in any Maori freehold land may alienate that interest to any person who belongs to 1 or more of the preferred classes of alienee.

[90] Section 148(1) restricts the class of persons who may take undivided interests in Māori land to the preferred class of alienees. The statutory definition of preferred class of alienees is set out in s 4 of the Act:

> **Interpretation**
>
> In this Act, unless the context otherwise requires,—
>
> ...
>
> **preferred classes of alienees**, in relation to any alienation (other than an alienation of shares in a Maori incorporation), comprise the following:
>
> (a) children and remoter issue of the alienating owner:
>
> (b) whanaunga of the alienating owner who are associated in accordance with tikanga Maori with the land:
>
> (c) other beneficial owners of the land who are members of the hapu associated with the land:
>
> (d) trustees of persons referred to in any of paragraphs (a) to (c):
>
> (e) descendants of any former owner who is or was a member of the hapu associated with the land

[91] The applicants submitted that Vanessa Wilkinson is whanaunga of Te Haumarangai Connor and associated in accordance with tikanga Māori with Te Mata E3 per s 4(b) of the Act. They also submitted that Craig Solomon may be a member of the preferred class pursuant to the definition in subparagraph (e) that is, if he is a descendant of a former owner who is or was a member of the hapū associated with the land.

[92] The respondents submitted that the applicants had given no evidence as to the hapū associated with Te Mata E3, and no evidence as to the hapū to which the applicants belonged. The respondents also relied on the Court of Appeal decision in *Kameta v Nicholls* where the Court held that it was not enough that Mr Kameta and the Nicholas children shared a common ancestor; what was decisive was the devolution through a whakapapa link or relationship by blood within a hapū which was relevant to the land in question.[37] I note that the *Kameta* case concerned the class of persons entitled to succeed to a deceased owner of Māori land as defined in s 108 of the Act. The particular definition in question in the *Kameta* case refers to "[a]ny other persons who are related by blood to the testator and are members of the hapū associated with the land" (s 108(2)(c)). This is a different and narrower formulation to that set out in s 4(b) of the Act.

Is Vanessa Wilkinson a member of the preferred class of alienees?

[93] It is well established that in terms of subparagraph 4(b) there are two separate requirements to be fulfilled for a person to be considered a member of the preferred class of alienees. The first is that the person is whanaunga of the alienating owner. The second is that the person is associated in accordance with tikanga Māori with the land.[38] I consider each of these aspects separately below.

Is Vanessa Wilkinson whanaunga of Te Haumarangai Connor?

[94] Section 4 of the Act defines whānaunga as "a person related by blood."

---

[37] *Kameta v Nicholas* [2012] 3 NZLR 573 (CA) at [31].
[38] *Mihinui - Maketu A100* (2007) 11 Waiariki Appellate Court MB AP 230 (11 AP 230). See also *Sade v Mahanga – Taiharuru 2A1* (2008) 7 Taitokerau Appellate Court MB 47 (7 APWH 47); *Nicholas v Kameta – Estate of Whakaahua Walker Kameta* [2011] Maori Appellate Court MB 500 (2011 APPEAL 500) and *Kameta v Nicholas* [2012] 3 NZLR 573 (CA).

[95] In the Māori Appellate Court decision of *Mihinui - Maketu A100* Chief Judge Williams (as he then was) noted that the definition in the Act is broad in ambit and reflects that contained in Williams *Dictionary of the Māori Language* which defines "whanaunga" as "relative, blood relation". He then went on to state:[39]

> [15] Although the core word is *whānau* its derivative *whanaunga* does not have the same constrained meaning. Whanaunga is, as the dictionary example shows, a much broader term – broader than *hūanga:* the word used to describe someone of the same hapū. In my view, as long as two people have the same karangatanga – that is as long as they belong to the same iwi – they are *whanaunga* in accordance with the statutory definition. There is no basis for looking beyond the definition to the Preamble of the Act let alone the Interpretation Act to determine the meaning of the word as it applies to these facts. There is no ambiguity to justify such recourse. A word is not rendered ambiguous because its meaning is wide. The wide meaning must be applied…

[96] In that case, Judge Williams, in a dissenting decision, held that the beneficiaries of the Trust were by definition all whanaunga of the vendor. Judge Savage held that when determining a whanaungatanga relationship focussing on associations with the land is unhelpful. He considered that the question for the Court was what was meant by Parliament when it passed this legislation. He instead focussed on the kaupapa of the Act and the promotion of retention of the land by the vendor, her whānau and her hapū. He did not consider that the definition of "whanaunga" could be extended to members of an iwi. Judge Harvey accepted that, depending on the context, "whanaunga" will mean other tribes, iwi and hapū descending from common tipuna, but considered the question for the Court to be as follows:[40]

> In the context of the definition of the preferred class of alienees, taking into account section 2 and the Preamble, for the purposes of alienation, can whanaunga mean a person outside of the owners, their whānau and hapu.

[97] Judge Harvey was not persuaded that within the confines of the alienation regime contained in the Act it was intended that whanaunga should be construed to include members of other hapū beyond that holding ownership of the land in question.

[98] In *Tikanga Māori* by Sir Hirini Moko Mead "whānau", "whanaunga" and "whanaungatanga" are defined as follows:[41]

---

[39] *Mihinui - Maketu A100* (2007) 11 Waiariki Appellate Court MB AP 230 (11 AP 230) at [15].
[40] Ibid at [4].
[41] Hirini Moko Mead *Tikanga Māori: Living by Māori Values* (Revised ed Huia Publishers Wellington, 2016) at 403.

whānau	be born; be in childbed; offspring, family group; family, but modern; familiar term of address
whanaunga	relative
whanaungatanga	relationships

[99] Sir Hirini also says:[42]

> One component of the values associated with tikanga is whanaungatanga. Whanaungatanga embraces whakapapa and focuses upon relationships. Individuals expect to be supported by their relatives near and distant, but the collective group also expects the support and help of its individuals. This is a fundamental principle.
>
> There are obligations in terms of whanaungatanga…The whanaungatanga principle reached beyond actual whakapapa relationships and included relationships to non-kin persons who became like kin through shared experiences, and to the ancestral house at the marae, because it is usually named after an ancestor.

[100] Sir Hirini's comments about hapū membership are a contrast to the inclusiveness of whanaungatanga:[43]

> It is worth mentioning that locality by itself or even long association with a hapū, including years of toil at the local marae, do not qualify a person to membership of a hapū. Even the fact of being the mother of many of the hapū children or the grandparent of an even larger number of persons is not sufficient. The whakapapa principle and the simple fact of being born into the group is the most important and fundamental criterion of membership.

Discussion

[101] In support of their submission the applicants have provided a whakapapa showing the relationship between Vanessa Wilkinson and Te Haumarangai Connor.[44] That whakapapa shows a blood connection between Vanessa and Te Haumarangai – Vanessa's tupuna, Whare, is a sibling to Te Haumarangai's tupuna, Moana. In addition, Vanessa's grandmother, Te Raumahoe and Te Haumarangai Connor are related through marriage. Te Raumahoe was married to Reupene Renata. Reupene is a sibling of Ruawai Mihi who is Te Haumarangai's biological mother.

[42] Ibid at 32-33.
[43] Ibid at 231.
[44] Affidavit of Craig Anthony Solomon dated 2 April 2016 at Appendix "O".

[102] The Court records also confirm that Te Raumahoe is related to Te Haumarangai's father, Te Kani Connor. The Court minutes show that Te Raumahoe and Te Kani are first cousins.[45] Thus Vanessa has, in Māori terms, a reasonably close blood connection with Te Haumarangai on his father's side.

[103] As such I am satisfied that Vanessa Wilkinson is whanaunga of Te Haumarangai Connor. The remaining question is whether Vanessa is associated with the land in accordance with tikanga Māori.

Does Vanessa have an association with the land?

[104] In *Sade v Mahanga – Taiharuru 2A1* the Māori Appellate Court referred to the discussion of Judge Isaac in *T F Hickling Family Trust - Nuhaka 2E3C8A2B* concerning "association with the land in accordance with tikanga" as follows:[46]

> [8] Association with land in accordance with tikanga was aptly described by Judge Isaac in *Nuhaka 2E3C8A2B* (1994) 218 where he said:
>
> > According to tikanga Māori, right to land is validated by whakapapa. The earlier the ancestor the stronger the right to that land. Land was claimed by whakapapa because in accordance with tikanga Māori all things were derived from ancestors and were passed on to future generations. If a person can whakapapa to an original owner or occupier of the land that person has a right to the land. The whakapapa presented to the Court does not lose strength because it traces back for many generations. In terms of tikanga Māori it gains strength.

[105] The Māori Appellate Court held that the transferee though not having an association to the particular title to the land nonetheless had an association with the land as she could whakapapa back to a tupuna of the parent block.

[106] In *Kameta v Nicholas* the Court of Appeal determined, as stated above, that although the parties might share a common ancestor; what is decisive is whether there is a devolution through a whakapapa link or relationship by blood within a hapū relevant to the land in question.[47]

---

[45] 104 Hauraki MB 11 (104 H 11).
[46] *Sade v Mahanga – Taiharuru 2A1* (2008) 7 Taitokerau Appellate Court MB 47 (7 APWH 47) at [8] citing *T F Hickling Family Trust - Nuhaka 2E3C8A2B* (1994) 92 Wairoa MB 214 (92 WR 214) at 218.
[47] *Kameta v Nicholas* [2012] 3 NZLR 573 (CA).

[107] In addition, Judge Harvey in *Steedman v Apatu - Owhaoko D 6 Subdn 3* considered whether the transferee was a member of the preferred class of alienees by analysing the original title determinations for the Owhaoko lands.[48] He concluded that the evidence demonstrated that Mr Hall is associated with the Owhaoko lands. He had a historical connection to the lands and a relevant associational connection via his whakapapa links. Although Judge Harvey considered that the physical connection was tenuous, on the whole he found Mr Hall to be whanaunga of the alienating owner who was associated in accordance with tikanga Māori with the land and therefore was a member of the preferred class of alienees.

Discussion

[108] As demonstrated in the cases above, membership of the hapū which holds the land is the most obvious way of being associated with the land in accordance with tikanga Māori.

[109] According to Craig Solomon's affidavit Vanessa's whānau are Ngāti Whare and Ngāti Maru, and the Marumaru whānau/hapū in Manaia are one of the whānau/hapū to which Te Haumarangai Connor belonged. The letter from Suzanne Williams (Chairperson of the Board of Trustees of Manaia School) attached to Craig Solomon's affidavit states that:[49]

> very recently …I have learned Uncle Hector is connected to these lands …through his Ngati Maru lineage and Vanessa herself is of Ngati Maru descent.

[110] I further note that Vanessa Wilkinson's father and Te Haumarangai Connor are both owners in Pumoko 2C4B block which suggests that they have hapū in common.

[111] Te Haumarangai received his interest in Te Mata E3 by succession to his whāngai mother, Miriama Kipa, and from his whāngai brother, Haimoana Mataitaua. In the submission prepared by the Deputy Registrar for the hearing of Te Haumarangai's succession application, it states that the whakapapa connection between Te Haumarangai and his whangai mother and brother is not clear.[50] This fact and the overlapping blood and marital links between himself and Vanessa may be what Te Haumarangai was referring to

[48] *Steedman v Apatu - Owhaoko D 6 Subdn 3* (2015) 341 Aotea MB 164 (341 AOT 164).
[49] Affidavit of Craig Anthony Solomon dated 2 April 2016 at Appendix "K".
[50] 77 Waikato Maniapoto MB 85-102 (77 WMN 85-102) at 87.

during the s 18(1)(a) application when asked by the judge whether Vanessa or Craig was related to him. The passage in the hearing is as follows:[51]

> **Court**: Now is Vanessa or Craig related to you in any way?
>
> **Hector Connor**: I haven't really looked right into that Your Honour.
>
> **Court:** Oh, okay.
>
> **Hector Connor:** It's complicated.
>
> **Court:** Is it more like just a friendship relationship this one?
>
> **Craig Solomon**: No. No, we have blood…we do have blood ties but it's …we have…our tupuna, we have common tupunas.
>
> **Court**: Right.
>
> **Craig Solomon**: …but we haven't delved right into it.

[112] Given the uncertainty, it is necessary to consider the derivation of ownership of the Te Mata blocks. The investigation of title for Te Mata was completed on 22 November 1907 and ownership awarded to the following:[52]

1. Te Awhimate Kipa
2. Ema Reweti
3. Hori (More) Kipa
4. Hohepa Mataitaua
5. Karauna Poono
6. Kawhena Rangitu
7. Moni Koura
8. Manahi Kipa
9. Meri Reweti
10. Miriama Kipa
11. Mere Kipa

12 Pare Te Arani

13. Patehau Kipa
14. Raiha Poono

[51] 9 Waikato Maniapoto MB 111-115 (9 WMN 111-115) at 114.
[52] 58 Hauraki MB 76 (58 H 76).

15. Rangi Pukeroa
16. Rare Pukeroa
17. Rangiuira Te Arani
18. Tautari Pukeroa
19. Tuangahuru Te Arani
20. Watana Te Arani
21. Te Wararahi Te Arani

[113] On 1 September 2015 the Te Mata block was partitioned into Te Mata A, B, C, D and E and Te Mata Tapu. The owners for each block were:[53]

Te Mata A

1. Karauna Poono
2. Raiha Poono

Te Mata B

1. Te Awhimate Kipa
2. Hori Kipa
3. Hoani Kipa Nikora
4. Iehu Nikora
5. Manahi Kipa
6. Mere Kipa

Te Mata C

1. Tautari Pukeroa
2. Rangi Pukeroa
3. Rare Pukeroa

Te Mata D

1. Pare Te Arani
2. Rangiuira Te Arani
3. Watana Te Arani
4. Tuangahuru Te Arani

[53] 64 Hauraki MB 174-176 (64 H 174-176).

5. Te Wararahi Te Arani

Te Mata E

1. Mere Reweti
2. Hohepa Mataitaua
3. Kawhena Rangitu
4. Miriama Kipa
5. Patehau Kipa

Te Mata Tapu

1. Heni Hirini
2. Hohepa Mataitua
3. Rare Pukeroa

[114] The Court records disclose that Te Haumarangai Connor was a descendant of Heni Hirini, one of the original owners in the Te Mata Tapu block.[54] Te Haumarangai's mother was Heni Hirini's granddaughter.

[115] However Te Mata E3, which Te Haumarangai solely owned, was created by amalgamation of the Te Mata E2A and E2B blocks on 28 January 1971.[55] Those blocks are derived from Te Mata E block. As previously stated Te Haumarangai received his interests in Te Mata E2A and E2B from Miriama Kipa and Haimona Hohepa Mataitaua pursuant to their respective Wills.[56] The Court records do not shed any further light on a whakapapa connection between Te Haumarangai and his whāngai mother or Haimona Mataitaua.

[116] Craig Solomon suggested that the subtribe associated with the block is Ngāti Karaua. However, he did not produce any supportive evidence from kaumātua or the Court's records for this proposition. The investigation of title in 1907 shows that the Court was confronted with two different groups who claimed the land. The Court at that time noted that the lists of descendants for both tūpuna showed considerable overlaps and awarded the block to both groups together with an area in the block to a third party. As

[54] 74 Hauraki MB 266 (74 H 266) and 79 Hauraki MB 54-55 (79 H 54-55).
[55] 3 Hauraki Alienation MB 92 (3 ALAH 92).
[56] 77 Hauraki MB 64 (77 H 64); 74 Hauraki MB 266 (74 H 266); TN28/190. See also partition of Te Mata E into Te Mata E1 and Te Mata E2 at 69 Hauraki MB 326 (69 H 326). See also 74 Hauraki MB 144-145 (74 H 144-145) where Te Mata E2 was further partitioned into Te Mata E2A and Te Mata E2B.

Mr Bidois submitted, the land in this area of the Coromandel was subject to contested claims between Ngāti Maru and Ngāti Whanaunga as well as Ngāti Pūkenga.[57] No clear evidence of a whakapapa connection of Vanessa Wilkinson to the original owners of the block as set out in the investigation of title in 1907 has been filed. This means that there is some uncertainty as to whether Vanessa Wilkinson is a member of the relevant hapū, although further whakapapa evidence might well establish that.

Is there an association in accordance with tikanga Māori with the land?

[117] Even though the evidence before the court does not conclusively show that Vanessa Wilkinson has a hapū affiliation to the land, there is evidence to suggest that Vanessa may still be associated with the land in accordance with tikanga Māori.

[118] Rodney Renata stated in his evidence that the most significant tikanga in this situation is that of the tuku of the land by Te Haumarangai Connor to the applicants. He states that:[58]

> [i]t is not tikanga or 'customary practice' to undo the expressed wishes of a rangatira/tohunga of the ilk of Te Haumarangai Connor.

[119] He gave the example of the tuku of land to various hapū of Te Tawera of Ngāti Pūkenga at Manaia, calling it an act of whāngaia in its widest sense ("to provide for"). Another example given by Mr Renata was the act of Wikiriwhi Pokiha of Ngāti Maru which resulted in descendants of Tame Brown succeeding to Ngāti Maru lands at Manaia.

[120] Michael Baker also referred to the tikanga associated with tuku whenua. Mr Baker placed the action of Te Haumarangai Connor very firmly within that context.[59] In addition Martin Mikaere's statement also indicated that the gift of the section to the applicants was a gift within the context of tikanga.[60]

[121] The evidence demonstrates that Te Haumarangai's action in settling the applicants on the section was well-known within the Manaia community. While the Court must be careful as to the weight to be given written statements where the witness is not present to

[57] See for instance the recent attempt to investigate title to Tataweka and Wekarua Islands off the Te Kouma peninsula.
[58] Affidavit of Craig Anthony Solomon dated 2 April 2016 at Appendix "I".
[59] Ibid at Appendix "J".
[60] Ibid.

be cross-examined, I consider that in this case these statements are consistent with the evidence given in person by Rodney Renata that, in tikanga terms, there was a tuku of the land from Te Haumarangai to the applicants.

[122] One of the traditional categories of claims to land is tuku whenua. In *Tikanga Māori*, Sir Hirini states that "the basis of the claim is said to be he take tuku, a claim by way of gift."[61]

[123] One of the submissions made by the respondents against the applicants' case was that it was not the tikanga of the area for those with no blood connection to be able to succeed to land interests. The present case is unique in that the respondents themselves succeeded to their whāngai father, Te Haumarangai's lands, in spite of the fact that there was no apparent blood connection to Te Haumarangai. The succession was based on the tikanga in Manaia relating to whāngai children as set out in numerous statements from Te Haumarangai's friends and relations. In addition, as already mentioned, Te Haumarangai received the Te Mata E3 interests in circumstances where it was not clear what the whakapapa connection was between him and his whāngai whānau, although it is clear that Te Haumarangai had a tupuna who was an owner in the Te Mata Tapu block.

[124] I conclude that the respondents' view that the tikanga of the hapū around Manaia is that only those of the bloodline could receive lands is not entirely correct. In the right circumstances others could and did receive land.

[125] This is a complicated case. There is a reasonably close whānau connection between Vanessa Wilkinson and Te Haumarangai, and given the overlapping nature of the hapū claims in the areas around Manaia it is quite possible, even probable that Vanessa belongs to a hapū with affiliations to the land at Te Mata. If she is not a member of such a hapū, then the other way in which she is associated with the land is by the tikanga of tuku.

[126] I do not consider that the applicants' offer to pay for the section undermines the tikanga of tuku whenua. Rather, as Rodney Renata put it, this was a way for the applicants to balance up the generosity shown by Te Haumarangai Connor. A particular transaction is

[61] Hirini Moko Mead *Tikanga Māori: Living by Māori Values* (Revised ed Huia Publishers Wellington, 2016) at 297.

capable of having overlapping layers of tikanga and legal requirements. Further, the respondents provided no evidence that this tikanga does not operate in these circumstances.

[127] In the end I am persuaded by the fact that Te Haumarangai himself offered the applicants the land: land he had previously offered to Vanessa's aunt. Te Haumarangai, as a distinguished kaumātua fully conversant with tikanga and whakapapa in the area would have offered the applicants land that was appropriate in tikanga terms: either because Vanessa was a member of a hapū associated with the block, or because he was confident that it was appropriate in terms of a tuku whenua, or both.

[128] I therefore find that, Vanessa Wilkinson is whanaunga of Te Haumarangai Connor who is associated with the land in accordance with tikanga Māori.

Is Craig Solomon a member of the preferred class of alienees?

[129] The applicants submitted that Craig Solomon may be a member of the preferred class pursuant to the definition in subparagraph (e) - that is, a descendant of a former owner who is or was a member of the hapū associated with the land.

[130] Craig Solomon gave evidence that he is descended from Tame Paraone and Riana Kereopa. The whakapapa he provided shows that the children of Tame and Riana were Hakere Paraone and Tiri Te Piwai Paraone. Hakere Paraone was the tupuna of Henarangituia Tutonu also known as Tui Collier, a former owner in the Te Mata block.

[131] However, for the purposes of the definition in s 4(e), based on the evidence presented to the court Mr Solomon cannot claim to be a descendant of a former owner. His relationship to Tui Collier is through the marriage of Hohepa Tutonu (also known as Hohepa Mataitaua) to Kahu O Te Rangi Paraone (descendant of Hakere Paraone). The Te Mata land interests come from Hohepa Tutonu, not from the Paraone line. Craig also has a connection to Haimona Hohepa Mataitaua (the whāngai brother of Te Haumarangai) but it is not a blood connection. Hohepa Tutonu had another marriage to Mere Reweti, and Haimona Mataitaua is a descendant of that marriage. Thus Craig is whanaunga of Tui Collier and has a distant connection by marriage to Haimona Mataitaua, but, on the evidence presented, that is all.

[132] As I am satisfied that Vanessa Wilkinson is a member of the preferred class of alienees, the requirements of s 148 have been fulfilled in relation to her. I also consider that given the kaupapa and principles of the Act this finding does no more than reinforce the principles of retention and development in the hands of the owners, their whānau and their hapū. Vanessa Wilkinson is close kin of Te Haumarangai Connor, and it is important that members of whānau and hapū are able to use and occupy land with which they have connections.

[133] The finding that Vanessa Wilkinson (but not Craig) is a member of the preferred class of alienees will have an impact upon who will have the benefit of the orders that may be made, but the applicants seem to have anticipated that in terms of the application and evidence filed. I must now consider the application of ss 152 and 158 of the Act.

Confirmation provisions

[134] The relevant parts of sections 152 and 158 of the Act provide:

> **152 Court to grant confirmation if satisfied of certain matters**
>
> (1) The court must grant confirmation of an alienation of Maori freehold land if it is satisfied—
>
> (a) that,—
>
> (i) in the case of an instrument of alienation, the instrument has been executed and attested in the manner required by the rules of court; or
>
> (ii) in the case of a resolution of assembled owners, the resolution was passed in accordance with this Act or regulations made under this Act; and
>
> (b) that the alienation is not in breach of any trust to which the land is subject; and
>
> (c) that the value of all buildings, all fixtures attached to the land, all things growing on the land, all minerals in the land, and all other assets or funds relating to the land, has been properly taken into account in assessing the consideration payable; and
>
> (d) that, having regard to the relationship (if any) of the parties and to any other special circumstances of the case, the consideration (if any) is adequate; …
>
> (2) Before granting confirmation, the court may, with the consent of the parties, vary the terms of the instrument of alienation or resolution...

> **158 Special valuation required except in special cases**
>
> (1) Except as may be otherwise provided by the rules of court or unless the court otherwise orders, every application for confirmation of an alienation of any interest in Maori freehold land shall be supported by a special valuation of the land or any interest in land to which the application relates.
>
> (2) Every special valuation required for the purposes of this section is to be made by a registered valuer and to be transmitted by the registered valuer to the court…
>
> …
>
> (5) In determining in any case the adequacy of the consideration for the alienation, the court shall have regard to the valuation made by the registered valuer, but shall not be bound to determine the adequacy of the consideration in conformity with that valuation.

[135] In *Epere - Waima A12B* Judge Ambler held that s 152(1) did not remove the Court's discretion under s 164(1) to grant a vesting order. Section 164(3) simply requires the Court to take into account the factors set out in ss 152 and 158 when considering a s 164 application.[62]

[136] In terms of s 152 I am satisfied that the alienation was not in breach of any trust over the land at the time the transaction was entered into, and that there were no buildings or fixtures on the section that needed to be taken into account in assessing the consideration.

[137] As at 2009 the land value on the rating roll for the whole Te Mata E3 block was $240,000.00, so that if the value of the section was calculated simply as a proportion of the land to the total area of the block, the section would have been valued at $4,439.00. The valuation report filed by the applicants values the section (land value only) at $175,000.00 as at July 2016. In 2014 the rating valuation for land for the whole block was $303,000.00, so clearly the value for the section set out in the valuer's report contains an element of premium on the basis that a house site has been established. However, I take into account that the applicants created the section themselves from the rest of the block, by clearing the section, establishing the building platform, bringing essential services to the site, and by obtaining the necessary resource and building consents and paying the accompanying development fee. Taking into account the evidence of Mr Gujer that he sold his sections on nearby land for $25,000.00, the elapse of time since the purchase price was agreed between the applicants and Te Haumarangai Connor, the relationship between the parties,

[62] *Epere - Waima A12B* (2012) 35 Taitokerau MB 131 (35 TTK 131).

and the element of tuku whenua in the transaction, I am satisfied that the consideration is adequate. I therefore consider that the agreement between Te Haumarangai Connor and the applicants complies with ss 152 and 158 of the Act.

[138] I also find that the transfer of interests in Te Mata E3 to Vanessa Wilkinson is consistent with the principles of the Act. The applicants are occupying a section of Te Mata E3, not the whole block, so that an ample area is retained by the respondents. I also accept that, as the land was not being used at the time Te Haumarangai gave the applicants the section, this was one way in which development and occupation of the land by whānau could occur.

[139] As mentioned earlier in this judgment, Mr Bidois accepted that if the Court found that there was an agreement for sale and purchase between Te Haumarangai Connor and the applicants which did not contravene the provisions of the Act, then his clients would be fixed with a constructive trust and steps would then need to be taken to give effect to the agreement.

Have the grounds for partition been made out?

[140] I am prepared to make an order pursuant to s 164 transferring to Vanessa Wilkinson an interest in Te Mata E3 corresponding to the section occupied by the applicants, subject to the payment of the balance of the purchase price. I consider that the applicants should also pay a share of the rates including arrears due on the property. I have considered whether the applicants' share of the rates should be taken back to the date at which the first payment was made on the purchase price, as the date on which the agreement for sale and purchase came into effect, or to some other date, such as the date of death of Te Haumarangai Connor, as that is the date on which any arrangements he had with the applicants about payment of the rates would cease. I consider that I require submissions from counsel about that matter and will give directions accordingly at the end of this decision.

[141] The applicants have sought a partition order to give effect to the agreement for sale and purchase. However, there are further requirements pursuant to ss 288 and 289 of the Act that need to be met. The filing of evidence and submissions in relation to the partition application was dependent on the outcome of the question as to whether there was an

enforceable agreement for purchase of the section. There are also other possible options besides partition which the Court needs to consider.

[142] At the end of this decision I will direct counsel for the parties to liaise and advise the Court whether the respondents might consent to the partition application or not and to make submissions as to what further steps are required. I note that even if the respondents have no objection to the partition as such, the Court still needs to consider the requirements of Te Ture Whenua Māori Act 1993.

Conclusion

[143] I find that there is an enforceable agreement for sale and purchase of the one hectare section on Te Mata E3 between Te Haumarangai Connor and the applicants. I consider that such a finding is consistent with the Preamble and s 2 of the Act as this agreement will allow whanaunga of the deceased Māori land owner, Te Haumarangai Connor, to occupy the land. The requirements of Te Ture Whenua Māori Act 1993 in relation to alienation of an undivided share in Māori freehold land have been fulfilled.

[144] I also consider that in all the circumstances, in line with s 17(2)(a) and (f), this is a way to give effect to the wishes of Te Haumarangai Connor in a practical way, given the length of time the applicants have lived on the section, and the difficulties and significant costs involved in removing a permanent structure with all its attendant services such as the electrical supply and septic tank from the land.

Outcome

[145] The Court will make an order pursuant to s 164, in favour of Vanessa Wilkinson, transferring shares in Te Mata E3 corresponding to the section occupied by the applicants once the associated application for partition has been concluded. The making of the s 164 order is not dependent on the outcome of the partition application, but it is convenient to leave the making of the s164 order until the rest of the proceedings are completed. The s 164 order will be conditional, pursuant to s 73 upon payment of the balance of the purchase and payment of a share of the rates, once the Court has received submissions from counsel on the rates issue and made a determination as to the amount to be paid by the applicants.

[146] I direct counsel for the parties to liaise and advise the Court whether the respondents are prepared to consent to the partition application or not, and what next steps are required. I also direct counsel to liaise to see if some agreement can be reached in terms of payment of rates arrears due on the section. If no agreement can be reached counsel are to file submissions on this point together with submissions in relation to the next steps to take in relation to the partition application. Submissions on these points are to be filed within 2 months of receiving this decision.

[147] Costs are reserved.

Promulgated at 3.00 am/pm in Hamilton on the 2nd day of May 2017.

S Te A Milroy
JUDGE