IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKAURAU ROHE

CIV-2019-404-001667
[2019] NZHC 2783

UNDER	the Senior Courts Act 2016 and the Land Transfer Act 2017
IN THE MATTER OF	Caveat No 11492712.1, South Auckland Land Registration District, Part Parakerake Block, Identifier 850139
BETWEEN	ROBERT MATTHEW URLICH Applicant
AND	ATTORNEY-GENERAL Respondent

Hearing: 8 October 2019

Appearances: P Hoskins for Applicant
N Anderson and N Julian for Respondent

Judgment: 30 October 2019

JUDGMENT OF ASSOCIATE JUDGE P J ANDREW

Introduction

[1] The applicant, Robert Urlich, is of Ngāti Kahu descent. He seeks an order pursuant to s 143(4) of the Land Transfer Act 2017 (LTA) sustaining a caveat over ancestral whenua (land) on the Karikari Peninsula. The land is currently in Crown ownership. He says that he is beneficially entitled to the land because he is a successor of one of the original owners of the land under s 40(2) of the Public Works Act 1981 (PWA) and was entitled to have the land offered back to him under that legislation.

[2] The land at issue was originally owned by Robert's father, Simon Urlich, and his uncle, Richard Urlich. It was gifted to the Crown for a Māori school but is now surplus. It has been offered back to Zahn Urlich, the grandson of Richard. The Crown says it could not offer the land back to Robert because he only had a contingent right to his father's residual estate at the time of Simon's death. He is thus not a successor (unlike Zahn) under s 40(5) of the PWA.

[3] The critical issue I must determine is whether Robert has established a reasonably arguable case in support of a caveatable interest. That is, is it reasonably arguable that Robert is a successor under s 40(5) of the PWA, or am I bound to follow the Court of Appeal decision in *Williams v Auckland Council* and conclude that it is not reasonably arguable that he has any rights under the public works legislation?[1]

Background facts

[4] On 6 June 1952, Richard and Simon purchased Parakerake No 576N block (the Parakerake block).

[5] On 18 March 1953, part of this block was gifted to the Crown to be used for educational purposes (the property). The property was held for a public work pursuant to the Public Works Act. The remainder of the Parakerake block was sold to a development company on 26 March 1954.

[6] Simon died on 14 November 2002 and his wife, Robert's mother, Olivia Urlich, died on 16 December 2010. The property was not expressly mentioned in Simon's

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1 *Williams v Auckland Council* [2015] NZCA 479 at [65].

will and would therefore have formed part of his residual estate. Had it been in his ownership at the time of his death, then, under the will, the residual estate would have been bequeathed to his wife, Olivia.

[7] Richard died in about August 2010. Pursuant to his will of February 2004, Zahn is one of two executors and trustees. The other named executor and trustee is Marlene Kumar, being Zahn's mother.

[8] Zahn and Marlene were major beneficiaries under Richard's will. Zahn also received the residue of Richard's estate. Probate was never granted for Richard's will.

[9] On 27 March 2018, the property was declared by the Ministry of Education to be no longer required for educational purposes. The property was not required for any other public work or land exchange.

[10] On 24 October 2018, the property was offered to Zahn, who the Crown says is the successor to Simon's residual estate under s 40 of the PWA. Zahn accepted the Crown's offer-back but the settlement of that transaction is currently delayed pending the determination of this caveat application.

[11] Robert lodged the caveat at issue on 12 July 2019.

Relevant legal principles

[12] A caveator, in response to the caveat lapsing procedure under the LTA, may apply for an order that the caveat not lapse.[2]

[13] I adopt the following principles in relation to Robert's application to sustain a caveat over the property at issue:[3]

> (a) The burden of establishing that the applicant has a reasonably arguable case for the interest claimed is upon the caveator;[4]

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[2] Land Transfer Act 2017, s 143.

[3] *Cube Building Solutions Ltd v Kingloch Holdings Ltd* HC Christchurch CIV 2009-409-935, 15 October 2010 at [13] (citations omitted) (footnotes added).

[4] *New Zealand Limousin Cattle Breeders Society Inc v Robertson* [1984] 1 NZLR 41 (CA) at 43; and *Coltart v Lepionka & Co Investments Ltd* [2016] NZCA 102, [2016] 3 NZLR 36 at [30], n 17,

(b) The caveator must show an entitlement to, or beneficial interest in, the estate referred to in the caveat by virtue of an unregistered agreement or an instrument or transmission, or of any trust expressed or implied;[5]

(c) The summary procedure involved in an application of this nature is wholly unsuitable for the determination of disputed questions of fact —[6] an order for removal of the caveat will not be made unless it is clear that the caveat cannot be maintained either because there was no valid ground for lodging it or that such valid ground as then existed no longer does so;[7]

(d) When an applicant has discharged the burden upon the applicant, there remains a discretion as to whether to remove the caveat, which will be exercised cautiously;[8]

(e) The Court has jurisdiction to impose conditions when making orders.

[14] If I find against Robert on the "reasonably arguable case" issue (see [13](a) above), then he seeks, in the alternative, an adjournment of these proceedings, with the caveat remaining in place in the interim, to protect his position. This includes the option of making an application under s 19 of the Administration Act 1969.

[15] Section 143(4)(b) and (c) of the LTA expressly provides that a Court may make interim orders that a caveat not lapse and an order adjourning the application.

Analysis and decision

Issue - definition of "successor" under the Public Works Act

[16] Robert submits that it is reasonably arguable that he is a "successor" as defined in s 40(5) of the PWA.

[17] I start with the statutory scheme. Section 40(1) and (2) of the PWA reads:

40 Disposal to former owner of land not required for public work

(1) Where any land held under this or any other Act or in any other manner for any public work—

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citing *National Bank of New Zealand v Radisich* HC Hamilton CIV 2003-419-928, 25 August 2003 at [6].

5 Land Transfer Act 2017, s 138.

6 *New Zealand Limousin Cattle Breeders Society Inc v Robertson*, above n 3, at 43.

7 *Sims v Lowe* [1988] 1 NZLR 656 (CA) at 659–660.

8 *Stewart v Kaipara Consultants Ltd* [2000] 3 NZLR 55 (CA); and *Pacific Homes Ltd (in rec) v Consolidated Joineries Ltd* [1996] 2 NZLR 652 (CA).

(a) is no longer required for that public work; and

(b) is not required for any other public work; and

(c) is not required for any exchange under section 105 –

the chief executive of the department within the meaning of section 2 of the Survey Act 1986 or local authority, as the case may be, shall endeavour to sell the land in accordance with subsection (2), if that subsection is applicable to that land.

(2) Except as provided in subsection (4), the chief executive of the department within the meaning of section 2 of the Survey Act 1986 or local authority, unless –

(a) he or it considers that it would be impracticable, unreasonable, or unfair to do so; or

(b) there has been a significant change in the character of the land for the purposes of, or in connection with, the public work for which it was acquired or is held –

shall offer to sell the land by private contract to the person from whom it was acquired or to the successor of that person –

(c) at the current market value of the land as determined by a valuation carried out by a registered valuer; or

(d) if the chief executive of the department within the meaning of section 2 of the Survey Act 1986 or local authority considers it reasonable to do so, at any lesser price.

[18] Section 40(5) of the PWA reads:

> For the purposes of this section, the term **successor**, in relation to any person, means the person who would have been entitled to the land under the will or intestacy of that person had he owned the land at the date of his death; and, in any case where part of a person's land was acquired or taken, includes the successor in title of that person.

[19] It is not in dispute that a former owner of land, or a "successor", as defined in s 40(5) of the PWA, has a caveatable interest to register under the LTA. This Court, following the Privy Council, has previously held that the "right is complete and enforceable (and therefore caveatable) immediately [after] the land is declared surplus to all Crown public works or exchange requirements".[9]

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[9] *Hall v Attorney-General* [2009] NZRMA 329 (HC) at [40], applying *Attorney-General v Horton* [1999] 2 NZLR 257 (PC) at 261.

[20] The interpretation of s 40(5) of the PWA was at issue before the Court of Appeal in *Williams v Auckland Council*.[10] In that case, the Auckland Harbour Board had acquired land for the development of port facilities. Alleged successors of the seven original owners claimed that the Board no longer required the land for the purpose of a public work and that the successor of the Board (the Auckland Council) had breached its duty to offer to sell the land back to them.

[21] In the High Court, Fogarty J interpreted s 40(5) to include persons benefiting under the will of the former owner or on his or her intestacy.[11] On appeal, the Court of Appeal held that his Honour's interpretation of the s 40(5) criteria under the PWA created a wider class of claimant than was authorised by the statute. The Court of Appeal held:[12]

> [65] … The s 40(5) test is plainly formulated, even though its application may prove problematic in a particular case — it is whether a person would have been entitled to the land under the will or intestacy of the person who owned the land at the time of acquisition had that person owned it at the date of his or her death. There is an assumption that ownership of the land has not changed between the dates of acquisition and the owner's death, meaning, … that Parliament intended only one level of succession.
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> (footnotes omitted)

[22] The Court of Appeal considered the application of the claimants against the definition in s 40(5) and held that three of the seven claimants were not "successors", overturning the judgment of the High Court.[13] The Court of Appeal held that the "test is a purely factual one, to be determined by examining the terms of [the] will".[14]

[23] One of these claimants, Mrs Spencer-Wood, claimed succession to one of the properties on the ground that her father, Mr Kindersley, was the former owner. However, Mr Kindersley left his entire estate to his wife, Mrs Spencer-Wood's mother, Mrs Kindersley. Mrs Spencer-Wood was only to inherit Mr Kindersley's estate if Mrs Kindersley predeceased Mr Kindersley.[15] As Mr Kindersley predeceased

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10 *Williams v Auckland Council* (CA), above n 1.
11 *Robertson v Auckland Council* [2014] NZHC 765 at [209].
12 *Williams v Auckland Council* (CA), above n 1.
13 At [96].
14 At [69].
15 At [76].

Mrs Kindersley, the estate went to Mrs Spencer-Wood only upon Mrs Kindersley's death. Therefore, Mrs Spencer-Wood had only a contingent interest in the estate.

[24] The Court of Appeal concluded the "decisive factor is that Mrs Spencer-Wood would not have been entitled to her father's land at the date of his death. Only her mother would have been entitled".[16] Mrs Spencer-Wood was therefore not a successor under s 40(5) of the PWA.

[25] The Supreme Court, in declining leave to appeal Court of Appeal's decision in *Williams v Auckland Council*, considered that there was an arguable point as to the interpretation of s 40(5); however, the Court considered that it did not need to decide that issue given its decision to refuse leave to appeal on other grounds.[17]

[26] Mr Hoskins, on behalf of Robert, relied on the Supreme Court leave decision in *Williams v Auckland Council* in support of his contention that there is a reasonably arguable point as to the interpretation of s 40(5) of the PWA. He submitted that Robert is a successor for the purposes of s 40 through his mother's estate and on the basis of being a contingent beneficiary under his father's estate. He sought to distinguish the Court of Appeal decision in *Williams v Auckland Council* on the basis that the facts were quite different. In *Williams v Auckland Council*, the parties claiming offer-back rights had no personal or familial connection with the land, and it was the litigation funder, rather than those parties, who stood to gain from favourable findings. Essentially, it was a case all about money. By contrast, Mr Hoskins submitted that, here, the applicant, Robert, has strong personal, familial and cultural connections with the land and the facts of the present case demonstrate that the narrower approach to s 40(5) adopted by the Court of Appeal (overturning Fogarty J) can produce arbitrary and antithetical outcomes. In circumstances where the effect of the narrower approach to interpretation would result in the disinheritance of a whole line of whakapapa (lineage, descent), the Court can sensibly conclude that the point is at least arguable. For the purposes of a caveat, all that need be established is a reasonably arguable case.

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16 At [79].

17 *Williams v Auckland Council* [2016] NZSC 20 at [16].

[27] Mr Hoskins sought to draw support for his approach from the Court of Appeal decision in *Port Gisborne Ltd v Smiler*[18] and this Court's decision in *Deane v Attorney-General*.[19] In *Port Gisborne Ltd v Smiler*, the Court of Appeal held:

> [35] … The background to the offer-back concept is that land is being acquired from a private person for a public work purpose, possibly under the threat or contemplation of compulsion. The rationale must be that it is only fair, if that purpose disappears, the land should so far as practicable revert to the previous or equivalent private ownership.

[28] In *Deane v Attorney-General*, Hammond J held that persons from whom land was compulsorily acquired retained an "inchoate … right to repurchase" and that attempts to treat s 40 on a "strictly commercial footing" were wrong in principle because the section "cannot be understood in isolation from its broad purpose: the vindication of the inchoate rights of the former owner".[20]

[29] Further support for the contention that personal or familial connections with the land may support a wider interpretation of s 40(5) of the PWA is to be found in the Supreme Court leave decision in *Williams v Auckland Council*, where it was held:[21]

> [9] … that the purpose of the Public Works Act is to restore to someone whose land has been compulsorily taken land with which that person has a personal or familial connection.

[30] There can be little doubt that, on the approach of Fogarty J in *Williams v Auckland Council* and his interpretation of "successor", Robert, as a contingent beneficiary under his father's will (and in that sense in contemplation of the owner who sold the land), would be an "immediate beneficiary" and thus able to establish a reasonably arguable beneficial interest in the land. However, the fundamental problem for Robert is that, on appeal, Fogarty J's approach was expressly overruled by the Court of Appeal, and that decision is binding on this Court. I acknowledge the force of Mr Hoskins' arguments that Robert has substantial personal, familial and cultural ties to the property, but, in my view, on the material facts, his case is on all fours with that of Mrs Spencer-Wood in *Williams v Auckland Council*. The Court of Appeal held

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[18] *Port Gisborne Ltd v Smiler* [1999] 2 NZLR 695 (CA).

[19] *Deane v Attorney-General* [1997] 2 NZLR 180 (HC). See also *Aztek Ltd v Attorney-General* [2018] NZHC 1839 at [100].

[20] At 192–193; and *Aztek Ltd v Attorney-General*, above n 19, at [55].

[21] *Williams v Auckland Council* (SC), above n 17.

that Mrs Spencer-Wood had only a contingent in the estate and that the "decisive factor is that Mrs Spencer-Wood would not have been entitled to her father's land at the date of his death. Only her mother would have been entitled."[22]

[31] As the Crown submitted, Robert's claim to succession under s 40(5) is based upon a contingent interest identical to that of Mrs Spencer-Wood. In applying the Court of Appeal decision, as I must, the decisive factor against Robert is that he would not have been entitled to the land on the death of his father, Simon. The residual estate of Simon was bequeathed to his wife, the mother of Robert, Olivia. Robert is thus not a successor under s 40(5) of the PWA.

[32] I acknowledge that the Supreme Court has, at the least, expressed some doubt about whether the Court of Appeal's interpretation of s 40(5) of the PWA is correct. However, on the law as it currently stands, this Court must follow the interpretation of the Court of Appeal. In refusing leave to appeal in *Williams v Auckland Council*, the Supreme Court must be taken to have acknowledged that the Court of Appeal's interpretation remains good law until either the Supreme Court sets it aside or the Court of Appeal reconsiders its decision (if there are grounds to do so). Accordingly, in my view, it is not open for me to conclude that, because the test I am applying is simply one of a "reasonably arguable case", I can simply rely on the Supreme Court's obiter dictum to that effect and consequently ignore the substantive and binding determination of the Court of Appeal directly on point.

[33] I turn now to address further arguments advanced by Robert in support of his contention that he has established the reasonably arguable threshold.

Proposed judicial review proceedings

[34] Robert, relying on *Hood v Attorney-General*, contends that the Crown's decision to offer back the land to Zahn alone is, in the circumstances, both unreasonable and unfair and thus in breach of s 40 of the PWA.[23] Robert says that the Crown has failed to take into account his rights as successor, his personal and familial

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22 *Williams v Auckland Council* (CA), above n 1, at [79].
23 *Hood v Attorney-General* [2005] BCL 263 (CA).

ties to the property and the Māori ancestry of the deceased original owners and all their living successors, including Robert, Zahn and Robert's siblings. Mr Hoskins referred to the *Hood v Attorney-General* decision where the Court of Appeal held that, in assessing whether an offer-back is unfair or unreasonable, "the interests of the former owners must be considered and there must be good reason for these interests to be disregarded".[24]

[35] On this basis, Robert proposes to bring judicial review proceedings challenging the Crown's decision to offer the land back to Zahn alone.

[36] I agree with Mr Hoskins that the Crown's reliance on s 41 of the PWA does not necessarily provide an answer to the allegation that the Crown failed to have regard to the Māori ancestry of the Urlich whānau (family).[25] However, I have difficulty in understanding how the proposed judicial review proceedings can assist Robert in establishing that he has a caveatable interest in the land. As the Crown submitted, s 40(2) provides a discretion which can be used by the Chief Executive of Land Information New Zealand (LINZ) to decide not to offer land back to a successor – and the conventional judicial review challenge to s 40 decisions is where the Crown has decided not to offer back on the "impracticable, unreasonable, or unfair" ground in s 40(2)(a).

[37] However, even if it were tenable to argue that the decision to offer the land back to Zahn alone was unlawful, the exercise of the discretion would not give rise to any right of Robert to be offered the property. The effect of the proposed judicial review proceedings might be to deprive Zahn of the right to the offer back, but it cannot bestow a corresponding right on Robert. If there were a successful judicial review challenge to the decision to offer back to Zahn alone, then, according to the Crown evidence, the outcome might be that (in applying the binding decision of the Court of Appeal in *Williams*) the land would not be offered back to anyone under s 40

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[24] At [97].

[25] Section 41 of the Public Works Act 1981 provides a process for the disposal of former Māori land when no longer required. Māori freehold land or general land owned by Māori is defined in s 41(b) as "beneficially owned by more than four persons".

and it would become subject to the Crown's Maori protection mechanism. That might then result in the land being available to the iwi (tribe) Ngāti Kahu.[26]

[38] I acknowledge that it might be possible (although the grounds were not clearly articulated) for Robert to seek an interim order under s 15 of the Judicial Review Procedure Act 2016 restraining the Crown from disposing of the land until any substantive judicial review proceeding had been determined. However, relief under s 15 is, of course, discretionary and, again, it is hard to see that any right to apply for relief can somehow translate into a caveatable interest.

No probate in respect of Simon's will

[39] Robert further contends that the lack of probate of Richard's will is relevant to both the proposed judicial review proceedings of the Crown's decision to offer back to Zahn alone and the alternative relief sought, namely that this Court should grant an adjournment of the proceedings under s 143(4) of the LTA pending a grant of administration in the estate of Richard (with the caveat not lapsing in the interim).

[40] There is no dispute that, despite having passed away in February 2004, probate has never been granted in respect of Richard's will. Under Richard's will, Zahn (his grandson) received the residue of Richard's estate. That is the basis upon which the Crown has concluded that Zahn is the sole successor and entitled to have the land offered back to him.

[41] The contention that the definition of "will" in s 40(5) of the PWA is to be confined to wills in respect of which probate has been granted is, in my view, not an attractive one. It is to be noted that subs (5) refers to both "will or intestacy". However, I do not need to decide the point. I would also query the wisdom of Mr Hoskins' contention that the offer back to Zahn comprises a windfall gain to him "well in excess of $500,000". The property has been offered back to Zahn for the value of the buildings alone, being $125,000. Robert believes the property has a current capital value of $890,000, hence the allegation of a windfall of well in excess

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[26] See Waitangi Tribunal *The Ngāti Kahu Remedies Report* (Wai 45, 2013). The Waitangi Tribunal stated that the property at issue should be "offered for purchase to Ngāti Kahu".

of $500,000. In the context of the offer-back of former Māori land originally gifted to the Crown as a school, "windfall" may well not be an appropriate description of the transaction.

Adjournment of the proceedings

[42] Alternatively, Robert seeks an adjournment of the proceedings. In advancing that argument, Mr Hoskins submitted that there were legitimate concerns about Richard's will and that Robert (his nephew) could apply to the Court under s 19 of the Administration Act 1969 as a "person interested in the estate" for a grant of administration. He submitted that the proceedings should accordingly be adjourned to enable Robert's concerns about the will to be further and better investigated.

[43] There is very little evidence before the Court to assess whether there would be merit to Robert's proposed application under s 19 of the Administration Act 1969 and, if he were successful, what the consequences might be. However, again, even if Robert obtained some relief, it is difficult to see how that might translate into a right to be offered the land back (and to be treated as a successor for the purposes of s 40(5)).

[44] The better approach, which I now address, is to consider whether these proceedings should be adjourned pursuant to s 143(4) of the LTA, with the caveat maintained in the interim, to allow Robert an opportunity to both appeal against this judgment (which adopts the Court of Appeal's interpretation of "successor" in *Williams v Auckland Council*) and to obtain such relief from the Court of Appeal and/or the Supreme Court that allows him to argue the critical point while the caveat remains in place.

Adjournment of proceedings pursuant to s 143(4) of the LTA

[45] Section 143 of the LTA expressly contemplates that instead of the Court ordering the caveat not lapse, it might either make an interim order that it not lapse or an order adjourning the application. I interpret the power to adjourn as recognising that, in appropriate circumstances, it might be permissible, in order to protect legitimate interests at issue, to adjourn the proceedings (albeit temporarily) in order for one of the parties to take further steps to protect his or her position.

[46] I find that this is an appropriate case for me to grant an adjournment, for a limited period, and with the caveat remaining in place, in order to ensure that Robert has a full opportunity to have his claims determined before it is too late to do so.

[47] In *Kiwi Freeholds Queen Street Ltd v Shanti Holdings Ltd*, Associate Judge Doogue held that this Court has jurisdiction to make an order extending a caveat pending the hearing of an appeal.[27] His Honour held that the factors to be addressed (in deciding whether or not to grant a stay of execution) includes the following:[28]

> (1) If no stay is granted will the applicant's right of appeal be rendered nugatory?
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> (2) The bona fides of the applicants as to the prosecution of the appeal.
>
> (3) Will the successful party be injurious affected by the stay?
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> (4) The effect on third parties.
>
> (5) The novelty and importance of the question involved.
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> (6) The public interest in the proceedings.
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> (7) The overall balance of convenience.

[48] It is clear that, if a caveat were to lapse, any right of Robert to challenge the Court of Appeal's decision in *Williams v Auckland Council* would likely be rendered nugatory. Whilst extending the caveat will obviously cause some delay for Zahn, no evidence has been put to the Court to establish that there would be any injurious effects on him. Therefore, in my view, the overall balance of convenience favours extending the caveat in these circumstances.

[49] It is clear that the facts of this case, including the personal, familial and cultural ties that Robert has to the land at issue, make it an appropriate test case for determining the issue of the interpretation of "successor" in s 40(5) of the PWA. I have, of course, already noted that, whilst the Supreme Court has expressed (obiter) the opinion that the point is reasonably arguable, I consider that I am bound by the Court of Appeal's substantive decision on that point.

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27 *Kiwi Freeholds Queen Street Ltd v Shanti Holdings Ltd* (2007) 8 NZCPR 517 (HC).

28 At [22], citing *Dymocks Franchise Systems (NSW) Pty Ltd v Bilgola Enterprises Ltd* (1999) 13 PRNZ 48 (HC) at [9].

[50] The outcome of the Crown's decision to offer the land back solely to Zahn does appear to be arbitrary and, as Robert has argued, will disinherit Simon's successors forever. It may be that, in the context of the PWA, where the subject matter is land, there is a legitimate basis for interpreting its provisions in accordance with Treaty of Waitangi principles and/or tikanga, so as to achieve the outcome for which Robert contends.[29] That is not a matter for me to determine, but it does all suggest that the reasonable approach is to allow Robert a proper opportunity to test these matters.

[51] I also note that the Court of Appeal in *Williams v Auckland Council* acknowledged that the more limited interpretation which it adopted could produce arbitrary outcomes – although it explained in the case of Mrs Spencer-Wood that "if the result seems arbitrary it is because Mr Kindersley [her father] chose to leave [her] only a contingent interest in his estate".[30] I note that the Court of Appeal further concluded that it addressed the critical issue of declaratory relief on the assumption that all owners, including Mrs Spencer-Wood, had standing. It held:

> [96] … In addressing this issue we shall assume all owners have standing, against the contingency that we may have erred in finding against the RNZFB, McCormick and Spencer-Wood interests.

[52] In referring to such matters I am in no way suggesting that the Court of Appeal was wrong – that is not a matter for me to decide. However, these factors reinforce the importance of giving Robert and his whānau the opportunity to protect their interests before it is too late and the land passes to Zahn unconditionally.

[53] Finally, I accept the Crown's submission that the factors Robert relied on as distinguishing this case from *Williams v Auckland Council*, namely financial motivation and delay (which were prevalent in the *Williams* case), were not taken into account by the Court of Appeal in determining whether the owners fell within the statutory definition of "successor" but rather, related to the outcome of the proceeding for those who were able to claim succession.[31] However, I do not see that as necessarily an answer to the allegation that personal, familial and cultural ties to the

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[29] Philip A Joseph *Constitutional and Administrative Law in New Zealand* (4th ed, Brookers Ltd, Wellington, 2014) at [22.12.1]. See also *Barton-Prescott v Director-General of Social Welfare* [1997] 3 NZLR 179 (HC).

[30] *Williams v Auckland Council* (CA), above n 1, at [79].

[31] At [126].

land are not relevant to the interpretation of “successor” or that Māori interests can only be considered under s 41. Again, however, that will be a matter for the Court of Appeal and/or the Supreme Court to determine.

Conclusion and result

[54] For all the above reasons I conclude as follows.

[55] I find that the applicant, Robert, has not established a reasonably arguable case that he has a caveatable interest in the property.

[56] I order pursuant to s 143(4) of the Land Transfer Act 2017 that these proceedings are adjourned until **Friday, 13 December 2019** to enable Robert to appeal against this judgment and/or to obtain the necessary interim orders from the Supreme Court and/or the Court of Appeal to protect his interests in the land pending determination of the outstanding substantive issue.

[57] The adjournment is granted on the condition that Robert take steps to expedite an appeal to the Court of Appeal and/or Supreme Court and diligently prosecute any appeal.

[58] I order that in the interim and pending further order of the Court that Caveat No. 11492712.1, South Auckland Registration District, Parakerake Block, Identifier 850139, not lapse.

[59] As Robert is legally aided (and the Crown accepts) I make no order as to costs.

[60] Having regard to the need for Robert to obtain a further grant of legal aid, I have adjourned the proceedings for longer than might otherwise be the case.

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Associate Judge P J Andrew