

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

**I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKĀURAU ROHE**

CIV-2018-404-259

BETWEEN

STEWART NGAWAKA, MARYLIN
STEPHENS, MARK ANTHONY
McMATH, ALLAN JOHN MOORE, HORI
TE MOANAROA PARATA and ELDERS
and registered members of NGATI REHUA-
NGATIWAI KI AOTEA
Plaintiffs

AND

NGĀTI REHUA-NGĀTIWAI KI AOTEA
TRUST BOARD
First Defendant

YVONNE JEWEL WIKI
Second Defendant

CATHERINE HOPE MUNRO
Third Defendant

NICOLA MARIE ATARIA MACDONALD
Fourth Defendant

RODNEY NGAWAKA
Fifth Defendant

Teleconference: 6 September 2019

Appearances: R M Harrison for the plaintiffs
S E Wroe for the Second to fourth defendants

Date of Minute: 6 September 2019

MINUTE NO 4 OF PALMER J

Context

[1] There have been a number of developments in this proceeding in the past few weeks. I have awaited responses from all parties before making my decisions. Today

is the last day of a three-week trial over which I have been presiding. Yesterday, the second to fourth defendants (the defendants) applied, without notice, for an interim injunction directing that information hui scheduled for 7, 14 and 21 September not proceed, and directing the interim trustees and interim independent chair not to:

- (a) take any steps other than payment of invoices and receipt of correspondence necessary for the day-to-day administration of the Trust; and
- (b) pass any resolution that is binding on the Trust.

[2] The defendants' stated concern is to prevent the series of information hui proceeding and to stop decision-making when the Trust Board is not properly constituted. I convened an urgent teleconference during the lunch adjournment of my trial today and heard from counsel.

Decisions

[3] I decline the application for the urgent interim injunction. It is not necessary to preserve the defendants' position. I do not consider the hui will prejudice the defendants. I do not consider any resolutions at the information hui will be determinative of decisions I or the trustees have to make. But the discussion that has occurred, and that is proposed to occur, at the information hui appears likely to be useful for implementing the directions in my judgment of 18 December 2018.¹ More discussion of these issues is required amongst the beneficiaries, rather than less. I expect the korero at these hui will inform any decisions the trustees and I will eventually have to make. I do not expect the information put to the hui, or the views expressed at them, will be one-sided. My advice to the defendants is that they should engage with the discussions and put their perspective, constructively of course.

[4] I am conscious there is a need to appoint a trustee to replace Ms MacGregor. I appoint Mr Jason Wii as proposed by the defendants. I make that appointment effective from today. I note the plaintiffs' concerns. But I am satisfied, on the basis

¹ *Ngawaka v Ngāti Rehua – Ngatiwai ki Aotea Trust Board* [2018] NZHC 3398.

of the information filed in support of Mr Wii, that his appointment is appropriate. As I said in the judgment of 18 December 2018 (at [25]) there is a need for the composition of interim trustees to reflect an even-handed or balanced approach between the two groups until trustees can be elected.

[5] As I also observed in the judgment (at [27]), none of the trustees are “representative” of one group or the other. Each of them owes, to all beneficiaries, the exercise of their independent judgement unclouded by animus concerning the wider dispute. I have full confidence in the interim independent chair. I endorse his comments, in his memorandum of 30 August 2019 (at [5.1]), that it will be important for all trustees to leave aside the animus of the various confrontations which led to the litigation and get on with the work to be done for all beneficiaries. I am sure all trustees will do that. If, contrary to my expectation, the chair considers any individual trustee displays a consistent and persistent pattern of destructive behaviour in trustee meetings, I expect he would advise me of that. In that event, I would consider whether the trustee should remain or not.

[6] I understand the circumstances in which the current appointment of an administrator, on a temporary basis, came to be made. I note there is some feeling that the administrator of the trust should be relatively independent of the two groups. I am sure the trustees will consider that in their pending review of the appointment.

[7] I have not yet formed a view on the other directions sought by the defendants or about the proposals being discussed at the information hui about registration, re-registration etc. I expect the views expressed at the information hui will be useful for me to take into account in considering the directions sought. The parties may also wish to have a brief hearing about those issues. We will proceed step by step.



Palmer J

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