

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

**I TE KŌTI MATUA O AOTEAROA
WHANGĀREI TERENGA PĀRAOA ROHE**

CIV-2017-404-577

UNDER the Marine and Coastal Area
(Takutai Moana) Act 2011

IN THE MATTER OF an application by Ngatokimatawhorua
Waka Te Tii-I-Waitangi Māori
Incorporation on behalf of Ngāti Rahiri
and Ngāti Kawa for orders recognising
Customary Marine Title and Protected
Customary Rights

On the papers:

Counsel: D C F Naden for Applicants

Minute: 29 August 2022

MINUTE OF CHURCHMAN J

[1] By memorandum dated 25 August 2022, the solicitor for the applicants in these proceedings applied under HCR 5.41 of the High Court Rules 2016 (HCR) to be permitted to withdraw as solicitor on the record.

[2] The application was supported by an affidavit from Ms Maithili Sreen, a solicitor employed by the firm of solicitors on the record. That affidavit discloses that the firm had submitted invoices to Te Arawhiti (the agency responsible for funding applications under the Marine and Coastal Area (Takutai Moana) Act 2011) but, because of the failure of Mr Hapeta Rameka, the representative of the applicants in this matter, to authorise Te Arawhiti to pay the invoices, they remain unpaid.

[3] The affidavit also details unsuccessful attempts at communication between the firm and Mr Rameka.

[4] The affidavit confirmed that Ms Sreen had communicated with Mr Rameka advising him that the firm intended to make this application and providing him with information obliged to be provided under r 4.2.4 of the Lawyers and Conveyances Act (Lawyers: Conduct and Client Care) Rules 2008. Ms Sreen also deposed to having advised Mr Rameka the effects of HCR 5.42. No substantive response has been received to those communications.

Analysis

[5] The withdrawal of a solicitor on the record in circumstances where there is no replacement solicitor is a serious matter. It has significant implications for the ability of the Court and parties affected by the litigation to communicate with the applicant. Another practical consequence is the potential for delay in the ability of the Court to progress disposal of the proceedings in an orderly manner.

[6] HCR 5.41(5) provides that unless the Court otherwise directs, notice of every application under HCR 5.41(1) and a copy of the affidavit in support must be served on the party for whom the solicitor acted.

[7] Ms Sreen's affidavit indicates that Mr Rameka has insisted on being communicated with only by text message and that the firm has followed that instruction. Ms Sreen confirmed that she had conveyed by way of text message the essence of the information set out in the application and supporting affidavit.

Order

[8] In the circumstances, I am prepared to direct that, in terms of HCR 5.41(5), this is sufficient compliance with the requirements of the rules.

[9] This is a case where the applicant has established a valid case for withdrawal as solicitor on the record and, in terms of HCR 5.41(1), I declare that the solicitor has ceased to be the solicitor on the record in this matter.

[10] This raises consequences for the applicants. There is now no longer an address for service of the applicants. That state of affairs cannot be permitted to continue.

[11] Mr Rameka is directed, within 14 days of the date of this minute to file with the Court a notice of change of address for service. The new address for service will include the physical address at which documents can be left for the applicants and telephone and email contact details.

[12] If this direction is not complied with, the Court may be obliged to consider whether the application should be struck out. That would be a most unfortunate outcome for the applicants as it would result in the end of their claim for recognition orders under the Act.

A handwritten signature in black ink, reading "P.B. Churchman J". The signature is written in a cursive style with a large, stylized "J" at the end.

Churchman J