

**CASE MANAGEMENT CONFERENCE  
WELLINGTON  
19 DECEMBER 2018 at 10.00 am**

**Application by Ms Catherine Clarkson & Ors**

**COURT:**

Good morning. The key question is Ms Clarkson. Has anyone had any communication from her at all? Obviously, the reason why I convened this hearing today was because of the lack of response from Ms Clarkson. I am very concerned that the parties are being put to some considerable efforts to try and have this matter heard in mid-way through next year and I don't want to abandon that fixture at this stage. But, clearly, things are not in the state they should be in. One of the options might be for one or more of the overlapping claimants to effectively become the applicant for the purposes of the substantive hearing. I want to float that as a possibility in the event that Ms Clarkson's circumstances prevent her from being able to fulfil her obligations. I don't expect any response at this stage, but I do want to flag that as a possibility so that we can try and work towards that fixture mid-way through next year.

Mr Melvin, any thoughts?

**MR MELVIN:**

As your Honour will be aware no doubt, Ms Clarkson has a history of not keeping to timetabling directions and then partially meeting them and giving the Court some confidence to proceed to the next step, but then again defaulting and what we are experiencing today is a similar pattern that's occurred over the history of her application. My thought sir was that there's a stronger likelihood of getting Ms Clarkson ready to go when there is another applicant either leading the way or at least parallel with her, sort of bringing –

**COURT:**

– dragging her along.

**MR MELVIN:**

– dragging her along with her. So, your Honour's suggestion of another application that overlaps that could perhaps take the lead or at least share the lead with Ms Clarkson does have merit.

**COURT:**

Mr Ferguson, without putting any pressure on you your client might be a logical client to take the lead?

**MR FERGUSON:**

May be sir. I'm going to be the first to admit that I've recently had instructions confirmed to take over from Ms Braithwaite in this matter. I'm not sure where they sit in that regard and I haven't been able to clarify whether they desire to actively participate in progressing their claim at this time or whether they also have direct engagement with the Minister in terms of the alternative process sir and on the documents that I have got to date that's not clear to me, so subject to clarification of that point I'm happy to come back to the Court and indicate whether they are prepared to take that. Obviously, their concern I know to date in terms of participation with the Clarkson priority application was whether they were simply going to appear in that in terms of any opposition or possibly support for Ms Clarkson's application in whole or in part as opposed to advancing and seeking substantive determinations in relation to their own application given that their application proceeds a considerable way south outside of the Clarkson area.

**COURT:**

Yes, but it entirely encompasses?

**MR FERGUSON:**

It doesn't entirely encompass I don't think sir but I could be wrong.

**COURT:**

I was looking at the maps last night.

**MR FERGUSON:**

Yes.

**COURT:**

There is at least one claim that entirely encompasses it I think.

**MR WATSON:**

Sir, with respect that might be my client I think, Leo Watson here up in Napier sir.

**COURT:**

Your client, Mr Watson?

**MR WATSON:**

Yes sir.

**COURT:**

Yes, that's right Mr Watson, thank you. Well, you were the second one that I was going to point to as being an obvious plan.

**MR FERGUSON:**

Well, I'm shuffling the ball along the line to my friend, sir.

**COURT:**

Mr Watson?

**MR WATSON:**

Sir, leave to remain seated with the microphone issue if that's okay?

**COURT:**

Yes, of course.

**MR WATSON:**

Thank you for accommodating the telephone conference AVL and it helps considerably sir. I don't have a lot to add. I certainly share Mr Melvin's concerns. This has a history and a pattern here so I'm not confident sir that this is an aberration we're going to get a similar sort of behaviour in the New Year. That's my pick. So certainly, an alternative plan is needed. I confess, coming to the telephone conference or AVL I didn't know what to expect so I certainly haven't taken instructions as to whether my clients would be ready to proceed in July. That's quite a big ask sir in terms of where they were tracking, because their evidence that they were going to adduce in relation to the priority application was primarily limited as we had discussed at an earlier conference with you, limited to responding to Ms Clarkson's scope of her application. If my clients were going to take a lead or even a shared lead, their rohe, the extent of their rohe is significantly wider. So I do need to take instructions, but I am interested in the possibility of using court time efficiently and moving this forward where we can and perhaps even a discussion among my colleagues later might be useful to see who's ready to go forward. One other point is I intimated to you just as Mr Ferguson has now, that my clients do have a preference sir for a direct engagement process. Nevertheless, I must say that this possibility has some merit and whether there's a short period of time sir that you'd allow in which we can take instructions and respond by memoranda to the possibility of filling that July fixture I'd be most grateful.

**COURT:**

Yes, I certainly will bend over backwards to assist the parties in trying to take full advantage of that time that the Court's been able to build into its programme for next year.

Ms Bollen?

**MS BOLLEN:**

Yes, Ms Bollen here in Hamilton, can you hear me?

**COURT:**

Yes, I can indeed.

**MS BOLLEN:**

I also seek leave to remain seated.

**COURT:**

Yes, of course yes.

**MS BOLLEN:**

Kia ora. Yes, so here on behalf of Rangitāne Tū Mai Rā Trust.

**COURT:**

Yes.

**MS BOLLEN:**

The only instructions we received coming into this AV was that last week there was a trustee election and four new trustees were appointed to the Trust so any intake – there's the introductory period in the New Year, which the trustees will need to come up to speed with matters at hand such as this case so would need to take instructions on that, but agree with everything Mr Watson said with regard to using the court time efficiently and going forward with something next July.

**COURT:**

Thank you Ms Bollen.

Now Mr Hirschfeld, good morning and thank you for making yourself available.

**MR HIRSCHFELD:**

Good morning sir. I'm here with Mr Tupara as counsel.

**MR TUPARA:**

Mōrena sir.

**COURT:**

Mōrena.

Any thoughts as to how to progress matters from your perspective? Is your client one that could logically step into the breach?

**MR HIRSCHFELD:**

Your Honour, yes. I can report to your Honour sir that matters are fairly well advanced on the evidential front and certainly our organisation is such that we would expect to be where we indicated this to your Honour in the first judicial conference.

**COURT:**

You did. You were quite optimistic then about being able to be ready.

**MR HIRSCHFELD:**

Yes, and of course sir we are happy to oblige in terms of any timetable direction that your Honour might decide upon. I would say sir, slightly over the thumb at the moment, but we would be ready by May next year and yes sir, we could step into the breach. I'd have to take instructions on that sir but it's a significant claim in its own right of course.

**COURT:**

Mr Hirschfeld, could you just remind you does your client's claim entirely encompass that that has been lodged by Ms Clarkson?

**MR HIRSCHFELD:**

Not entirely sir, no. Are you to the north or to the south?

**MR HIRSCHFELD:**

South sir.

**COURT:**

I'm not going to make any decisions today. What I am pretty confident about however, is that it's unlikely Ms Clarkson is going to be in a position to fulfil the obligations that the Court was expecting of her and I think that we need to try and explore as constructively as possible, one or more of the other overlapping claimants advancing their claims in a way that hopefully will enable the Court to resolve as many of Ms Clarkson's claims and those of overlapping claimants and then ultimately of course, interested parties as soon as is possible. Whether that is able to take place in July of next year we'll have to wait and see.

But what I propose to do is adjourn this conference to a date very early in the New Year to provide counsel with the opportunity to take instructions and let's convene early in the New Year. By early in the New Year I mean early in the New Year by court calendar standards. But it will probably be in the first week of February.

**MR WATSON:**

Your Honour, may I make a comment up here in Napier?

**COURT:**

Yes, by all means.

**MR WATSON:**

Certainly, that's useful to hear that from Mr Hirschfeld and tēnā koe e hoa –

**MR HIRSCHFELD:**

Tēnā koe –

**MR WATSON:**

If a May date is being floated though sir, that raises for me a question of how best the other overlapping claims to Mr Hirschfeld's client's claims are best participated because the timetable that you have already was really manageable where we were able to receive the evidence well in evidence likely to be quite detailed historical and whakapapa based evidence and then respond so that the Court has the best information before it and I just flag this as a concern not at all directed at Mr Hirschfeld but if the timetable for the filing of the primary lead claim is that late sir, then I'd have to signal that the chance of being able to effectively manage my client's response if the fixture remains in July, it's difficult to see how that would operate well.

**COURT:**

I am conscious of that Mr Watson and I won't be taking an unrealistic approach towards having this matter progress in July. We're in a situation which we're in through no fault of anyone who's appearing today and I am very conscious of that. At the same time, I want to assist the parties in progressing their claims so that they can be heard and determined as expeditiously as possible.

**MR WATSON:**

As the Court pleases.

**MR FERGUSON:**

Sir, just one additional matter by way of proviso and just from looking again at the maps and again acknowledge my friend's Mr Hirschfeld's indication his client may be ready to proceed, just looking at the maps and apprehending the area of my friend's application, it may be that if that was to proceed sir that there are other overlapping claimants that aren't presently overlapping with Clarkson it would need to be brought into this case management process.

**COURT:**

The cascading effect.

**MR FERGUSON:**

Yes, I'm afraid so sir. But that's just an observation.

**COURT:**

Yes, I am conscious of that. Thank you Mr Ferguson.

Thank you all very much for making yourselves available. I will issue a minute. It may or may not come out before Christmas, just depending on how things go. But I will, later today find a time and notify all parties and counsel and interested parties of a date early in the New Year for the resumption of this case management conference.

**MR HIRSCHFELD:**

Your Honour, may I just ask one question?

**COURT:**

Yes.



**MR HIRSCHFELD:**

In your Honour's earlier direction of course the Court minute refers to statements of evidence. Just as a point of clarification sir, at this point in the pre-trial phase does your Honour mean by statements of evidence "will say statements" and not the final affidavits?

**COURT:**

My preference would be for the evidence to be finalised as best it possibly can, but I also recognise that there will be some instances where that's not going to be possible and I a "will say" statement will have to suffice, provided of course that the final evidence is not materially different from the "will say statements".

**MR HIRSCHFELD:**

Of course sir. Thank you sir.

**MR SHARROCK:**

Sir, it's Mr Sharrock here just recording that I'm here on behalf of Mr Dargaville and I assume a watching [inaudible 10:26:06].

**COURT:**

Thank you Mr Sharrock. I am grateful for your appearance as well.

As I say, I am not going to be making any decisions today but I will issue a minute later today advising of a resumption of this case management conference early in the New Year.

Thank you all very, very much.