IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

I TE KŌTI MATUA O AOTEAROA
TE WHANGANUI-Ā-TARA ROHE

CIV-2017-404-538

IN THE MATTER OF	the Marine and Coastal Area (Takutai Moana) Act 2011
IN THE MATTER OF	an application by RIHARI DARGAVILLE for an order recognising Customary Marine Title and Protected Customary Rights of New Zealand Māori Council Members

On the papers:

Counsel: G Sharrock for Applicant

Minute: 4 May 2020

MINUTE (NO. 7) OF CHURCHMAN J
["National Claims"]

Background

[1] By minute of 3 March 2020, the Court set down the application by Mr Dargaville "on behalf of all Māori" for hearing to consider whether it should be stayed either in whole or part, or struck out.

[2] A one-day fixture was allocated to address these issues or 27 May 2020. Final submissions were to be filed 30 days prior to the hearing.

Developments

[3] By memorandum dated 24 April 2020, Mr Sharrock, counsel for the applicant, sought the following orders:

(a) that the timetable directing filing of submissions and the hearing scheduled for 27 May 2020 be vacated; and

(b) that the hearing of this matter be transferred from Wellington to Auckland or Whangarei.

[4] The grounds relied upon in support of the application are that the restrictions imposed by COVID-19 Levels 3 and 4 have "precluded effective contact with the numerous parties involved".

[5] Mr Sharrock asserts "…this is a hearing that requires the presence of the applicants". He submits that Mr Dargaville is unable to travel to attend a hearing in Wellington for reasons of health as well as reasons of costs. He also submits that he, as counsel, is in a similar position.

[6] Mr Sharrock further submits that this is not an urgent matter and claims that the lack of urgency is "…indicated by the Crown is (sic) its programming of Crown engagement for Tai Tokerau of 2035."

[7] Mr Sharrock submits that there is no prejudice in granting the applications he seeks as there is "certainty around the nature of the applications made by Mr Dargaville" and that "…with the exception of the claim in Waitara, remain concentrated on defined areas in the Tai Tokerau Waitangi hearing district."

Analysis

[8] The memorandum filed by Mr Sharrock appears to misunderstand the minute of 3 March 2020.

[9] The stay/strike-out hearing only relates to those aspects of the application filed by Mr Dargaville that do not, on their face, comply with the requirements of ss 9 and 100(1) of the Marine and Coastal Area (Takutai Moana) Act 2011 (the Act).

[10] Mr Sharrock had previously indicated that Mr Dargaville was abandoning those parts of his "national" application on behalf of all Māori that went beyond the areas where there were identified applicant groups who made a claim in respect of an identified area (these are

the claims in the Tai Tokerau and Waitara areas referred to in Mr Sharrock's memorandum of 24 April 2020).

[11] As noted at [8] of the Court's minute of 3 March 2020, even in respect of those areas where Mr Dargaville purported to be pursuing a "protective" application on behalf of named applicant groups and identified areas, there was still apparent defects. There was a lack of clarity around who the applications were being advanced in respect of and, in respect of an extensive claim to the Hawkes Bay/Wairarapa coast, no claimant was identified at all.

[12] In the Court's minute of 30 January 2020,[1] the steps needed to be taken to rectify the identified defects were set out.

[13] Mr Sharrock filed a memorandum dated 25 February 2020 which confused rather than clarified the ambit of the claim that Mr Dargaville was advancing. Instead of clarifying either the identity of the claimants or the specific areas in respect of which their claims related to, the memorandum implied that Mr Dargaville had revived his claim to be able to advance a claim in respect of the coastal marine area situated anywhere throughout the country.

[14] The argument advanced was that if a named claimant either died or withdrew from a claim lodged anywhere in the country, it was necessary for Mr Dargaville to be able to be substituted as the applicant.

[15] As the Court's minute of 3 March 2020 noted no evidential basis was advanced for such a claim which appeared to be completed unjustified.

[16] A number of the initially named applicants in claims throughout the country have died and there has been no difficulty at all with other members of the claimant hapū, whānau or iwi taking over as the nominated claimant.

[17] The hearing scheduled for 27 May 2020 will address those aspects of Mr Dargaville's claim where he is asserting some entitlement to continue to advance a "national" protective claim in respect of whānau, hapū or iwi who are not identified, and whose claim is not properly particularised.

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1 Minute (No. 4) of Churchman J [Case Management Conferences – "National Claims"], 30 January 2020.

[18] The issues involved are legal ones to be addressed by submissions. It is difficult to see how evidence (as opposed to legal submissions) is likely to assist the Court on determining whether those aspects of Mr Dargaville's application meet the requirements of the Act.

[19] The Court's minute of 3 March 2020 made a direction only in respect of the filing of submissions. No direction was made in respect of the filing of evidence because it was not contemplated that any evidence would be required. Mr Sharrock did not take any issue with the minute of the Court requiring only submissions.

[20] The interlocutory hearing needs to take place and the issue addressed promptly. The prejudice of this not occurring is to other applicants whose claims are impacted by the uncertainty created by not knowing whether there are other applicants represented by Mr Dargaville, whose claim potentially overlaps or conflicts with theirs.

[21] A recent example of the potential prejudice created by Mr Dargaville's claim was his attempt to become involved in an interlocutory hearing in relation to the Ngāti Pahauwera claim on the East Coast of the North Island. Mr Dargaville subsequently withdrew his application to involve himself in these proceedings following objection by the other counsel who had complied with the timetable directions made by the Court in that matter.[2]

[22] Given that Mr Dargaville appears to be asserting a "national" claim, the appropriate registry for hearing is Wellington. However, if Mr Sharrock is unable or unwilling to travel to Wellington for a hearing, then there would appear to be two options:

(a) either the Court can arrange for Mr Sharrock to participate in the hearing by AVL link from the Auckland or Whangarei High Court; or

(b) arrangements could be made to reschedule the hearing when the Court sits in Auckland for the Auckland case management conference hearings presently scheduled for 22 July 2020. Time may be able to be made available to hear this matter on 23 July 2020 in the Auckland High Court.

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[2] CIV-2011-485-821, application by the trustees of the Ngāti Pahauwera Development Trust Minute (No. 4) of Churchman J, 22 April 2020.

[23] Counsel will need to indicate within 10 days of the date of this minute whether their preference is for a hearing by way of AVL or similar link on 23 July 2020, or an in person hearing in the Auckland High Court on that date.

[24] If any evidence is to be filed, then that will occur no later than **30 June 2020**. A synopsis of submissions, along with a casebook of any relevant authorities referred to, is to be filed by **15 July 2020**.

Churchman J