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: 14 May 2020

MINUTE (NO. 10) OF CHURCHMAN J
["National Claims"]

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[1] By memorandum dated 13 May 2020, counsel for Mr Dargaville, Mr Sharrock, filed a memorandum providing information about the "national" claim being advanced by Mr Dargaville and making submissions on other issues.

Venue of strike-out hearing

[2] Mr Sharrock indicates his client prefers to have in-person hearing in Auckland in relation to the strike-out and that will take place on 23 July 2020 commencing at 10 am.

[3] The memorandum also referred to a desirability of a hearing in Whangarei "to avoid six hours of travel for many elders".

[4] As indicated in the previous minutes of the Court in respect of this matter, this interlocutory hearing addresses questions of law relating to whether or not the application by Mr Dargaville meets the requirements of the Act. While Mr Sharrock has sought and been

granted leave to file evidence, it is still not clear to the Court how evidence could assist the Court in resolving these legal issues. It is also even less clear to the Court why "many elders" would be required to travel to the Court.

[5] If there are genuine reasons why the applicant or any other person involved in this case is unable to travel to the interlocutory hearing, then the proper course is for the applicant to apply for them to attend by way of AVL link from the Whangarei Court. Assuming such an AVL link is technically feasible, that would avoid the need for "many elders" to travel to Auckland.

The nature of the claim

[6] Mr Sharrock submits that "there is no intention to pursue a national claim" and refers to the contents of a memorandum of 28 April 2020.

[7] He also now clarifies that the claim to a large area of Hawkes Bay on behalf of an unidentified applicant is no longer being pursued. This is a new development. As recently as last month, Mr Sharrock was seeking to become involved, on behalf of Mr Dargaville, in a case involving other East Coast claimants. The only possible justification for such involvement would have been if Mr Dargaville was still then advancing a claim in respect of an overlapping area of the East Coast coastline.

[8] The claim being advanced by Mr Dargaville is still unclear. Indeed, in the intituling of the memorandum of 13 May 2020, the claim is now referred to as one seeking "an order recognising Customary and Marine Title and Protected Customary Rights of NEW ZEALAND MĀORI COUNCIL MEMBERS". No New Zealand Māori Council members, other than Mr Dargaville himself, have been identified as being claimants in this claim. Indeed, there are quite separate proceedings that have been commenced by another New Zealand Māori Council member, Maanu Paul, claiming the whole of New Zealand.

[9] Where Mr Dargaville is advancing a claim on behalf of an identified whānau, hapū or iwi and has filed a map clearly identifying the geographic area of areas, the subject of the claim, and otherwise complies with the Act, he is able to advance that claim.

[10] In its minute of 30 January 2020, the Court set out in detail in [11]-[19] the defects in the claim as it then existed and what was required to remedy them. Counsel appears to have ignored all of the issues raised in those paragraphs. That is most unfortunate.

[11] The issues identified in [11]-[19] of the Court's minute of 30 January would appear capable of rectification relatively easily. However, unless they are, there is no option but for the strike-out hearing to proceed on 23 July 2020.

[12] Mr Sharrock is encouraged to obtain immediate instructions on these matters and to promptly amend the claim to address these issues. If this is not done until the 11th hour, then that will cause needless inconvenience to those counsel representing other applicants who have had to prepare submissions in relation to the strike-out. That may well result in an application for costs.

Other matters

[13] Mr Sharrock's memorandum addressed topics that went well beyond the strike-out hearing. He expressed the view that Goldridge Farming (sic) was no longer an interested party in Mr Dargaville's amended application. If Mr Dargaville wishes to exclude any interested party from participating in the hearing of any part of his application, he will need to file a formal application in accordance with the High Court Rules 2016 specifying the grounds upon which such an application is made. It will need to be served on the party or parties it relates to, as well as all other interested parties and an interlocutory hearing allocated.

[14] The memorandum also made some gratuitous comments about counsel retained by an interested party. Mr Sharrock seems to want the Court to revisit the issues already resolved in the decision on the role of the Attorney-General in proceedings under the Act.[1] Again, if Mr Sharrock, on behalf of Mr Dargaville, wishes to make a specific application, he will need to formally do that.

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1 *Re an Application by Te Rūnanga o Ngāti Whakaue ki Maketū Incorporated* [2019] NZHC 2360, 18 September 2019, Churchman J.

[15] The balance of Mr Sharrock's memorandum seems to be matters of submission in support of Mr Dargaville's application. They are matters better addressed in the submissions to be filed in advance of the 23 July 2020 hearing where they can be responded to by the other parties to the strike-out hearing.

Churchman J