IN THE SUPREME COURT OF NEW ZEALAND

SC 17/2009
[2011] NZSC 35

BETWEEN	THE TRUSTEES OF TE HURIA MATENGA WAKAPUAKA TRUST Applicants
AND	THE MINISTER OF CONSERVATION First Respondent
AND	THE MAORI LAND COURT Second Respondent
AND	THE REGISTRAR-GENERAL OF LAND Third Respondent

Hearing: 5 April 2011

Court: Elias CJ, Blanchard, McGrath and William Young JJ

Counsel: J P Ferguson for Applicants
F R J Sinclair and C R W Linkhorn for First Respondent

Judgment: 6 April 2011

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The proposed appeal concerns the applicant trust's claimed title to mudflats in an estuary near Cable Bay at the top of the South Island. A certificate of title under the Land Transfer Act 1885 was issued in 1901 for surrounding land. The Court of Appeal has determined that the certificate of title did not include the

mudflats in the estuary below the mean high water mark. It also declared that orders made by the Maori Land Court in 1998 were wrongly made.[1]

[2] The Maori Land Court had proceeded on the basis that the mudflats were included in a Native Land Court order of 1883 pursuant to which the Native Land Court issued a certificate of title which was later converted into the Land Transfer title when this was permitted by the Native Land Court Act 1894.

[3] The Court of Appeal held that the Land Transfer Act certificate of title was explicit in not including the estuary. That was not really in dispute, as Mr Ferguson, for the applicant, immediately accepted at the hearing in this Court. Therefore, the Court of Appeal held, the Maori Land Court was obliged to treat the boundaries shown on the Land Transfer Act certificate of title as definitive until corrected by the Registrar-General of Land under his power of correction or as ordered by the High Court under the Land Transfer Act 1952.

[4] This Court would be in no position to take any different view and therefore leave to appeal should not be granted. We should make it clear, however, as did the Court of Appeal, that it does not necessarily follow that the applicant lacks any ongoing ability to pursue its claim to the mudflats. It has not been determined whether the Native Land Court Judge erroneously excluded them from the Native Land Court certificate of title or indeed whether he was ever asked to include them. All that has been decided is that the mudflats were not included within the Land Transfer Act title. If a claim to the mudflats can be established it may be possible for that area to be brought within the Land Transfer Act pursuant to the provisions of that Act and of the Te Ture Whenua Maori Act 1993. It also remains possible that a claim may be able to be made on the basis of customary title. Any effect of the Marine and Coastal Area (Takutai Moana) Act 2011 would have to be considered in relation to such claims.

[5] One of the difficulties in this case is that two of the survey plans considered by the Native Land Court Judge and used in the production of the Native Land Court certificate of title have long ago gone missing. The Court of Appeal reviewed the

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1 *Minister of Conservation v Maori Land Court* [2008] NZCA 564.

evidence of the history of the matter and ventured an indication of its view of that evidence. However, that obiter opinion is not binding upon any future decision-maker and, as the Court itself recognised, different evidence might come to light in the future.

Solicitors:
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Crown Law Office, Wellington for First Respondent