

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 53/2022
[2022] NZSC 108

BETWEEN

RORE PAT STAFFORD
Applicant

AND

ATTORNEY-GENERAL
First Respondent

KĀINGA ORA – HOMES AND
COMMUNITIES
Second Respondent

HOUSING NEW ZEALAND LIMITED
Third Respondent

HEALTH NEW ZEALAND (PREVIOUSLY
KNOWN AS NELSON MARLBOROUGH
DISTRICT HEALTH BOARD)
Fourth Respondent

NELSON MARLBOROUGH INSTITUTE
OF TECHNOLOGY LIMITED
Fifth Respondent

Court: Ellen France, Williams and Kós JJ

Counsel: K S Feint KC, S M Hunter KC, M S Smith and
H K Irwin-Easthope for Applicant
J R Gough and S M Kinsler for First Respondent
V E Casey KC, R E Brown and G F Dawson for Second and
Third Respondents

Judgment: 9 September 2022

JUDGMENT OF THE COURT

A The application for leave to appeal is dismissed.

**B The applicant must pay the first, second and third
respondents one set of costs of \$2,500.**

REASONS

Introduction

[1] The applicant, Rore Stafford, has applied for leave to appeal from a decision of the Court of Appeal.¹ The Court dismissed Mr Stafford's appeal from a decision of the High Court declining to grant relief in judicial review proceedings.² To put the application for leave in context, we need to say something about the background to the proceedings.

Background

[2] In *Proprietors of Wakatū v Attorney-General*, this Court declared that the Crown owed fiduciary duties to reserve 15,100 acres (the Tenth) for the benefit of the customary owners of land in the Nelson area and to exclude their pā, urupā and cultivations (the Occupation Land) from the land obtained by the Crown following the 1845 Spain award.³ The Court remitted questions of liability, loss and remedy to the High Court for determination at trial. The trial to determine those issues is set down for hearing in August 2023 (the remedies proceeding).

[3] Mr Stafford is a kaumatua of the descendants and has standing to represent the descendants of the Māori customary land owners. He is a plaintiff in the remedies proceeding.

[4] Since this Court's decision, Mr Stafford has sought to ensure that the remaining land in the Crown's possession which comprises of the Tenth or the Occupation Land and other land which could form part of relief in the remedies proceeding is protected from disposal. He sought a moratorium preventing the sale of land in these categories held by the "core" Crown, Crown entities and agents, and state-owned enterprises.

¹ *Stafford v Attorney-General* [2022] NZCA 165 (Miller, Clifford and Gilbert JJ) [CA judgment].

² *Stafford v Attorney-General* [2021] NZHC 335 and *Stafford v Attorney-General* [2021] NZHC 1466 (Ellis J).

³ *Proprietors of Wakatū v Attorney-General* [2017] NZSC 17, [2017] 1 NZLR 423. The Court of Appeal in the present proceedings explained that the Spain award area "is the area from which the New Zealand company was to select the 151,000 acres that it had purchased from the Māori customary owners" following the review by Commissioner Spain in terms of the Lands Claims Ordinance 1841: CA judgment, above n 1, at [89].

The relevant Ministers (including the Attorney-General) declined to grant a moratorium. Mr Stafford challenged that decision in judicial review proceedings.

[5] As we have noted, Mr Stafford was unsuccessful in the High Court and on appeal to the Court of Appeal. In its decision the Court of Appeal said that, putting to one side the position of the third respondent, Kāinga Ora, Mr Stafford's position and his interests are sufficiently protected in terms of interim relief as a result of undertakings given over the course of the proceedings.⁴

[6] The undertakings are, broadly, in two groups. First, there are the undertakings provided by the Attorney-General. The undertakings require, amongst other matters, 30 working days' written notice to be given to Mr Stafford of any decision to commence a process to dispose of any "core" Crown owned land within the Spain award area. Mr Stafford can then file an urgent application in the High Court to restrain the disposal of the land. The Attorney-General has provided further undertakings that the Crown would give notice to Mr Stafford of any proposed land sales by the fourth and fifth respondents.

[7] Second, arrangements have been made with other Crown entities. The Accident Compensation Corporation, for example, agreed to not dispose of any property in the Spain award area pending resolution of the remedies proceeding. As a result of arrangements in this second category, some parties have been discontinued as respondents.⁵ Kāinga Ora provided details as to fresh proposed arrangements in the Court of Appeal. These arrangements would provide for notice of the sale of "sites of significance" and a cap on the net area of sales of land in the Spain award area. Kāinga Ora was concerned any arrangement did not hinder its ability to meet its statutory functions. The Court of Appeal considered the proposal provided "a basis for satisfactory interim protection".⁶

⁴ CA judgment, above n 1, at [91].

⁵ For example, Transpower New Zealand Ltd and Fire and Emergency New Zealand.

⁶ CA judgment, above n 1, at [95].

The proposed appeal

[8] Mr Stafford says that the arrangements presently in place are not sufficient and unfairly place the burden on him rather than the Crown as errant fiduciary. He seeks a moratorium to address the various inadequacies in the current protection arrangements. In the alternative, he seeks relief which essentially broadens the Attorney-General's undertakings to include all land held by the Crown and Crown entities in the Spain award area and obliges the Attorney-General to file an urgent application in the High Court for interim relief seeking disposal of the land. In support of his case, he wishes to advance four grounds of appeal in this Court. We can summarise these grounds as, broadly, raising questions as to whether the Crown has a duty to prevent further disposal of land owned by the Crown or Crown entities subject to the resolution of the remedies proceeding; whether the Crown's obligations under Te Tiriti o Waitangi | the Treaty of Waitangi support and inform that obligation; whether Crown land includes that which is owned by Crown entities; and whether the Court of Appeal was correct to find that Mr Stafford's position is adequately protected in terms of interim relief. Under each of these grounds Mr Stafford wishes to raise a number of other associated issues.

[9] We accept that matters such as the scope of "Crown" land in this context and the nature and extent of the Crown's fiduciary duties may raise questions of general or public importance.⁷ Those matters will ultimately be addressed in the remedies proceeding. In the interim, we consider those issues are better ventilated when they actually arise, in particular, if and when there is a proposed sale or other disposition of land in the area encompassed by the Spain award. The undertakings that have been provided to date are sufficient to alert Mr Stafford to any such proposed sale or disposition of land.

Result

[10] The application for leave to appeal is dismissed.

⁷ Senior Courts Act 2016, s 74(2)(a).

[11] The applicant must pay the first, second and third respondents one set of costs of \$2,500.

Solicitors:

Pitt & Moore, Nelson for Applicant

Crown Law Office, Wellington and Meredith Connell, Wellington for First Respondent

Bell Gully, Wellington for Second and Third Respondents

Duncan Cotterill, Nelson for Fourth and Fifth Respondents