

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 51/2022
[2022] NZSC 99

BETWEEN	ALEXANDER CHARLES MASON Applicant
AND	VICKI ANN TRIEZENBERG AND PAUL MORLEY DODD AS TRUSTEES OF THE MAMARI TRUST AND THE MAMARI (NO 2) TRUST Respondents

Court: Glazebrook, O'Regan and Kós JJ

Counsel: G J Thwaite for Applicant
V T M Bruton QC and J P Cundy for Respondents

Judgment: 22 August 2022

JUDGMENT OF THE COURT

- A The application for leave to appeal is dismissed.**
- B The applicant must pay the respondents costs of \$2,500.**
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REASONS

[1] Mr Mason applies for leave to appeal a Court of Appeal judgment dismissing appeals from two High Court judgments.¹

[2] In 1994 Mr and Mrs Mason instructed their accountant, Mr Dodd, to form a family trust for their personal assets. “Mamari 1” was duly settled. In 2012 Mrs Mason was diagnosed with early-stage degenerative dementia. In 2013 Mr and Mrs Mason appointed Ms Triezenberg (one of their children) as their attorney for

¹ *Mason v Triezenberg* [2022] NZCA 138 [CA judgment]; *Triezenberg v Mason* [2019] NZHC 14 [first HC judgment]; and *Triezenberg v Mason* [2019] NZHC 920 [second HC judgment].
ALEXANDER CHARLES MASON v VICKI ANN TRIEZENBERG AND PAUL MORLEY DODD AS TRUSTEES OF THE MAMARI TRUST AND THE MAMARI (NO 2) TRUST [2022] NZSC 99 [22 August 2022]

property affairs, personal care and welfare. A further trust – “Mamari 2” – was also settled. Mr and Mrs Mason were trustees, as were Ms Triezenberg and Mr Dodd (the respondents). The respondents were subsequently appointed trustees of Mamari 1.

[3] In 2015 Mrs Mason was certified as mentally incapable. Discord arose between Mr Mason and Ms Triezenberg about Mrs Mason’s care arrangements. Issues surfaced in the administration of the trusts. In 2016 a family mediation was held, and a settlement agreement was reached. In 2017 the respondents instituted proceedings to remove Mr Mason as a trustee of the trusts. In 2018 Mr Mason executed deeds purporting to remove the respondents as trustees and appoint his son in their place.

Lower Court judgments

[4] Mr Mason was unsuccessful in the High Court. Fitzgerald J had “no doubt” that he was the “primary cause and source of the problem” and removed him as a trustee.² Mrs Mason was also removed as a trustee.

[5] On appeal, the Court of Appeal largely agreed with the Judge’s reasoning. The Court endorsed the Judge’s dismissal of an argument that a clause in the Mamari 1 trust deed ousted the Court’s jurisdiction as an arbitration agreement.³ The Court also agreed that Mr Mason did not have the power to unilaterally remove and appoint trustees while Mrs Mason was alive (the Court rejecting a new argument that Mrs Mason was legally dead).⁴ The Court was satisfied that it was appropriate for the Judge to intervene, remove Mr Mason as a trustee and decline to remove the respondents as trustees.⁵

Submissions

[6] Mr Mason challenges the Court of Appeal judgment on the grounds that: (a) a dispute resolution clause in the Mamari 1 trust deed amounts to an arbitration agreement and ousted the Judge’s jurisdiction; (b) the medical certificate certifying Mrs Mason as medically incapable was invalidly issued; (c) the Court was wrong to

² First HC judgment, above n 1, at [130] and [165].

³ CA judgment, above n 1, at [38].

⁴ At [50]–[51].

⁵ At [67], [75] and [80].

uphold the Judge’s decision to remove Mr Mason as a trustee and decline to remove the respondents; and (d) Mr Mason’s purported removal of the respondents was legally valid. All grounds under s 74(2) of the Senior Courts Act 2016 are said to be engaged by these arguments.

Analysis

[7] The proposed grounds of appeal are intensely fact specific. There is no general principle calling for review; in 2009 this Court observed that “the principles governing the removal of trustees are well-settled”.⁶ Nor is there the prospect of a substantial miscarriage of justice here: (a) we consider the proposition that the High Court’s supervisory jurisdiction over the Mamari 1 trust was ousted by the trust deed is untenable for the reasons given in the Courts below; (b) it may be doubted that alleged regulatory non-compliance in omitting the health practitioner’s registration number is fatal to the status of the certificate, and in any case, the certificate was not essential to the central issue before the Judge; (c) it was entirely reasonable for the Judge to conclude that the trusts would not function effectively with Mr Mason’s continued involvement, and no good reason existed for the Judge to remove the respondents as trustees, given Mr Mason was the primary source of the dysfunction; and (d) Mr Mason raises no convincing authority whatever to support his argument that Mrs Mason should be regarded as legally dead.

Result

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

[9] The applicant must pay the respondents costs of \$2,500.

⁶ *Naresh v McCluskie* [2009] NZSC 118 at [3].