



Supreme Court of New Zealand | Te Kōti Mana Nui o Aotearoa

27 OCTOBER 2023

## **MEDIA RELEASE**

COOPER v PINNEY

(SC 32/2023)

**Hearing in the Supreme Court Wednesday 1 November — Thursday 2 November**

### **CASE HISTORY SYNOPSIS**

This synopsis is provided to assist in understanding the history of the case and the issues to be heard by the Court. It does not represent the views of the panel that will hear the appeal in the Supreme Court. The synopsis does not comprise part of the reasons for the judgment of the Court of Appeal. A direct link to the judgment is included at the end of this synopsis.

**NOTE: PURSUANT TO S 35A OF THE PROPERTY (RELATIONSHIPS) ACT 1976, ANY REPORT OF THIS PROCEEDING MUST COMPLY WITH SS 11B, 11C AND 11D OF THE FAMILY COURT ACT 1980. FOR FURTHER INFORMATION, PLEASE SEE <https://www.justice.govt.nz/family/about/restriction-on-publishing-judgments/>**

### **Background**

This case involves a dispute over the definition of relationship property. The central issue for the Court is whether rights and powers under a family trust are classed as property within the meaning of the Property (Relationships) Act 1976 (the PRA) and are thereby property which can be used for division or compensation under the PRA.

Ms Cooper (appellant) and Mr Pinney (respondent) were in a domestic relationship from 2004 to 2014. During that time, they worked together on a number of farming and other businesses related primarily to the farm property. In 2006 the farm upon which the appellant and respondent lived and worked (as well as other assets) were transferred from the settlement of a wider family trust (of which the respondent was a beneficiary) to a newly formed trust (the MRW Trust). Under the new trust the respondent is both a discretionary beneficiary and a trustee. The respondent also has the power under the MRW Trust to appoint or remove trustees, although there must be a minimum of two trustees at any time.

The main point in dispute is whether the respondent's powers under the MRW Trust, particularly the power of appointment and removal of trustees, amounts to a right or interest that comes within the definition of property under s 2 of the PRA. The appellant relies on the principle established in the earlier Supreme Court decision of *Clayton v Clayton (Vaughan Road Property Trust)* [2016] NZSC 29 in which a similar issue arose. The extent to which the MRW Trust is similar to that in *Clayton v Clayton* is another key issue for the Court.

In the Family Court the Judge held that the respondent's powers and entitlements under the MRW Trust meant he was able to effectively deal with the Trust property as if it was his own and therefore it was correct to classify those assets as property under the PRA. The High Court disagreed. The High Court Judge did not consider the respondent's powers under the MRW Trust to be as extensive as those at issue in *Clayton* and that therefore they did not amount to property under the PRA. For broadly the same reasons, the majority in the Court of Appeal agreed with the High Court and dismissed Ms Cooper's appeal. Justice Miller disagreed with the majority in the Court of Appeal and would have allowed the appeal.

### **This appeal**

On 3 July 2023 the Supreme Court granted Ms Cooper leave to appeal on the question of whether the Court of Appeal was correct to dismiss her appeal to that Court.

### **Viewing of hearing**

The courtroom is open to the public.

This hearing of the appeal will be live-streamed. Details about access to the live-stream and the conditions of access will be posted on the [Courts of New Zealand website](#) shortly before the hearing. No recording is permitted.

### **The panel**

The Hon Justice Williams	The Hon Justice Glazebrook	The Rt Hon Chief Justice Winkelmann	The Hon Justice Ellen France	The Hon Justice Kós
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Judges as seen from the public gallery

### **Counsel**

- Raewyn Phyllis Cooper (Appellant): *P G Watts KC, S J Zindel and I T F Hikaka*
- Marcus Robert William Pinney (Respondent): *S N van Bohemen and R L Powell*
- Jennifer Jane Pinney and Phillip John Smith as trustees of MRW Pinney Family Trust (Interested Parties): *A S Butler KC, N L Walker and J A Tocher*

### **Sitting hours**

Court will begin at 10:00am and conclude at 4:00pm with adjournments taken from 11:30am to 11:45am and from 1:00pm to 2:15pm. There is no afternoon adjournment.

### **Enquiries**

Any enquiries about the hearing should be directed via email to. While attending the hearing, enquiries can also be directed to the Court Registry, which is located outside the main courtroom in the Supreme Court foyer.

Contact person: Sue Leaupepe, Supreme Court Registrar (04) 914 3613

Court of Appeal decision: [\[2023\] NZCA 62](#) (13 March 2023)

Supreme Court leave decision: [\[2023\] NZSC 80](#) (03 July 2023)