



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

02 October 2023

MEDIA RELEASE

LEGLER v FORMANNOIJ

(SC 8/2023)

Hearing in the Supreme Court Tuesday 10 October 2023

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.

Background

The appellants are the adult children of Ricco Legler and his first wife. Mr Legler met his second wife Maria Formannoj (the first respondent) in 1989 and they married in 2009. In 2008, Mr Legler created the Kaahu Trust (Kaahu) with himself and Maria as the final beneficiaries. The discretionary beneficiaries included Mr Legler, Ms Formannoj and the appellants. Initially, the trustees were Mr Legler, Ms Formannoj and BOI Taxation Trustee Co No 2 Ltd (BOI).

Following Mr Legler's death in 2017 and the subsequent resignation of the BOI as trustee, Ms Formannoj became the sole trustee. She was required by the trust deed to appoint a new trustee. Following legal advice, a new company was created (Kaahu Trustee Ltd) with Ms Formannoj as its director and her and her lawyers as equal shareholders. Kaahu Trustee Ltd became a trustee of Kaahu on the same day that Ms Formannoj resigned her trusteeship.

In March 2020, Kaahu Trustee Ltd excluded the appellants as beneficiaries of Kaahu. It distributed trust funds to Ms Formannoj and appointed her as the beneficiary for whom the trust would be held on vesting day. The appellants challenged the appointment of a single corporate trustee, claiming it was a fraud on a power (done for an improper purpose).

Trust Deed

The relevant clauses of the trust deed state that:

26.1 Unless a corporate body is the sole Trustee:

(a) if at any time there is only one Trustee, no power or discretion ... other than that of appointing a new Trustee, shall be exercised by the surviving Trustee until such time as an additional Trustee has been duly appointed;

(b) the Trustees must always include at least one person who is not a Beneficiary, nor the spouse, parent or child of a Beneficiary or of a Trustee ...

The deed goes on to permit a “properly empowered corporate body” to act as the sole trustee. When the trustee is a corporate body, it “may exercise all the powers and discretions vested in that Trustee ... notwithstanding such exercise may in any way directly or indirectly benefit any Beneficiary who has any interest (contingent or otherwise) in that Trustee whether as director, officer, shareholder or otherwise however”.

Lower Courts

The High Court rejected the appellants’ argument that Ms Formannoij acted to benefit her interests when appointing Kaahu Trustee Ltd. It also rejected the argument that Ms Formannoij sought to take exclusive control of the trust and use the property however she wished, without regard to any additional or independent trustee. Thus, Ms Formannoij did not commit a fraud on a power by appointing a corporate trustee subject to her control.

The majority of the Court of Appeal dismissed the appellants’ appeal. It held that the appointment was neither ultra vires (beyond the terms of the deed) nor a fraud on a power. The minority Judge considered the appointment did not comply with the terms of the deed and that Ms Formannoij had been motivated by an improper purpose.

This appeal

The Supreme Court granted leave to appeal on the question of whether the Court of Appeal was correct to dismiss the appeal.

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 O’Regan	The Hon Justice Miller
--------------------------	----------------------------	-------------------------------------	-------------------------	------------------------

Judges as seen from the public gallery

Counsel

- Ken Legler and Laila Sun Legler Klau (Appellants): *D R Bigio KC and J W H Little*
- Maria Guillaumina Cornelia Johanna Formannoij and Kaahu Trustee Ltd (Respondents): *J D McBride and R C Woods*

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 supremecourt@justice.govt.nz. 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: [\[2022\] NZCA 607](#) (7 December 2022)

Supreme Court leave decision: [\[2023\] NZSC 46](#) (4 May 2023)

