

IN THE SUPREME COURT
OF NEW ZEALAND

SC 32/2023

I TE KŌTI MANA NUI
O AOTEAROA

IN THE MATTER OF **COOPER v PINNEY [2023] NZCA 62**

BETWEEN **RAEWYN PHYLLIS COOPER**
Appellant

AND **MARCUS ROBERT WILLIAM PINNEY**
Respondent

AND **JENNIFER JANE PINNEY and PHILIP JOHN
SMITH as trustees of MRWP FAMILY
TRUST**
Interested parties

CHRONOLOGY

DATED: 20 SEPTEMBER 2023

THIS document is filed by **STEVEN JULIAN ZINDEL**, Solicitor for the abovenamed applicant whose address for service is at the offices of ZINDELS, Barristers & Solicitors, 21 New Street (PO Box 1023), Nelson, phone (03) 548 0039, email steven@zindels.co.nz. Counsel Acting: Steven Zindel

CHRONOLOGY

Date	Event	COA Reference
9 August 1977	<p>Pinney Trust settled</p> <p>Settlor: Bernard Pinney (father of Marcus)</p> <p>Beneficiaries: Marcus, a sibling (Jonathon), and their children</p> <p>Trustees as at November 2015: LA McIntyre, JM Pinney; JBO Acland</p>	201.0346
29 September 2000	<p>Marcus and his then partner, Mia Stafford-Bush sign conditional agreement for sale and purchase of farm at 1925 Whataroa Highway, Te Taho, Whataroa, Westland</p>	301.0364
30 October 2000	<p>Trustees of the Pinney Trust proposed that they would complete the purchase of the farm on the basis that:</p> <ul style="list-style-type: none"> • The Trustees would on-sell the stock and plant to Marcus & Mia's partnership • The Trustees would lend the partnership half the value of stock and plant (\$107,500), with the other half to be borrowed from a bank • Partnership would lease the farm from the Pinney Trust for 5 years at \$24,500 p.a. • Marcus & Mia would need to earn \$15,000 p.a. off-farm income each • After 5 years, the Trustees would consider transferring the farm to another trust of which Marcus is a beneficiary 	301.0380
2 April 2001	<p>Settlement took place as planned</p>	
January 2003	<p>Marcus and Mia separated</p> <p>Pinney Trust advances \$36,223 to Marcus to enable him to clear the partnership's ANZ overdraft, meet other liabilities and buy Mia's interest in the partnership (which owned the stock and plant)</p>	201.0346 para 34

	Trustees emphasise to Marcus the need to earn off-farm income to support living expenses.	
February 2004	Parties meet	
April 2004	Marcus' accountant, Greg Johnston confirms that Marcus needed to earn at least \$15,000 off-farm income per annum	201.0346 para 44
October 2004	Appellant moved in with respondent Start of de facto relationship	
3 December 2004	Greg Johnson confirms farming operation not financially viable in current form, and changes needed	301.0424
2 June 2005	Trustees of the Pinney Trust discussed proposal to resettle the Trust's assets on two trusts for the respondent and his brother, and each of their children and grandchildren	201.0345 para 51
10 June 2005	Lindsay McIntyre wrote to Marcus to inform him of the proposal and to ask him to set up new trust to maintain the assets and facilitate future receipt of inheritances by ensuring that the new trust adhered to the terms of Marcus' father's will, excluded domestic partners and avoid PRA claims	301.0431
26 August 2005	Greg Johnson confirms that trustees of the new trust would be Mr McIntyre, Jane O'Neill (respondent's sister) and the respondent	301.0433
10 November 2005	Tony Sullivan at Hannon & Seddon explains rationale for naming Marcus as a settlor, being in case he may wish to add assets into the Trust at a later date.	301.0435
21 November 2005	Pinney trustees meet to discuss the new arrangements	
1 December 2005	Te Tahoe Deer Park Ltd incorporated	201.0346 para 59
16 December 2005	Deed of Partial Distribution from the Pinney Trust to (future) MRW Pinney Family Trust	301.0437

	<p>Assets to be distributed – half net assets of Pinney Trust comprising:</p> <ul style="list-style-type: none"> • Land and buildings at Te Taho at valuation (book value \$469,669; • Advances to MRW Pinney \$311,120.87 for: <ul style="list-style-type: none"> ○ Livestock & Plant \$173,720.35 ○ Vehicle - \$10,000 ○ Stag - \$5,000 ○ Deer - \$6,050 ○ Truck - \$93,223 ○ Overdraft - \$93.223 ○ House alterations - \$4,808.77 • Marcus's overdrawn current account - \$23,307.23 • One half of Dunrobin Partnership - \$2,091 • Cash - \$216,472 	
20 December 2005	Registered valuation of Te Taho farm land and buildings - \$1,100,000	301.0442
27 January 2006	<p>MRW Pinney Family Trust settled</p> <p>Settlers: LA McIntyre, JM Pinney, JBO Acland, MRW Pinney</p> <p>Trustees: LA McIntyre, JM Pinney, MRW Pinney</p> <p>Beneficiaries: Marcus / his children & grandchildren</p> <p>Sale & purchase agreement for the farm from the Pinney Trust to the MRW Pinney Family Trust for \$1,100,000</p> <p>Deed of Partial Distribution comes into effect</p>	<p>301.0456</p> <p>301.0447</p>
Period ending 30/6/2006	<p><u>Te Taho Deer Park Limited</u></p> <ul style="list-style-type: none"> - Deficit for year (\$250) - Debt to National Bank \$102,344 	305.1372

	<ul style="list-style-type: none"> - Marcus stock & plant introduced \$168,025 - Marcus cash drawings \$118,542 - Marcus current account \$57,954 <p><u>Distribution to MRW Trust</u></p> <p>Cash reserves with National Bank \$206,037</p> <p>Other assets: land & buildings \$1,166,333</p> <p>Trustee funds \$1,340,486</p>	305.0720
2006-February 2007	<p>Renovations at farm to allow a homestay business.</p> <p>\$174,454 expenditure on extensions paid for by the MRW Trust</p>	305.0721, 0722
5 February 2007	<p>MRW Trustees resolve to execute documentation to guarantee loan of \$120,0000 from National Bank to Te Taho Deer Park Ltd, to be secured by mortgage over farm</p>	201.0345 para 65
16 February 2007	<p>ANZ Bank registered mortgage over farm</p>	306.1659
y/e 30/6/2007	<p><u>Te Taho Deer Park Limited</u></p> <ul style="list-style-type: none"> - Deficit for year (\$9,325) - Debt to National Bank (secured over farm) \$107,677 - Marcus cash drawings \$25,930 - Marcus current a/c \$33,001 <p><u>MRW Trust</u></p> <p>Cash reserves with National Bank \$9,678</p>	<p>305.1382</p> <p>305.1389</p> <p>305.1386</p> <p>302.0720</p>
y/e 30/6/2008	<p><u>Te Taho Deer Park Limited</u></p> <ul style="list-style-type: none"> - Deficit for year (\$36,664) - Debt to National Bank (secured over farm) \$147,181 - Marcus cash drawings \$31,224 - Marcus current account \$1,647 	<p>305.1398</p> <p>305.1405</p> <p>305.1402</p> <p>302.0731</p>

	<u>MRW Trust</u> Cash reserves with National Bank \$5,062	
y/e 30/6/2009	<u>Te Taho Deer Park Limited</u> - Deficit for year (\$418) - Debt to National Bank (secured over farm) \$173,219 - Marcus cash drawings \$41,108 - Marcus current a/c (\$26,253) <u>MRW Trust</u> Cash reserves with National Bank \$5,562	305.1418 305.1405 305.1422 302.0742
y/e 30/6/2010	<u>Te Taho Deer Park Limited</u> - Deficit for year before shareholder's salary (\$47,393) - Deficit for year after shareholder's salary (\$47,393) - Debt to National Bank (secured over farm) \$165,707 - Marcus cash drawings \$24,576 - Marcus current a/c (\$27,980) <u>MRW Trust</u> Cash reserves with National Bank \$3,168	305.1440 305.1440 305.1447 305.1444 302.0753
y/e 30/6/2011	<u>Te Taho Deer Park Limited</u> - Surplus for year before shareholder's salary (\$14,105) - Deficit for year after shareholder's salary (\$289) - Debt to National Bank \$172,356 - Marcus cash drawings \$28,490 - Marcus current a/c (\$40,649) <u>MRW Trust</u> Cash reserves with National Bank \$3,255	305.1459 305.1459 305.1466 305.1463 302.0764

y/e 30/6/2012	<u>Te Taho Deer Park Limited</u> <ul style="list-style-type: none"> - Deficit for year before shareholder's salary (\$31,436) - Deficit for year after shareholder's salary (\$39,436) - Debt to National Bank \$191,062 - Marcus cash drawings \$26,288 - Marcus current account (\$68,047) <u>MRW Trust</u> Cash reserves with National Bank \$3,964	305.1479 305.1479 305.1486 305.1483 302.0774
y/e 30/6/2013	<u>Te Taho Deer Park Limited</u> <ul style="list-style-type: none"> - Surplus for year before shareholder's salary \$1,121 - Surplus for year after shareholder's salary \$1,121 - Debt to ANZ Bank (secured over farm) \$212,902 - Marcus cash drawings \$35,568 - Marcus current account (\$108,812) <u>MRW Trust</u> Cash reserves with ANZ Bank \$4,059	305.1500 305.1500 305.1507 305.1504 302.0786
19 April 2014	End of de facto relationship. Company owns plant and equipment, jetboat and hunting gear. Trust owns furniture and fittings in house (beds, sofas, TV curtains etc)	305.1530 302.0805
9 May 2014	Ms O'Neill and Mr McIntyre ceased to be shareholders of Te Taho Deer Park Ltd	
30 June 2014	Respondent's shareholder current account (\$128,962) at balance date. Company owed \$188,071 to the MRW Pinney Family Trust	
	<u>Te Taho Deer Park Limited</u> <ul style="list-style-type: none"> - Surplus for year before shareholder's salary \$61,707 	305.1521

	<ul style="list-style-type: none"> - Surplus for year after shareholder's salary \$31,646 <p>305.1521</p> <p>(achieved by sale of capital stock)</p> <p>305.1519</p> <ul style="list-style-type: none"> - Debt to ANZ Bank (secured over farm) \$132,908 <p>305.1528</p> <ul style="list-style-type: none"> - Marcus cash drawings \$44,310 - Marcus current account (\$159,023) <p>305.1525</p> <p><u>MRW Trust</u></p> <p>Cash reserves with ANZ Bank \$4,150</p> <p>302.0803</p>	
September 2014	Proceedings filed	
2016	Mr McIntyre died	
30 June 2017	<p>Debt to ANZ Bank (secured over farm)</p> <p>ANZ 00 Account \$120,674</p> <p>ANZ Term Loans \$126,034</p> <p>Total debt: \$246,708</p>	305.1585
12 November 2018	Colliers valuation of farm \$1,545,000, including \$330,000 for dwelling and curtilage	306.1596
20 November 2018	Family Court hearing	
5 March 2019	Decision of Judge Grace in Greymouth Family Court in appellant's favour	
29 May 2020	Decision of Clark J in respondent's favour (judgment reissued on 4 June 2020 to deal with technical issues)	
5 March 2021	Decision of Clark J declining leave to appellant to appeal	
9 August 2021	Decision of Court of Appeal to grant leave to appeal	
13 March 2023	Decision of Court of Appeal to dismiss appeal by majority	
3 July 2023	This Court grants leave to appeal	

We certify that the submissions do not contain any information that is suppressed and the submissions are suitable for publication.