

**IN THE SUPREME COURT  
OF NEW ZEALAND**

**SC 32 / 2023**

**I TE KŌTI MANA NUI  
O AOTEAROA**

**BETWEEN**

**RAEWYN PHYLLIS COOPER**

Appellant

**AND**

**MARCUS ROBERT WILLIAM PINNEY**

Respondent

**AND**

**JENNIFER JANE PINNEY AND PHILIP JOHN SMITH**

as trustees of the MRW Pinney Family Trust

Interested parties

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**RESPONDENT'S OUTLINE OF ORAL ARGUMENT**

Dated this 31st day of October 2023

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<p>in the world or to keep it for yourself – unlimited objects</p>	
<p>17. Mr C's powers were "rights" that were "interests" under PRA</p> <ul style="list-style-type: none"> <li>a. Dispositive powers of sole trustee (cl 6.1(a), 8.1 and 10)</li> <li>b. Power to add and remove beneficiaries (cl 7.1)</li> <li>c. Fiduciary obligations excluded, including core obligation to consider the interests of all beneficiaries (cl 11.1)</li> <li>d. Beneficiaries' rights not a constraint on power; ability to enforce the trust was limited</li> </ul>	<p><i>Clayton</i> [52]-[68]</p>
<p>18. <i>Clayton</i> is not about existence of trustee discretion to favour one beneficiary, or "de facto control" of trust property</p>	
<p>19. Marcus does not have a GPA over the Trust's property:</p> <ul style="list-style-type: none"> <li>a. Dispositive powers are special (not general) powers <ul style="list-style-type: none"> <li>i. Limited objects – discr. beneficiaries (cl 1)</li> <li>ii. No ability to add or remove beneficiaries (cl 12)</li> <li>iii. This was deliberate – Mr McIntyre's evidence</li> </ul> </li> <li>b. Dispositive powers belong to trustees, not Marcus <ul style="list-style-type: none"> <li>i. Trustees subject to duties in exercising powers</li> <li>ii. Duty to consider interests of beneficiaries applies</li> </ul> </li> <li>c. Beneficiaries have rights enforceable in the Courts</li> </ul>	<p>[301.0456]</p> <p>[201.356] at [53]</p> <p>Trusts Act, ss 21-27</p>
<p>20. Above points determinative, but Marcus cannot exercise his POAT to circumvent the 2-trustee requirement (cl 15):</p> <ul style="list-style-type: none"> <li>a. Trustees once appointed subject to fiduciary duties</li> <li>b. POAT is a fiduciary power that must be exercised in interests of the beneficiaries</li> <li>c. Exercise of POAT to "work around" the trust deed would be ultra vires the implied terms of power (scope rule)</li> <li>d. If intra vires, it would be an improper purpose</li> </ul>	<p>[301.0456]</p> <p>HC at [10]</p> <p>[301.0431]</p> <p><i>Grand View</i> [51]</p> <p><i>Brkic</i> at [35]</p>

<u>Analysis of Raewyn's Claims under the PRA (Mr van Bohemen)</u>	Subs [104]-[133]
21. If Marcus's powers are property, they are his separate property <sup>1</sup>	
22. Value of powers = value of net assets of Trust	<i>Clayton</i> [99]
<u>Section 9A</u>	
23. Claim limited to net increase in value of Trust assets: \$0	Schedule A
24. Miller J analysis on which Raewyn relies is wrong because:	
a. Net assets of Trust decreased over relationship	
b. Based on increase of 1 asset only	
c. Ignores debt	S20D
d. Includes chattels which HC found were not RP	HC [129]
25. 9A(1) – No RP to improve Trust's assets: financial failure; overdrawn shareholder's current a/c; company operated at loss	(cf FC at [77]) HC [115]-[117]
26. 9A(2) – Raewyn bears onus of proof	
27. Trust expenditure/market forces caused incr. in value of farm	<i>Nation</i> [70]
28. That increase is credited as contribution by Marcus	[302.0721]
29. At best, Raewyn's contribution 10% (\$44,500); Less 10% increase in Trust's debt (-\$13,290); Net award: \$44,500 – \$13,290 = \$31,290	[306.1596] at 1633 and 1637 <i>Rose</i> [47]
30. Any award must be offset against Raewyn's share of relationship debt: Net result: -\$56,834.91 + \$31,290 = -\$25,544.91	S20D
<u>Section 17</u>	
31. Definition of sustenance / No sustenance of Trust property	Appendix
32. Any award must be offset against relationship debt	S20D
33. Appeal should be dismissed	

I certify that this outline does not contain any information that is suppressed and that the outline is suitable for publication.

31 October 2023

<sup>1</sup> Conceded, see App's subs [78]-[84]

## Property Schedule: Cooper v Pinney

## APPENDIX

Assets & Values as per para [167] HC Judgment

### RELATIONSHIP PROPERTY **-\$78,067.81**

<u>ASSETS</u>		<u>Raewyn</u>	<u>Marcus</u>
Cash at separation	\$	3,000.00	
Ms Cooper's bank account at separation	\$	297.00	
Marcus's Westpac account			\$ 703.19
Subaru Legacy	\$	20,000.00	
Mr Pinney's current account balance with the MRWT			\$ 32,390.00
<u>LIABILITIES</u>			
UDC debt for car	-\$	5,496.00	
Te Taho Deer Park Ltd shareholders' current account debt			-\$ 128,962.00
Net value of property retained by each	\$	17,801.00	-\$ 95,868.81
<u>ADJUSTMENTS</u>			
Total property pool	-\$	78,067.81	
Half share	-\$	39,033.91	
Raewyn has retained property worth	\$	17,801.00	
Marcus has retained property worth	-\$	95,868.81	
To achieve equal sharing, Raewyn pays Marcus	\$	56,834.91	

No increase in value of Trust assets during the relationship, therefore s9A does not apply