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

RESPONDENT'S OUTLINE OF ORAL ARGUMENT

Dated this 31st day of October 2023

Instructing Solicitor: Counsel for the Respondent:

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Introduction (Mr van Bohemen)	Subs at [1]-[7]
The appeal is a claim against trust property. The claim is beyond the ambit of the PRA	
2. PRA is about the division of relationship property	
3. Marcus does not have powers which are "property" under PRA	
4. Even if the Court determines that Marcus's powers are property,	
there is no basis for an award of money to Raewyn under s 9A	
5. Relevance of Tikanga Māori	Subc [124]
a. Procedural issues / No evidence	Subs [134]-
b. Court cannot apply tikanga in a vacuum	
Factual Analysis (Mr van Bohemen)	Subs at [8]-[22]
6. 2003/4: Pinney Trustees concerned about viability of Te Taho	Chronology
7. 2005: Plans to part-resettle the P Trust as per B Pinney's wishes	201.0345
8. MRW Trust's assets worth \$1,652,992	301.0437
9. At the start: Raewyn had no assets, Marcus had assets and debt	
10. Te Taho was uneconomic venture: no profit. Parties financed	HC [16]
their life-style by drawing / over-drawing Marcus's current a/c. Co. Equity at end of relationship: (\$90,991)	305.1528
11. As matters stand, the relationship property pool is -\$78,067.81	
12. To achieve an equal division Raewyn owes Marcus \$56,834.91	HC [167], [172]
13. 2018 (DoH) Trust assets worth \$1,572,758 (or \$1,384,589)	Appendix
14. Pinney facts, not <i>Clayton</i> facts - 3 distinguishing features: (1)	Schedule A
Trust assets derived from Pinney Trust, not Marcus; (2) Pinney	
Trustees who settled property into the Trust do not control it and	
Marcus is nominal settlor only; (3) Relationship a financial failure	
Why Marcus's Powers are not "Property" as per Clayton (Dr Powell)	Subs [56]-[103]
15. In combination, Mr C had powers and entitlements that	
amounted to a GPA over the VRPT's property	
16. GPA is the power to appoint (give away) property to anyone	

in the world or to keep it for yourself - unlimited objects 17. Mr C's powers were "rights" that were "interests" under PRA Clayton [52]-[68] Dispositive powers of sole trustee (cl 6.1(a), 8.1 and 10) b. Power to add and remove beneficiaries (cl 7.1) Fiduciary obligations excluded, including core obligation to consider the interests of all beneficiaries (cl 11.1) Beneficiaries' rights not a constraint on power; ability to enforce the trust was limited 18. Clayton is not about existence of trustee discretion to favour one beneficiary, or "de facto control" of trust property 19. Marcus does not have a GPA over the Trust's property: [301.0456] a. Dispositive powers are special (not general) powers i. Limited objects – discr. beneficiaries (cl 1) ii. No ability to add or remove beneficiaries (cl 12) [201.356] at iii. This was deliberate – Mr McIntyre's evidence [53] b. Dispositive powers belong to trustees, not Marcus Trusts Act, ss i. Trustees subject to duties in exercising powers 21-27 ii. Duty to consider interests of beneficiaries applies c. Beneficiaries have rights enforceable in the Courts 20. Above points determinative, but Marcus cannot exercise his [301.0456] POAT to circumvent the 2-trustee requirement (cl 15): a. Trustees once appointed subject to fiduciary duties b. POAT is a fiduciary power that must be exercised in HC at [10] interests of the beneficiaries [301.0431] c. Exercise of POAT to "work around" the trust deed would Grand View [51] be ultra vires the implied terms of power (scope rule) Brkic at [35] d. If intra vires, it would be an improper purpose

Analysis of Raewyn's Claims under the PRA (Mr van Bohemen)	Subs [104]-[133]
	3ubs [104]-[133]
21. If Marcus's powers are property, they are his separate property ¹	
22. Value of powers = value of net assets of Trust	Clayton [99]
Section 9A	
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;	(cf FC at [77])
overdrawn shareholder's current a/c; company operated at loss	HC [115]-[117]
26. 9A(2) – Raewyn bears onus of proof	
27. Trust expenditure/market forces caused incr. in value of farm	Nation [70]
28. That increase is credited as contribution by Marcus	[302.0721]
29. At best, Raewyn's contribution 10% (\$44,500); Less 10%	[306.1596] at
increase in Trust's debt (-\$13,290); Net award: \$44,500 -	1633 and 1637
\$13,290 = \$31,290	Rose [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
Section 17	
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	
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I certify that this outline does not contain any information that is suppressed and that the outline is suitable for publication.

31 October 2023

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¹ 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

ASSETS		Raewyn	Marcus
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
LIABILITIES			
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
ADJUSTMENTS			
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