

IN THE SUPREME COURT OF NEW ZEALAND

SC 113/2017
[2017] NZSC 202

BETWEEN RAPATA (ROBERT) LEEF AS
REPRESENTATIVE OF NGĀTI TAKA
Applicant

AND COLIN BIDOIS AS REPRESENTATIVE
OF PIRIRĀKAU
First Respondent

JASON AKE, TE PIO KAWE, LANCE
WAAKA, ROBERT URWIN, KIMIORA
RAWIRI, PHILIP HIKAIRO,
STEPHANIE TAIAPA AND MIKERE
WAIRUA AS TRUSTEES OF NGĀ
HAPŪ O NGĀTI RANGINUI
SETTLEMENT TRUST
Second Respondents

KIMIORA RAWIRI, TE PIO KAWE, TE
RURUANGA TE KEETI (LOU GATES),
PIRIPI WINIATA, LANCE WAAKA
AND GEORGE MATUA EVANS AS
REPRESENTATIVES OF THE OTHER
HAPŪ OF NGĀTI RANGINUI
Third Respondents

Court: Elias CJ, William Young and O'Regan JJ

Counsel: S P Bryers for Applicant
F M R Cooke QC and M J Sharp for First Respondent

Judgment: 21 December 2017

JUDGMENT OF THE COURT

- A** **The application for leave to appeal is dismissed.**
- B** **The applicant is to pay to the first respondent costs of
\$2,500.**
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REASONS

[1] The proposed appeal concerns a dispute between Pirirākau and Ngāti Taka, two of the eight hapū of Ngāti Ranginui in connection with the proceeds of a settlement between Ngāti Ranginui and the Crown. In the course of negotiations leading to the settlement, it became apparent that allocation of some of the proceeds would depend on which hapū had mana whenua over particular areas of land between 6 February 1840 and May 1865. Ahead of settlement, the hapū entered into what was known as the Mana Whenua Process Agreement which provided a three stage process for resolving such disputes. Under the Agreement these processes could be invoked only after settlement.

[2] Prior to settlement being concluded, Pirirākau and Ngāti Taka sought to utilise the processes provided for under the Agreement but were advised that this was not possible (as the Agreement applied only after settlement). Accordingly, they entered into an arbitration agreement under which they submitted to arbitration the issues between them as to who had mana whenua at the specified times in respect of particular areas of land. It was agreed that the decision would be “final and binding”. In due course, the arbitrators found in favour of Pirirākau.

[3] The Deed of Trust of Ngā Hapū o Ngāti Ranginui Settlement Trust which was subsequently entered into allocated the proceeds of settlement on the basis of the arbitrators’ award and this Settlement Trust Deed was signed on behalf of all hapū (including Ngāti Taka) and approved overwhelmingly in an iwi wide poll. Ngāti Taka had earlier objected to the way proceeds would be allocated under the Settlement Trust Deed and indicated an intention to challenge the award but its approval of the Settlement Trust Deed was not conditional.

[4] After the settlement was entered into Ngāti Taka challenged the award. This challenge was successful in the High Court but,¹ on appeal, the Court of Appeal reversed the decision of the High Court and upheld the validity of the arbitrators’ award.² In the course of its judgment, the Court of Appeal noted that the Mana

¹ *Leef v Bidois* [2013] NZHC 1349.

² *Bidois v Leef* [2015] NZCA 176, [2015] 3 NZLR 474.

Whenua Process Agreement was no longer operative.³ An application for leave to appeal to this Court was declined.⁴

[5] Ngāti Taka then issued further proceedings alleging that the arbitrators' award did not determine who should get the proceeds of settlement and that it was now necessary for the parties to follow the Mana Whenua Process Agreement. This argument rested on the contention that under that Agreement distribution of the settlement proceeds was not completely controlled by the mana whenua determination but rather that room was left for a discretionary adjustment. Once again Ngāti Taka was successful in the High Court⁵ but unsuccessful in the Court of Appeal, with the latter Court concluding that:⁶

- (a) The arbitration agreement had replaced the Mana Whenua Process Agreement procedures.
- (b) Ngāti Taka had accepted the Ngāti Ranginui Settlement Trust Deed which divided up the proceeds of settlement on the basis of the arbitration award. Those allocations were final and binding on all hapū.
- (c) Further, and in any event, the Mana Whenua Process Agreement did not provide for discretionary adjustment of the kind suggested by Ngāti Taka.

[6] The dispute between the parties concerns three very particular agreements, the Mana Whenua Process Agreement, the arbitration agreement and the Ngāti Ranginui Settlement Trust Deed. The proposed appeal does not raise any question of

³ At [53].

⁴ *Leef v Bidois* [2015] NZSC 128.

⁵ *Leef v Bidois* [2017] NZHC 36 (Heath J).

⁶ *Bidois v Leef* [2017] NZCA 437 (Harrison, Winkelmann and Gilbert JJ) at [29].

public or general importance. And, having reviewed carefully the judgment of the Court of Appeal, we see no appearance of a miscarriage of justice. Accordingly, the application for leave to appeal is dismissed.

Solicitors:
Martelli McKegg, Auckland for Applicant
Holland Beckett, Tauranga for Respondent