IN THE HIGH COURT OF NEW ZEALAND
INVERCARGILL REGISTRY

CIV-2014-425-000102
[2016] NZHC 2048

UNDER	the Judicature Amendment Act 1972
IN THE MATTER	of Judicial Review and related tortious claims
BETWEEN	TONI COLIN REIHANA Applicant
AND	RAKIURA TITI COMMITTEE First Respondent
AND	MARAMA COOPER Second Respondent
AND	STEWART BULL Third Respondent

CIV-2016-425-000015
CIV-2016-425-000016

BETWEEN	TONI COLIN REIHANA Applicant
AND	RAKIURA TITI COMMITTEE First Respondent
AND	STEWART BULL Third Respondent
AND	RON RANUI BULL Fourth Respondent
AND	SONIA RAHITI Fifth Respondent

Hearing: 16 August 2016

Appearances: T C Reihana - Applicant in person
C M Lenihan - Counsel for First Respondent
R E Brown - Counsel for Te Runanga o Ngai Tahu (Intervener)

Judgment: 31 August 2016

JUDGMENT OF GENDALL J

Introduction

[1] The applicant, Mr Reihana, has filed three sets of proceedings in which he challenges the conduct of the first respondent, the Rakiura Titi Committee ("the Committee"), in relation to the Titi (Muttonbird) Island Regulations 1978 ("the 1978 Regulations").

[2] The Committee has sought to strike out or alternatively to stay these three proceedings pursuant to r 15.1 of the High Court Rules.

[3] As I understand the position, Mr Reihana has indicated a wish to join Te Runanga O Ngai Tahu ("Te Runanga") as a respondent to the three sets of proceedings and has provided copies of his pleadings to Te Runanga.

[4] On 1 August 2016, this Court noted the hearing of the stay/strike out application concerning the three proceedings was issued prior to any suggestion that Te Runanga would be joined as a party but that in any event it was appropriate for Te Runanga to act as an intervener on the hearing of this application. This has occurred, on the basis that Te Runanga could provide assistance to the Court on aspects such as the history, purpose and scope of the Regulations and perhaps the approach the Court might take to both the present stay and strike out applications. For this the Court is grateful, and records its thanks for the considerable assistance Te Runanga has been in the resolution of this application.

History of the Titi Islands and the Regulations

[5] First, it is useful in considering this matter generally, to provide some background to the governance history of the Titi Islands (which have been the subject of regulations developed in consultation with the owners of the Islands, since 1912), and which are the subject of this proceeding. With gratitude towards Ms

Brown, counsel for Te Runanga, the intervener in the proceeding, I adopt the regulatory history of the Titi Islands as set out in her submissions.

[6] To the south of the South Island of New Zealand are Rakiura (Stewart Island) and adjacent islands famous for mutton-birding known as the Titi Islands. On 29 May 1864, a Deed of Cession for Rakiura was signed at Awarua. This Deed transferred to the Crown Rakiura and the adjacent Titi Islands, and it provided for 21 named Titi Islands to be reserved for Ngai Tahu/Ngati Mamoe. A small number of people were granted beneficial interests in those 21 islands which came to be known as the Beneficial Titi Islands, which are the subject of this proceeding.

[7] The Special Powers and Contracts Act 1886 was passed and gave the Governor of New Zealand power to protect the islands and birds from trespassers, and to secure them for Maori.

[8] Later, the Land Act Regulations 1912 ("the 1912 Regulations") provided that Rakiura Maori with a beneficial interest in a particular island ("Beneficial Owners") did not require a permit to enter the island in question in which they had a beneficial interest. However, all other Rakiura Maori[1] who wanted to enter an island at the time were required to obtain a written permit from the Commissioner of Crown Lands for the Southland Land District ("the Commissioner"). The 1912 Regulations also gave Rakiura Maori the power to appoint "one of their number" to be a supervisor for a particular Titi Island or part of it ("Supervisor"). The Supervisor was responsible for allotting manus (bird catching areas), supervising conduct on the area under their supervision and reporting any infringement of the regulations to the Commissioner. The Commissioner or any Crown Lands Ranger was given power to lay an information against any person who committed a breach of the 1912 Regulations.

[9] The Land Act Regulations 1949 (Amendment No 3) of 1962 ("the 1962 Regulations") followed. They made further amendments to the administration of both the Beneficial Titi Islands and to the other islands in the group – called the

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[1] The term "Rakiura Maori" it seems means any person who is a member of the Ngai Tahu tribe or Ngati Mamoe tribe and is a descendant of the original owners of Rakiura/ Stewart Island: Ngai Tahu Claims Settlement Act 1998, s 333.

Crown Titi Islands (as they were then known). Beneficial Owners still did not require a permit to enter land on which they had a beneficial interest. However, other Rakiura Maori who wanted to access a Beneficial Titi Island required the consent of the majority of Beneficial Owners who had a beneficial interest in that particular island. The role of the Supervisor continued. If a dispute developed between Supervisors concerning the allotting of manus or any other dispute arising out of the regulations, the Commissioner was to call a meeting of the Supervisors or other parties concerned to settle the dispute. If the dispute was not settled, the Commissioner was to make a decision which was to be final and binding on all parties.

1978 Regulations

[10] The Titi (Muttonbird) Islands Regulations 1978 (which, as I have noted earlier, I will refer to as "the 1978 Regulations") followed. These regulations continued to provide that Beneficial Owners did not require a permit to enter land on which they had a beneficial interest but that no other Rakiura Maori who wanted to access a Beneficial Titi Island could do so without the consent of the majority of Beneficial Owners who had a beneficial interest in that particular island. The role of the Supervisor continued, as did the role of the Commissioner in resolving any disputes. However, the 1978 Regulations introduced the Rakiura Titi Committee (which, as I have noted earlier, I will refer to as "the Committee") which was elected annually. One member of the Committee was to be a Rakiura Maori nominated by the Ngai Tahu Maori Trust Board. The Committee's role was to inquire into and make recommendations to the Commissioner on any matter relating to the land in question that he may refer to it, and upon such other matters as it thought fit. If any beneficiary or other person authorised to enter onto the land in question was not satisfied with a decision of the Commissioner, that person could ask the Commissioner to reconsider the decision. After consultation with the Committee, the Commissioner was then required to reconsider that decision.

[11] Responsibility for the administration of the 1978 Regulations was transferred to the Department of Conservation in 1987 pursuant to s 65(6) of the Conservation

Act 1987. At that point the Director General of Conservation ("the Director General") took over the role previously carried out by the Commissioner.

2005 and 2007 Amendments

[12] The 1978 Regulations were the subject of amendment in both 2005 and 2007. The 2007 amendments it seems had the most significant effect in terms of decision-making under the 1978 Regulations. Following all those amendments, the 1978 Regulations now provide:

(a) Regulation 3(2) was amended so that the Committee can approve people entering on the islands earlier than 15 March in any year, whereas previously this was the role of the Director General, on the recommendation of the Committee.

(b) Regulation 3(2A) was inserted which allows the Committee to issue a permit to any person and to impose conditions on that permit.

(c) Regulation 5, which deals with buildings on an island in question, was changed so that various roles carried out by the Director General are now carried out by the Committee.

(d) Regulation 6 was amended in two ways. First, it was amended so that Supervisors are now appointed by the Committee, rather than the Director General.

(e) And secondly, Regulation 6 was amended so that any disputes between Supervisors concerning the allotting of manus or any other dispute arising out of the regulations is now to be referred to the Committee, which is to call a meeting to settle the dispute and, failing agreement between the Supervisors or parties, the Committee is to make a decision which shall be final and binding on all parties.

(f) Regulation 7 was amended so that it is the Committee that calls the annual meeting of all interested Rakiura Maori and their respective

spouses. The Committee is also empowered, at any time to call a meeting of all Supervisors.

(g) Regulation 9 was amended to allow for any beneficiary who is dissatisfied with a decision of the Committee to apply, in writing to the Committee, for the matter to be referred to an independent decision maker for resolution. This regulation also contains detailed provisions regarding the time within which the Committee must deal with any such application and the process to be followed.

[13] The 1978 Regulations have been the subject of a number of other proceedings before this Court and the Maori Land Court. Of relevance to the present proceeding, in 1996 the Maori Appellate Court made the following finding in relation to the 1978 Regulations prior to their amendment in 2007:[2]

> The Titi (Muttonbird) Island Regulations 1978 lay down a comprehensive set of rules for the management and control of birding activities on the islands, and for relevant conservation purposes to ensure the survival of the birds on the islands.
>
> …
>
> We agree with the finding of Deputy Chief Judge Smith that the Titi (Muttonbird) Island Regulations of 1978 contain a complete code for the control of muttonbirding on the islands. When a beneficiary is dissatisfied with the final decision of the Director-General or of an officer acting with his delegated authority then proceedings in the ordinary Courts are available to seek a review of the Director-General's decision.

[14] To similar effect, a few years later in a High Court decision, Panckhurst J stated:[3]

> It follows from the very scheme of the regulations that those who become Supervisors and Committee members are necessarily interested parties, that is are persons who come from the requisite tribe and who have an interest in muttonbirding. It is incumbent upon those who have an administrative role that they are to promote rangatiratunga wherever possible. In keeping with this the Director General was described as a "decision maker of last resort". That I think was an apt description of his role.

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2 *In the matter of an appeal by Toni Colin Reihana,* Maori Appellate Court, Te Waipounamu District, Appeal 1995/7, 5 September 1996 at 154.

3 *Reihana v Christchurch Maori Land Court* HC Auckland CP94/00, 28 February 2001 at [9].

[15] However, up to the present, as I understand the position, Regulation 9 specifically has not been subject to any prior decisions.

[16] From both the history of the Regulations and the decisions referred to above, it is clear the 1978 Regulations contain "a complete code" for the control of muttonbirding on the Titi Islands. The 1978 Regulations set out who is responsible for making various decisions and, since the 2007 amendments, they have allowed for any beneficiary who is dissatisfied with a decision of the Committee to apply for the matter to be referred to an independent decision maker.

The present 1978 Regulations

[17] Relevant to the current proceedings are the specific provisions of regulations 6 and 9 of the 1978 Regulations. Regulation 6 provides:

> **6 Supervisors**
>
> (1) The Rakiura Maoris frequenting any island forming part of the said land or any part of any such island may at the annual meeting held in accordance with regulation 7(1) nominate one of their number, who, after appointment by the Committee, shall be the Supervisor for the particular island or part of an island. The Supervisor shall be responsible for ensuring a fair and equitable distribution of the privileges, opportunities, and rights under the regulations of all persons authorised to enter the island or part of an island. In addition to any other powers prescribed in these regulations, the Supervisor shall have power to call meetings of all beneficiaries on their island at the time for the purpose of approving sites for buildings and allotting manus and generally supervise the conduct of birding operations on the area under his supervision. He shall be required to report to the Committee any infringement of these regulations. Failing the nomination of a Supervisor for any area, the Committee may make the appointment.
>
> (2) If there is any dispute between Supervisors concerning the allotting of manus or any other dispute arising out of these regulations, the dispute shall be referred to the Committee who shall call a meeting of the Supervisors or other parties concerned to settle the dispute as soon as possible thereafter. Failing agreement being reached by the Supervisors or parties, or if they do not attend the meeting so called, the Committee shall make the decision, which shall be final and binding on all parties.

[18] As I will discuss below, the relevance of Regulation 6 here involves Mr Reihana's present complaint that the Committee has acted improperly following its refusal to appoint him as a Supervisor.

[19] Regulation 9 provides:

> **9 Referral to independent decision maker**
>
> (1) A beneficiary (an *applicant*) who is dissatisfied with a decision of the Committee may apply, in writing to the Committee, for the matter to be referred to an independent decision maker for resolution.
>
> (2) The Committee must,—
>
> (a) within 10 working days after receipt of an application under subclause (1), notify any other parties directly affected by the decision to which the application relates (the *other parties*); and
>
> (b) within 15 working days after—
>
> (i) receipt of the application, attempt to reach an agreement under subclause (3)(a)(i)(A) if no other parties are involved; or
>
> (ii) giving notification to the other parties, attempt to facilitate an agreement under subclause (3)(a)(i)(B) if any other parties are involved.
>
> (3) The person to be appointed as independent decision maker—
>
> (a) must—
>
> (i) be agreed on—
>
> (A) by the Committee and the applicant if no other parties are involved; or
>
> (B) by the applicant and the other parties if any other parties are involved; and
>
> (ii) be appointed by the Committee; but
>
> (b) may be decided on, and appointed, by the President of the Arbitrators' and Mediators' Institute of New Zealand Incorporated if—
>
> (i) agreement has not been reached under subclause (3)(a); and

(ii) the applicant has, within 15 working days after the expiry of the time specified in subclause (2)(b), made an appropriate written request to the President.

(4) The procedures for resolution may—

(a) be agreed on by the applicant and the other parties; or

(b) be decided on by the independent decision maker, if agreement has not been reached under paragraph (a).

(5) The independent decision maker must attempt to resolve the matter by mediation.

(6) However, if the independent decision maker believes that mediation has failed, or will fail, to resolve the matter, he or she may resolve the matter in any way he or she considers appropriate.

(7) Nothing in this regulation prevents more than 1 independent decision maker being appointed in relation to a particular matter and, if more than 1 independent decision maker is appointed, this regulation applies with all necessary modifications.

[20] I have already noted that the 1978 Regulations were intended to be a code for the governance of the Titi Islands. Among the purposes of the regulations in setting out a regulatory procedure to resolve internal disputes, was the wish to preserve the autonomy of the governing body and to reduce the cost of administration and litigation.

The three proceedings brought by Mr Reihana

[21] Having considered the regulatory history of the proceeding, I briefly summarise the three proceedings brought by Mr Reihana. The applicant's pleadings are lengthy and, in part, somewhat difficult to follow. Nevertheless, the statements of claim with respect to each of the proceedings relate generally to matters I now outline:

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[22] As I understand the position, it appears that this proceeding relates to a time when Mr Reihana was himself a supervisor for one of the Titi Islands, Hinekuha. At that time Mr Reihana requested the Committee to make a decision in relation to banning a beneficiary from the island. Mr Reihana sought the Committee's support in his position as Supervisor and a decision to that effect.

[23] Mr Reihana, it seems, also advised that should the Committee decline jurisdiction in this case or decide that it was not prepared to back his banning attempt and thus the Committee reached an unfavourable decision on his request, Mr Reihana would instigate the process under Regulation 9.

[24] In response, the Committee decided in fact that it did not have jurisdiction to ban a whanau member from his/her beneficial right on the Titi Island in question, because there was nothing in the 1978 Regulations to authorise this. The Committee recommended that Mr Reihana attempt to resolve the issue with the individual whanau directly, and if unsuccessful, that he come back to the Committee to mediate.

[25] Then, as I understand it, Mr Reihana says that in March 2013 he advised the Committee that the matter was before an independent decision maker. The Committee however asserts now that it never found out the outcome or indeed heard from the decision maker.

[26] It appears Mr Reihana decided at that point that, despite his earlier indication, he wasn't going through with the Regulation 9 procedure of appointing an independent decision maker. Almost a year went by without any further correspondence between Mr Reihana and the Committee. Then, perhaps unexpectedly to some extent, Mr Reihana filed a Supervisor's report. In October 2014 the Committee invited Mr Reihana and the other whanau members in dispute to attend a meeting. Mr Reihana, it appears, agreed to attend but later sought a deferral of the meeting until 4 November 2014.

[27] In the meantime in October 2014, however, without notice Mr Reihana advised that he was bringing this proceeding in the High Court challenging the Committee's decision not to support him in banning the beneficiary. He then served it on the Committee and other individual committee members. The planned 4 November 2014 meeting did not take place.

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[28] As best I can tell from Mr Reihana's statement of claim, this proceeding makes reference to two different complaints against the Committee. The first

complaint concerns an application by Mr Reihana to take two non-Rakiura Maori builders to one of the Titi Islands, Taukihepa Island. The application was considered and then declined by the Committee on the grounds that this permit related to a building project at a site on Taukihepa Island involving heavily disputed boundary and building site issues contested between Mr Reihana and other beneficiaries of the Islands for some time.

[29] Mr Reihana's second complaint in this proceeding refers to a failure to appoint him as a Supervisor for one of the Titi Islands in question. During the election of Supervisors generally, several written nominations were apparently received prior to the Annual General Meeting ("AGM") of the Committee. One of these was from Mr Reihana. However, it seems the parties who had nominated him for this Supervisor role were not present on the day of the AGM. The Committee contended that Regulation 7(1)(b) of the 1978 Regulations required the Rakiura Maori who were involved to be actually present at the AGM in order to nominate supervisors under Regulation 6(1), and that this had not occurred here.

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[30] This proceeding involves an allegation by Mr Reihana that four buildings were "unlawfully erected" without authority on Taukihepa Island by members of his whanau. On 26 May 2015, Mr Reihana wrote an email to the Committee, requesting "pluck house" buildings on Taukihepa Island be removed. The Committee then discussed this matter and dismissed the claim on the basis that there was no clear breach of the 1978 Regulations as none of the structures in question were considered to be "a house, whare or other building" under the 1978 Regulations and no authority existed therefore to have them removed. It is this decision which Mr Reihana challenges in this particular proceeding.

[31] The present application is one brought by the Committee to strike out or stay all these proceedings. Before considering the application itself, I will briefly set out the law relating to applications of this type.

Law

Strike Out Application

[32] Rule 15.1 of the High Court Rules sets out the requirements for the Court to strike out all or part of a plaintiff's proceeding, and provides:[4]

> **15.1 Dismissing or staying all or part of proceeding**
>
> (1) The court may strike out all or part of a pleading if it—
>
> (a) discloses no reasonably arguable cause of action, defence, or case appropriate to the nature of the pleading; or
>
> (b) is likely to cause prejudice or delay; or
>
> (c) is frivolous or vexatious; or
>
> (d) is otherwise an abuse of the process of the court.
>
> (2) If the court strikes out a statement of claim or a counterclaim under subclause (1), it may by the same or a subsequent order dismiss the proceeding or the counterclaim.
>
> (3) Instead of striking out all or part of a pleading under subclause (1), the court may stay all or part of the proceeding on such conditions as are considered just.
>
> (4) This rule does not affect the court's inherent jurisdiction.

[33] The established criteria for striking out was summarised by the Court of Appeal in *Attorney General v Prince* as follows:[5]

> (a) Pleaded facts, whether or not admitted, are assumed to be true.
>
> (b) The cause of action or defence must be clearly untenable.
>
> (c) The jurisdiction is to be exercised sparingly, and only in clear cases.
>
> (d) The jurisdiction is not excluded by the need to decide difficult questions of law, requiring extensive argument.

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4 High Court Rules, r 15.1.

5 *Attorney General v Prince* [1998] 1 NZLR 262 (CA). This was endorsed by the Supreme Court in *Couch v Attorney General* [2008] NZSC 45.

(e) The court should be particularly slow to strike out a claim in any developing area of law.

[34] The principles set out in *Attorney General v Prince* were also recently reaffirmed by the Supreme Court in *Carter Holt Harvey v Minister of Education.*[6] And it is clear too that the same criteria apply to an application to strike out a judicial review proceeding.[7]

Stay application

[35] The High Court also has jurisdiction to stay all or part of a proceeding. The Court's jurisdiction is based upon rr 15.1(3) of the High Court rules noted at [32] above. This confers on the Court a jurisdiction in staying a proceeding to make orders "on such conditions as are considered just".

[36] In addressing this rule, *McGechan on Procedure* notes that a common ground for the courts to stay a proceeding arises when an alternative method of dispute resolution has been provided for. The text explains:[8]

> (2) *Pending other agreed methods of dispute resolution*
>
> Courts have stayed proceedings to enforce a previously agreed alternative method of resolving the dispute. Examples are:
>
> (a) Agreement to refer any dispute to a panel of three experts for settlement.[9]
>
> (b) Contractual agreement to try to conciliate differences.[10]
>
> (c) Agreement to mediate.[11]

[37] The case law on the availability of judicial review in circumstances where an applicant has not exhausted the statutory appellate process requires the Court to determine:

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6 *Carter Holt Harvey Ltd v Ministry of Education* [2016] NZSC 95 at [10].
7 *Southern Ocean Trawlers Ltd v Director General of Agriculture and Fisheries* [1993] 2 NZLR 53 (CA).
8 *McGechan on Procedure* (online looseleaf ed, Thomson Reuters) at HR15.1.10(2).
9 *Channel Tunnel Group v Balfour Beatty Construction Ltd* [1993] 1 All ER 664 (HL).
10 *Hooper Bailie Associated Ltd v Natcon Group Pty Ltd* (1992) 28 NSWLR 194 (SC).
11 *Braid Motors Ltd v Scott* (2001) 15 PRNZ 508 (HC).

(a) whether the claims contained are in fact claims that could be addressed using the provisions of the Regulations; and

(b) if so, whether the procedure contained in the Regulations is more appropriate than judicial review proceedings.

[38] While the starting point is that the availability of appeal or other rights does not prohibit the bringing of judicial review claims, there is, however, a preference for the regulatory route where it is available. In *Telecom New Zealand Ltd v Christchurch City Council*, Chisholm J observed:[12]

> It is unlikely that the outcome of the Council's strike out/stay application will turn on the specific test or threshold that is applied. *The pivotal issue is whether the statutory objection process is capable of effectively determining the issue raised in the judicial review proceeding.* Resolution of that issue is likely to determine the matter one way or another.

[39] The test requires a context specific analysis. Cases focus on whether by reference to the relevant statutory provision in question, it is in the jurisdiction of the regulatory process to hear the proceeding.

Analysis

[40] At the outset, I need to say that it is not appropriate at this stage of the proceeding to strike out the claims brought by Mr Reihana here. I reach this conclusion however by a reasonably fine margin. The Court's jurisdiction to strike out any proceedings is one to be exercised sparingly, requiring the proceedings to be clearly untenable. In my opinion, it is premature, as the proceedings presently stand, to strike out Mr Reihana's claims on the basis that they disclose no reasonably arguable cause of action. Before me, little by way of submissions was advanced by Mr Reihana in opposition to the strike out application. He complained that the strike out question was one sprung on him at the last minute before this hearing. The Committee disputed that, but in any event, I heard little significant argument from Mr Reihana on this strike out question. And, if I were to strike out his claims here, this may have an impact on Mr Reihana's ability to use the dispute resolution

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[12] *Telecom New Zealand Ltd v Christchurch City Council* CP 68/02, 18 March 2003 at [23].

process specifically provided for in the 1978 Regulations in these claims which largely involve members of his extended whanau. In part at least, this is because an independent decision maker, appointed pursuant to Regulation 9, may be likely to feel constrained in some way by this Court's determination. This is to be avoided.

[41] However, I do find that the three proceedings should be stayed pending resolution under Regulation 9 of the 1978 Regulations. Clearly, in my view a stay is the appropriate course here. Applying the test in *Telecom New Zealand Ltd v Christchurch City Council,* I am satisfied that the various complaints should be addressed by appointment of an independent decision maker pursuant to Regulation 9.

[42] Furthermore, as set out earlier in this judgment, it is clear Mr Reihana himself initially opted into the regulatory procedure under Regulation 9 before unilaterally withdrawing, no doubt after a simple change in his mind. On this, in an email dated 8th December 2012, Mr Reihana wrote to the Committee members stating (in his words):

> Tena koutou katoa
>
> Mmm as i anticipated i would get off tangent bent from the committee on their interpretation of what the titi regulations provisions mean and how they should be properly interpretted, why i suggested the review to the independent decision maker
>
> and so i apply forthwith for a review of your decision by an independent decision maker pursuant to Reg. 9...

[43] Addressing this in a little more depth, as I have noted above, this Court has jurisdiction to stay all or part of a proceeding. The Court's jurisdiction to stay has two bases:

(a) a statutory jurisdiction to make an order "on such conditions as are considered just",[13] and

(b) the Court's inherent jurisdiction, maintained by the High Court Rules.[14]

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[13] High Court Rules, r 15.1(3).

[44] Here, the Committee as applicant has the burden to establish that a stay is warranted.[15]

[45] This Court may exercise its jurisdiction to grant a stay where to continue the proceeding would amount to an abuse of process. In doing so, the Court may rely on either its statutory or inherent jurisdiction. An abuse of process includes, relevantly here:

(a) a failure to use a dispute resolution clause where that dispute resolution clause is sufficiently certain;[16] and

(b) a failure to use a statutory appellate procedure where that procedure is the more appropriate forum for hearing the dispute.[17]

[46] This proceeding concerns the second situation. The Committee has filed two interlocutory applications on notice (dated 18 March 2016 and 1 July 2016). In the second interlocutory application, the Committee explains substantively the basis for its application for stay. It is useful here to set out the Committee's reasons in full:

> a. The Titi (Muttonbird) Islands Regulations 1978 (the Regulations) provide remedies for disputes or grievances arising out of matters covered by the Regulations.
>
> b. The Regulations are designed to promote self-governance by Rakiura Maori themselves, being the descendants of the original owners of the Islands and the people who have specialist knowledge of issues relating to the Islands and birding, according to tikanga.
>
> c. There are a variety of remedies available under the Regulations to resolve disputes or issues, including:
>
> i. resolution by Rakiura Maori amongst themselves (Regulation 6);
>
> ii. in certain situations, there can be referral to or decisions by Supervisors appointed pursuant to the Regulations (Regulation 5);

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14 High Court Rules, r 15.1(4); *Siemer v Stiassny* [2011] NZCA 1 at [15].
15 *Air National Corporate Ltd v Aiveo Holdings Ltd* [2012] NZHC 602 at [32].
16 *Braid Motors Ltd v Scott* (2001) 15 PRNZ 508 at [33].
17 *BNZ Investments Ltd v Holland* CA 91/97, 31 July 1997 at 11; *Telecom New Zealand Ltd v Christchurch City Council* HC Christchurch CP 68/02, 18 March 2003 at [47].

iii. Decision by or referral to the Rakiura Titi Committee, (Regulation 6);

iv. finally, if necessary, appointment of an independent decision maker if requested by a party (Regulation 9).

d. The ability to request and appoint an independent decision maker arose out of amendments to the Regulations in 2008, such amendments being put in place to deal with criticism of the previous situation (where the final appeal was to the Director-General of Conservation), to provide an independent third party decision maker instead and to further promote self-governance by Rakiura Maori.

e. The remedies available under the Regulations are broad enough to include the claims the subject of these proceedings (as far as those claims can be discerned from the current statements of claim). Some of the remedies sought may not be amenable to review by the Courts.

f. The Plaintiff has not exercised these remedies available under the Regulations.

g. Although difficult to discern, the claims also appear to involve complex factual situations that cannot be evaluated without reference to the facts of the case. These claims are best resolved amongst Rakiura Maori (either amongst the people, by a Supervisor, the Committee) or by an independent decision maker.

h. Allowing a plaintiff to pursue a remedy, in the High Court before exhausting remedies under the Regulations will inevitably mean great cost and inconvenience to the Applicant if similar disputes can be taken to the High Court prior to exercising remedies available under the Regulations.

i. There is no patent jurisdictional error on the part of the Applicant involved with any of the claims by the Plaintiff.

j. To allow an application for Judicial Review and other Tortious Claims prior to the above remedies being sought would amount to an abuse of process.

[47] The essence of the Committee's application is that the 1978 Regulations provide a more appropriate forum for hearing Mr Reihana's claims and therefore all these proceedings should be stayed pending use of the procedures in those Regulations. I agree. Chisholm J, in *Telecom New Zealand,* a case similar to this proceeding, observed:

> ... it is unlikely that the outcome of the Council's strike out/stay application will turn on the specific test or threshold that is applied. The pivotal issue is whether the statutory objection process is capable of effectively determining the issues raised in the judicial review proceeding. Resolution of that issue is likely to determine the matter one way or other.

[48] In the email correspondence between Mr Reihana and the Committee initially, there is a clear degree of acceptance on his part of the appropriateness in cases such as this of the dispute resolution procedures provided for in Regulation 9 of the 1978 Regulations.

[49] And, as I see it, the appropriate course here is for the necessary regulatory procedure to be implemented and exhausted before any proceedings (if appropriate in any event), are to be brought or pursued before this Court. That is what Regulation 9 of the 1978 Regulations for good reason envisaged when it described referral to an independent decision maker of the (often close whanau) disputes that might arise over dissatisfaction with decisions of the Committee.

[50] As I see the position, the issues raised in all Mr Reihana's proceedings should be first determined using the independent decision maker process set out in Regulation 9 of the 1978 Regulations, and this Court should stay all the proceedings in the meantime.

[51] And, in any event, Mr Reihana would not in any way be prejudiced in using the dispute resolution process under the 1978 Regulations. He would also be entitled to restart his proceedings (if this may be appropriate) following the use of the process under the 1978 Regulations.

Conclusion

[52] For all the reasons outlined above, the Committee has satisfied the burden on it to establish that the stay sought is warranted here. The Committee's stay application therefore succeeds and appropriate orders now follow.

[53] Orders are now made staying the proceedings CIV-2014-425-102, CIV-2016-425-15 and CIV-2016-425-16 respectively until conclusion in each case of the independent decision maker dispute resolution procedure provided for in Regulation 9 of the 1978 Regulations.

[54] Leave is reserved for any party to approach the Court further for any clarification or directions that may be required for the proper implementation of this decision.

Costs

[55] The Committee has essentially succeeded in its application given the orders for stay now made. I see no reason why costs should not follow the event in the usual way.

[56] Costs are therefore awarded to the Committee and to Te Runanga (who Mr Reihana specifically wished to join as a party to these various proceedings) against Mr Reihana with respect to this application. These costs are to be calculated on a Category 2B basis together with disbursements as fixed by the Registrar.

Gendall J

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