

**IN THE HIGH COURT OF NEW ZEALAND  
INVERCARGILL REGISTRY**

**I TE KŌTI MATUA O AOTEAROA  
WAIHŌPAI ROHE**

**CIV-2019-425-66  
[2019] NZHC 1522**

UNDER	Section 66 of the Trustee Act 1956 and/or the Court's inherent jurisdiction
BETWEEN	P R LAW QUEENSTOWN NO 1 TRUSTEES LIMITED (IN LIQUIDATION) Applicant
AND	STUART PAUL MICHAEL NORRIS First Respondent
AND	JACOB STUART TAPPER-NORRIS Second Respondent
AND	ALISON KATHLEEN HARVEY NORRIS Third Respondent
AND	COREY NORRIS Fourth Respondent
AND	AMY LAURA JOHNS Fifth Respondent
AND	K8 TRUSTEES LIMITED Sixth Respondent

Hearing: (Determined on the Papers)

Counsel: J W A Johnson and W L Porter for the Applicant

Judgment: 1 July 2019

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**JUDGMENT OF ASSOCIATE JUDGE LESTER**

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[1] The applicant company seeks on a without notice basis leave to commence proceedings by way of originating application and directions as to the conduct of the

proceeding, including directions as to service. This is the second proceeding commenced by the applicant, it being one of two applicants in a proceeding in which I gave a judgment on 14 June 2019.<sup>1</sup>

[2] P R Law Queenstown No 1 Trustees Ltd (“the Trustee company”) is trustee of the Stuart Norris Family Trust (“the SN Trust”). The company is in liquidation and the Liquidators were also applicants in the earlier proceeding to which I have referred (CIV-2019-425-61).

[3] I made directions in the earlier proceeding that the Trustee company bring proceedings to determine whether it remains trustee of the SN Trust, seeking confirmation of the status of the fifth respondent in this proceeding, that is whether the fifth respondent remains a trustee of the SN Trust, and directions in relation to the Trustee company’s ability to deal with shares it holds in another company and in respect of using the sale proceeds of those shares to meet the SN Trust’s creditors.

[4] I made directions that it was appropriate for the Trustee company’s liquidators to bring that proceeding.

[5] The present application is a consequence of that leave. It seeks the following orders:

- (a) that the Trustee company’s (in liquidation)’s application seeking directions in its capacity as trustee of the SN Trust be commenced under part 19 of the High Court Rules 2016 pursuant to rule 19.5; and
- (b) procedural directions.

### **Leave to use originating application procedure**

[6] The Trustee company relies on Osborne J’s decision in *Solar Bright Ltd v Martin*,<sup>2</sup> where His Honour set out the principles that guide the granting of leave to use the originating application procedure. Leave is required because the

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<sup>1</sup> *Gibson v Norris* [2019] NZHC 1348.

<sup>2</sup> *Solar Bright Ltd v Martin* [2019] NZHC 300.

proceeding the company in liquidation seeks to bring is not an application that can be brought as of right under r 19.2 of the High Court Rules.

[7] Under r 19.4 the liquidators may, as of right, seek directions of the Court by way of originating application, however, the company itself in liquidation may not do so.

[8] As Osborne J held in *Solar Bright*, the test under r 19.5 is whether the interests of justice require leave to be granted. His Honour said:<sup>3</sup>

The interests of justice mean that the Court must secure the just, speedy and inexpensive determination of this proceeding in its consideration of a r 19.3 application.

[9] His Honour went on to consider whether:

- (i) use of the originating application would allow the parties to be fully informed of the matters in issue;
- (ii) whether interlocutory procedures for the resolution of issues such as discovery will be required;
- (iii) whether the application is straightforward; and
- (iv) (His Honour characterised this of being less significance) whether there are likely to be multiple parties.

[10] In this case, the issues are well defined. The Trustee company seeks to have its status as trustee confirmed where in circumstances immediately prior to or on the day of liquidation, Mr Norris purported to use his powers under the Trust Deed of the SN Trust to remove the company as trustee and to have the company transfer shares that it holds to another entity.

[11] That this occurred the day before, or on the day of, an application to have the Trustee company placed into liquidation, the fact that the shares were subject to

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<sup>3</sup> At [18].

a charging order issued by this Court, and the uncertainties around whether the purported new trustee met the qualifications to be a trustee under the Trust Deed are all issues that have been directly discussed between counsel for the liquidators and counsel for Mr Norris and the sixth respondent.

[12] The relevant documents are already largely before the Court in the form of the exhibits to the affidavit of Mr Gibson filed in this proceeding.

[13] I do not consider that a statement of claim and statement of defence are necessary to ensure that the parties are fully informed of the issues.

[14] Given what I have said about the material documents appearing to be before the Court, it would appear that interlocutory procedures such as discovery are not going to be required.

[15] As to whether the application is straightforward, that is of course related to the issues. Again, I consider the issues are clear and they will turn largely on legal argument arising from the documentary records.

[16] In this case there are six respondents named. In reality however, the interests of the first and sixth respondents are essentially the same. The fifth respondent is a trustee whose status having resigned is a discrete issue to be considered. The remaining three respondents are beneficiaries. I do not consider the number of beneficiaries is such as to mean that the matter is unsuitable for the originating application procedure as the number of respondents in this case does not equate to a multiplication of the issues. I consider the originating application is appropriate and grant leave for the matter to proceed by way of originating application.

### **Procedural directions**

[17] Assuming that leave is given for the matter to proceed by way of an originating application the Trustee company seeks the following directions:

- (i) that the fourth named respondent, who is a minor, be served by sending the commencing documents to his mother in accordance with an agreement that has been reached in that regard;
- (ii) that the Registry schedule a one day hearing on or before 23 August 2019 in Auckland or Christchurch;
- (iii) that the respondents are to file and serve notices of opposition together with supporting affidavits within 10 working days of service;
- (iv) the Trustee company is to file and serve any evidence in reply within five working days of receipt of the respondent's evidence;
- (v) the Trustee company's submissions together with a bundle of authorities to be filed and served five working days before the hearing;  
and
- (vi) the respondents' submissions together with a bundle of authorities to be filed and served two working days before the hearing.

[18] In respect of the first application, the fourth respondent as noted is a minor. The Trustee company's papers are silent on the appointment of a litigation guardian for the fourth respondent as required by r 4.31 of the High Court Rules.

[19] The details of the arrangement reached to serve the papers on the minor via counsel acting for his mother are not before the Court, but given counsel's confirmation that such an arrangement exists, it is appropriate that the fourth respondent be served in accordance with that agreement.

[20] The Trustee company's counsel, however, needs to address whether the fourth respondent requires a litigation guardian, or whether such may be dispensed with under r 4.31(1).

[21] Given the need for this matter to progress, the respondents are to file and serve notices of opposition together with supporting affidavits within 10 working days of service of this proceeding.

[22] I am not prepared to direct that there be a fixture at this time. Such a direction does not need to be made on a without notice basis. That said, the need for this matter to be advanced is acknowledged and once the Trustee company's counsel has served the proceedings the Trustee company is to seek the allocation of a telephone conference before me so that setting down can be addressed. I am also mindful that this is an Invercargill proceeding and the Trustee company has sought that the hearing be in Auckland or Christchurch and that is a matter that it is appropriate that the respondents have a chance to reply to.

[23] Accordingly, there are orders in terms of paras 1(a), 1(b)(i) and 1(b)(iii) of the application for leave to commence proceedings and directions dated 18 June 2019.

[24] There is also the direction made at para [22] above in relation to the scheduling of a telephone conference. The Trustee company's counsel is to file any applications or memoranda in relation to the appointment of a litigation guardian for the minor within five working days of the date of this judgment.

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**Associate Judge Lester**

Solicitors:  
Wynn Williams, Auckland