

- (b) An order of the Maori Appellate Court of 23 September 2016 ordering Mr and Mrs Bamber to pay the sum of \$2,035.25 to the trustees;
- (c) An order of the Maori Appellate Court on 11 October 2016 ordering Mr and Mrs Bamber to pay \$4,830 to the trustees;
- (d) An order of the Maori Land Court of 22 February 2017 ordering Mr and Mrs Bamber to pay the sum of \$158,298.50 to the trustees.

[2] Following the entry of judgment in this Court on 4 May 2018, the trustees commenced bankruptcy proceedings in the High Court at Rotorua against Mr and Mrs Bamber based upon that total judgment debt.

[3] Mr and Mrs Bamber now apply for a stay of execution on the judgment entered in this Court. That application is stated to have been made in reliance on s 81 of the Te Ture Whenua Maori Act 1993 and s 144(a) of the District Court Act 2016. The short position is that Mr and Mrs Bamber seek to challenge the order by Judge Savage in the Maori Land Court on 22 February 2017 by way of appeal to the Maori Appellate Court. To that end, an appeal has been filed against the judgment of 22 February 2017 for \$158,298.50, but, as Mr and Mrs Bamber are out of time to bring that appeal, they have also applied to the Maori Appellate Court for leave to bring their appeal out of time.

[4] The rationale behind the steps taken by Mr and Mrs Bamber is that if execution on the judgment entered in this Court is stayed, then such a stay should operate to bring a halt to the bankruptcy proceedings in the High Court at least until Mr and Mrs Bamber's appeal has been heard by the Maori Appellate Court.

[5] This is a rather unique situation. Effectively, this Court is called upon to make a decision that has regard to the merits of Mr and Mrs Bamber's application for leave to appeal to the Maori Appellate Court against Judge Savage's decision, and if successful, then on the appeal. Additionally, there is an expectation that this decision will bring the bankruptcy proceedings to a halt while the stay is in place.

[6] I have been provided with a copy of the minute by Associate Judge Sargisson in the bankruptcy proceedings dated 28 February 2019.¹ In that minute (paragraph [3]) Judge Sargisson acknowledged that the various judgment debt orders of the Maori Land Court and the Maori Appellate Court had been transmitted into the District Court and that counsel considered that the application for stay of execution on the judgments should be to the District Court. With the greatest respect to the Associate Judge, and appreciating that that was the position outlined to her by counsel, there are difficulties with this Court being effectively put in the position of having to determine whether the bankruptcy proceedings should proceed or not.

[7] There are also issues as to whether this Court can or should entertain the application for a stay of execution on the judgment entered in this Court in these circumstances.

[8] The bankruptcy proceedings have been adjourned by the High Court through to early July 2019. My understanding from counsel is that this adjournment is to allow time for my decision to be delivered.

[9] A stay of enforcement proceedings is available in this Court either under s 143 or s 144 of the District Court Act 2016:

143 Stay of enforcement proceeding for inability to pay

- (1) A Judge may stay an enforcement proceeding against a party if satisfied that the party is unable from any cause to pay any amount that is recoverable against that party (whether by way of meeting the claim or counterclaim in the proceedings or by way of costs or otherwise) or any instalment of that amount.
- (2) The Judge may stay the enforcement proceeding for the period and on the terms that the Judge thinks fit, and may renew the stay from time to time until the liable party is able to pay.

[10] The application for stay has not been advanced on the basis of an inability to pay that would bring s 143 into play and, indeed, the application specifically identifies that it is brought under s 144(a).

¹ *Monschau & Te Ngaru v Bamber & Bamber* High Court Auckland, Associate Judge Sargisson, CIV-2018-463-000049, CIV-2018-463-000105.

144 Stay of proceeding on appeal

A notice of appeal operates as a stay of proceedings under the decision appealed from only if—

- (a) A Judge orders that the proceedings are stayed; or
- (b) The appellant has deposited with the Registrar the amount of the judgment or order under appeal and the costs, pending determination of the appeal; or
- (c) The appellant has given security to the satisfaction of the Registrar for the amount of the judgment or order and costs.

[11] Section 144(a) provides that where a notice of appeal is filed against a decision of this Court, that notice of appeal operates as a stay of proceedings only if a Judge orders that the proceedings are stayed.²

[12] A judgment of the Maori Land Court or the Maori Appellate Court that has been transmitted into this Court is deemed to be a judgment of this court³.

81 Enforcement of orders for payment of money

(1) For the purpose of enforcing any order made by the court for the payment of money, a Judge may, on the application of any party or of the Judge's own motion, transmit a copy of the order, under the Judge's hand and the seal of the court by which the order was made, to the District Court, where it shall be filed as of record in that court.

(2) On the filing of a copy of any such order, the order shall, so long as it remains in force, be deemed to be a judgment of the District Court in an action for the recovery of a debt, and may be enforced accordingly as if the order had been made in a proceeding of the District Court.

(3) For the purposes of this section, a certificate under the hand of a Judge of the Maori Land Court, with reference to any proceedings of that court or of the Maori Appellate Court in the matter in which the order to be enforced was made, or setting forth any particulars relating to the performance or non-performance by any person of the requirements of that order, shall, unless the contrary is proved, be accepted by the District Court, and by all officers of that court, as sufficient evidence of the facts so certified.

(4) The filing in the District Court under this section of a copy of an order made by the Maori Land Court or the Maori Appellate Court shall not limit or affect any right or power of rehearing, appeal, amendment, or cancellation existing in respect of that order.

² Section 144(a).

³ Section 81(2) Te Ture Whenua Maori Act 1993

[13] Does s 144(a) DCA apply in the instant case where the “decision appealed from” is from the Maori Land Court to the Maori Appellate Court? I expect that it must apply in order to make sense of the transmission of judgment scheme created by s. 81 Te Ture Whenua Maori Act 1993.

[14] The question then is whether a notice of appeal is to be considered as having been filed or having status for the purposes of s.144(a) DCA when the appellants are out of time to bring the appeal and that leave of the appellate court is required for the appeal to be brought? This is a more difficult question that I do not have to answer in this case. That is because the entry of a stay under s.144(a) DCA is not automatic on the filing of a notice of appeal. It is still dependant on a decision of a District Court Judge to order a stay and naturally requires the exercise of a discretion. My attention to this application will concentrate on whether I consider that a stay should be ordered in this case.

[15] The appeal proceedings (perhaps more correctly the intended appeal proceedings) are in respect of a decision of the Maori Land Court. That decision issued on 22 February 2017 came about following extensive litigation between the parties in the Maori Land Court and the Maori Appellate Court over a number of years. Initially, the issues were dealt with by Judge Savage in an extensive judgment issued by him on 10 December 2015 with aspects, particularly as to quantum of the debt, finalised in his subsequent decision of 22 February 2017. What I can make out from the litigation in the Maori Land Court is that it involves a dispute between family members in relation to a sizeable block of land. This Court has no expertise in Maori Land Court matters and I, for one, would not attempt to evaluate whether Mr and Mrs Bamber have any prospect of success either to obtain leave to appeal out of time to the Maori Appellate Court or, if leave is granted, to succeed in the appeal.

[16] I find myself the “meat in the sandwich” between the Maori Appellate Court and the High Court and being called upon to make a decision without any good and informed knowledge as to whether the appeal proceedings brought by Mr and Mrs Bamber have any prospect of success or whether it is a delaying tactic to avoid bankruptcy.

[17] Surely, the appropriate course is for Mr and Mrs Bamber to seek the further adjournment of the bankruptcy proceedings pending determination of the appeal proceedings in the Maori Appellate Court. The High Court has the advantage of being able to adjourn the bankruptcy proceedings on the condition that the appeal proceedings are pursued with all due expedition. While this Court could enter a stay on a similar condition, that would have the effect of this Court being called upon to monitor performance of that condition that could only add to the costs incurred by the parties.

[18] Indeed, if I was to enter a stay of execution on the judgment that would not automatically bring the bankruptcy proceedings to a halt. Those proceedings are based on an act of bankruptcy being the failure to comply with a bankruptcy notice. In the event that a stay of execution on the judgment was entered in this Court, the future of the bankruptcy proceedings would still require the consideration by the High Court. Furthermore, only part (albeit a substantial part) of the judgment sum is sought to be challenged by the appeal proceedings. Mr and Mrs Bamber would still be in jeopardy of being adjudicated bankrupt based on the unchallenged portion of the judgment.

[19] For these reasons, I am not prepared to order a stay of execution on the judgment.

[20] The trustees will have costs on Scale 2B.