

EDITORIAL NOTE: CHANGES MADE TO THIS JUDGMENT APPEAR IN [SQUARE BRACKETS].

NOTE: PURSUANT TO S 35A OF THE PROPERTY (RELATIONSHIPS) ACT 1976, ANY REPORT OF THIS PROCEEDING MUST COMPLY WITH SS 11B, 11C AND 11D OF THE FAMILY COURT ACT 1980. FOR FURTHER INFORMATION, PLEASE SEE

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**IN THE FAMILY COURT
AT BLENHEIM**

**I TE KŌTI WHĀNAU
KI TE WAIHARA KEKE**

**FAM-2020-006-000019
[2021] NZFC 964**

IN THE MATTER OF **THE PROPERTY (RELATIONSHIPS)
ACT 1976**

BETWEEN [MARIA HOWARD]
Applicant

AND [ANTON HOWARD]
[HOWARD] TRUST
Respondent

Date: 4 February 2021

Appearances: P Radich and S Wadworth for the Applicant
Respondent [Howard] appears in Person

MINUTE OF JUDGE R J RUSSELL

[1] These are proceedings under the Property (Relationships) Act 1976 between [Maria Howard] and [Anton Howard]. The third party to these proceedings is the [Howard] Trust.

[2] This is a further judicial conference following the judicial settlement conference and the extended judicial conference which I have convened to try and assist the parties to resolve the issues which are in dispute.

[3] In respect of the [Howard] Trust, this trust has been joined as a party to the proceedings. Both Mr and Mrs [Howard] are the trustees. The trust owns both of the properties in which the parties reside, and is not going to be independently represented. The decisions for this trust will need to follow along from the substantive issues in the proceedings affecting the parties themselves. There is no application under s 182 of the Family Proceedings Act 1980 to determine the parties' entitlements to the trust property.

[4] I have raised with the parties and Mrs [Howard]'s counsel the provisions of the Trusts Act 2019. Section 141 of this new Act gives this court a jurisdiction to address issues relating to trusts. In s 141(2) orders can be made "to give proper effect to any determination of the proceeding", the proceeding being the Property (Relationships) Act applications each party has filed. Section 141(3) provides if the parties consent, the Court can make any order available under the Trusts Act which is available to the High Court to resolve an issue or dispute between the parties which are closely related to the proceedings if this court considers such an order is necessary or desirable to assist in the resolution of the proceedings.

[5] I have enquired today as to whether there is consent given under s 141(3). Mr Radich has said there is consent by Mrs [Howard]. Mr [Howard] wishes to have further time to consider this issue and take legal advice about this if he wishes. He agrees to advise the registrar whether there is consent or not under s 141(3) within a period of 14 days from today.

[6] For the sake of completeness, I would add, if there is consent given, any decision of the Family Court is always available to be reviewed on appeal to the High Court anyway. If there is not consent under s 141(3), then the hearing judge will need to consider whether the proposed orders under the Property (Relationships) Act can be made within the umbrella of s 141(2)(b) or s 33(3)(m) or alternatively whether all of the issues in dispute need to be transferred to the High Court for determination.

[7] My own view, which is of course not binding on the hearing judge, is if there is not consent given under s 141(3), then s 141(2)(b) ought to enable this court to make any necessary adjustments to the terms of the trust once the substantive issues in the

relationship property components of the case is heard and determined. Section 33(3)(m) of the Property (Relationships) Act is also available to vary the terms of any trust.

[8] Both parties have filed extensive affidavit evidence. Mr [Howard] has tendered to me a valuation of the [address A] property today. It can be received on the file as an agreed exhibit with the consent of Mr Radich.

[9] Mrs [Howard] is still waiting for her valuation of this property and this can be filed when it is to hand. If there is disagreement with the valuation evidence, then the parties will need to consider whether these valuers need to be called or not or whether some agreement or compromise can be reached.

[10] There is a wealth of affidavit evidence already before the Court. I am going to give the parties a further period of time to file any further evidence they may wish. Thereafter, no further evidence will be received by the Court without leave.

[11] I am going to provisionally allocate one day plus judgment delivery time to be heard and determine the issues in this case. This will need to be reviewed if it becomes apparent the one day will not be sufficient time to hear all of the witnesses who are proposed.

[12] I record Mr [Howard] has filed an application under s 25(3) seeking interim orders in respect of the [address B] property which he resides in which is also owned by the trust. I am not going to allocate separate hearing time for this application. The evidence and the issues are closely intertwined with the substantive issues in the proceedings and one hearing judge should hear and determine all of the issues.

[13] Against this background I make the following orders and directions:

- (a) All further affidavit evidence needs to determine the issues in dispute and is to be filed and served within 21 days from today.

- (b) At the expiration of that 21-day period the case is to be placed on the ready list for hearing. One day plus judgment delivery time is to be provisionally allocated.
- (c) At the hearing all evidence-in-chief will be by way of the affidavit evidence filed. No further evidence-in-chief will be permitted without leave of the Court. The hearing will proceed by way of cross-examination of the deponents and any new submissions.
- (d) Not less than 21 days in advance of the hearing date, the parties may file updating affidavit evidence covering any material changes of circumstances which have occurred between the date of the filing of their last affidavit and the date of hearing.
- (e) Not less than 10 days prior to the allocated fixture the parties may file written submissions addressing legal and factual issues referring to any case authorities they may wish the judge to consider.
- (f) Mr Radich, being counsel for the applicant in the proceedings, is directed to file and serve a paginated bundle of documents for the purposes of the hearing. In this paginated bundle of documents, he does not need to include the extensive affidavit of Mr [Howard] with all the exhibits filed on 1 February, it can be left apart from the agreed booklet of documents.
- (g) Mr Radich should also, after consultation with Mr [Howard], prepare and file a chronology of relevant dates and events for the assistance of the presiding judge.
- (h) The issues to be determined at the hearing are:
 - (i) The application for interim orders filed by Mr [Howard], which are consolidated with the substantive application.

- (ii) What are to be the relationship property entitlements of each party.
 - (iii) What orders are necessary under either s 33(3)(m) of the Property (Relationships) Act and/or or s 141 of the Trusts Act to give effect to the determination of the parties' relationship property entitlements.
- (i) I direct that these proceedings be called before the hearing judge for a pre-hearing conference in the month preceding the allocated fixture to confirm there is compliance with these timetabling directions, the time estimate remains accurate, and the case is in all respects ready for hearing.
 - (j) Mr [Howard] is directed to advise the registrar, within 14 days from today, whether or not there is consent pursuant to the provisions of s 141(3) of the Trusts Act for the Court to deal with issues arising in respect of the [Howard] Trust. I record I have given him a copy of this section today.
 - (k) In the event that there is not consent provided, the file is to be placed before the hearing judge, for that judge to consider the contents of this minute and the file and to make an assessment of whether he or she is able to utilise s 141(2)(b) of the Trusts Act and s 33(3)(m) of the Property (Relationships) Act as I have outlined in this minute.
 - (l) I record there is no consent to my hearing the case because I conducted the judicial settlement conference. Given the issues in this case and the fact an out of town judge will be required, this case it is not suitable for a backup fixture.
 - (m) Leave is reserved to the parties for the Court's further directions on three days' notice. In particular, if it becomes apparent by the re-list date that one day plus judgment delivery time is not going to be

adequate to hear and determine the issues in these proceedings, then a further time estimate is to be provided to the registrar and the file is to be referred back to me in chambers for further direction.

Judge RJ Russell
Family Court Judge

Date of authentication: 12/02/2021
In an electronic form, authenticated electronically.