

**I TE KOOTI WHENUA MĀORI O AOTEAROA
I TE ROHE O TE TAITOKERAU**

*In the Māori Land Court of New Zealand
Taitokerau District*

AP-20230000028245 | A20140009266

WĀHANGA <i>Under</i>	Section 18(1)(a) and 21, Te Ture Whenua Māori Act 1993
MŌ TE TAKE <i>In the matter of</i>	Te Ti B Part being Lot 17 DP 61631
I WAENGA <i>Between</i>	AUDREY BIESTER Te kaitono <i>Applicant</i>
ME <i>And</i>	ALICE KINGI, EMMA GIBBS, HARATA CASH, HENARE COOK, JOYCE BAKER, MAUREEN TANA, PAORA MANO, PETERA TANE, RAMEKA YORKE, THERESA GIBBS AS TRUSTEES OF THE TE TII (WAITANGI) B3 AHU WHENUA TRUST Ngā kaiurupare <i>Respondents</i>

Nohoanga: <i>Hearing</i>	4 November 2022, 256 Taitokerau MB 12-54 7 September 2022 253 Taitokerau MB 292-283 26 January 2017, 147 Taitokerau MB 168-181 10 July 2015, 108 Taitokerau MB 272-280 (Heard at Kaikohe) (Heard at Whangarei)
Kanohi kitea: <i>Appearances</i>	Peter Magee for The Trustees of Te Tii (Waitangi) B3 Ahu Whenua Trust Barney Tupara for Audrey Biester
Whakataunga: <i>Judgment date</i>	8 September 2025

TE WHAKATAUNGA Ā KAIWHAKAWĀ M P ARMSTRONG
Judgment of Judge M P Armstrong

Hei timatanga kōrero*Introduction*

[1] The land known as Te Tii is located in historic Waitangi in the Bay of Islands. Like the surrounding area, this land has a rich history which was significantly impacted by early colonial contact.

[2] Te Tii was part of a larger area of land alienated to Henry Williams prior to the Treaty being signed. In 1839, Williams returned the Te Tii block.¹ In 1891, the Māori Appellate Court identified 251 owners in the block.² The owners were named in the Court order but individual shares were never determined or allocated. In 1954, a trust was established to administer this land. The beneficiaries of the trust are the descendants of those 251 original owners.³ That trust continues to this day and is now known as the Te Tii B3 Ahu Whenua Trust.

[3] The trustees of the trust administer over 70 blocks of Māori freehold land. The trustees operate a holiday park, backpacker accommodation, and have granted a number of commercial and residential leases over trust land.

[4] In 1971, the trustees granted a lease over part of this land, known as Lot 17, to Pita and Martha Apiata. That lease contained a perpetual right of renewal in favour of Mr and Mrs Apiata as lessees. In 1979, that lease was surrendered and a new lease was entered into. The new lease did not contain a perpetual right of renewal. Instead, the new lease had a fixed term of 42 years along with fixed rent of \$52.00 per year for the full term of the lease. The fixed term of the lease has now expired. The trustees have served notice to terminate the lease.

[5] The applicant, Audrey Biester, is Martha Apiata's daughter. Pita Apiata was her stepfather. Ms Biester is also one of the executors of her mother's estate. She seeks relief against cancellation of the lease and a declaration that the lessee continues to have a perpetual right to occupy Lot 17. The trustees oppose the application. I now determine whether to grant the relief sought.

¹ See *Baker – Te Tii (Waitangi) B3 Trust* (2011) 19 Taitokerau MB 116 (19 TTK 116).

² 11 Northern MB 45–48 (11 N 45–48).

³ 112 Taitokerau MB 34–35 (128 TTK 34–35).

Ko te hātepe ture o te tono nei*Procedural history*

[6] I heard this application on 4 November 2022.⁴ I directed counsel to file closing submissions within three weeks of the hearing minute being circulated, after which I would issue a decision in writing. Counsel subsequently sought an extension to this filing date, which I granted.

[7] Counsel for both parties filed their submissions on 12 April 2023. Unfortunately, those submissions were never referred to me. The Pae Tukutuku who was managing the application at that time went on extended leave and it appears that, in her absence, the file fell into a black hole. Between 2023 and 2025, I wrote to the Registrar on four separate occasions inquiring about the status of this proceeding and whether the closing submissions had been filed.

[8] Inexplicably, it was not until 7 August 2025 that the file was finally referred to me. The new Pae Tukutuku had to obtain further copies of the closing submissions that counsel already filed back in 2023.

[9] I apologise to the parties on behalf of the Court over the way in which this proceeding has been handled. Although the original Pae Tukutuku went on extended leave, the Registrar should have sufficient systems in place to ensure that files do not fall into an abyss in such circumstances. The fact that there was such a prolonged delay here, in spite of my numerous emails to the Registrar, is inexcusable. All parties are entitled to the prompt and efficient administration of their proceedings in this Court. Clearly, that has not happened in this case.

He aha ngā mauhanga e whakaatu ana?*What do the documents show?*

[10] The trust has retained very comprehensive records of its dealings with Pita and Martha Apiata from when the trustees granted them the original perpetual lease, and then the subsequent fixed-term lease. Ms Biester has also retained her mother's records from those transactions. I summarise the relevant documents below, before turning to consider the issues raised by Ms Biester.

⁴ 256 Taitokerau MB 12–54 (256 TTK 12–54).

[11] In the 1960s, a number of people, including Mr and Mrs Apiata, were occupying Lot 8 of the Te Tii lands. Those occupying the land did not have permission from the trustees to do so. The trustees wanted to develop Lot 8 into the holiday park. On 6 March 1968, the trustees gave written notice to those occupying the land, including Mr and Mrs Apiata, stating that they were trespassing and requesting that they immediately vacate the land.⁵ They did not do so.

[12] On 27 December 1968, the trustees wrote to Mr and Mrs Apiata once again stating:⁶

You are asked to vacate the land by January 31st 1969 or other measures will be taken.

There are still sections available for housing. The applications for housing can be obtained through the Māori Affairs Department, while the sections are through the Trust Board.

[13] On 3 July 1971, the trustees placed a notice in the Northern Advocate inviting the public to apply to lease three sections Lot 16, Lot 17 and Lot 18. The notice states that each lease will have:⁷

- (a) rent of \$52.00 per year subject to a rent review after 10 years: and
- (b) a term of 21 years with a perpetual right of renewal

[14] On 27 July 1971, the trustees signed a perpetual lease for Lot 17 with Mr and Mrs Apiata (the perpetual lease). That lease contained the following terms:⁸

- (a) for the first 10 years, the rent was fixed at \$52.00 per annum;
- (b) after that 10-year period, the rent would be determined per s 22 of the Public Bodies Leases Act 1969;
- (c) the lease was for an initial term of 21 years;

⁵ Affidavit of A Biester, 28 August 2014, exhibit "D".

⁶ Affidavit of A Biester, 28 August 2014, exhibit "E".

⁷ Affidavit of A Biester, 28 August 2014, exhibit "F".

⁸ Affidavit of T Livingston, 9 May 2014, exhibit "A".

- (d) the lessee had a perpetual right to renew the lease for a further 21 years on the same terms and conditions; and
- (e) no compensation was payable to the lessee for any improvements erected on the land.

[15] Similar leases were granted over Lots 16 and 18.

[16] In 1973, Pita Apiata was appointed as a trustee on the trust.⁹

[17] On 2 November 1974, the trust secretary wrote to the trust accountant concerning various leases over trust land. This included the three perpetual leases over Lots 16, 17 and 18. The letter states:¹⁰

The method of computing the rental reviews is linked to a percentage of the increase in unimproved value of the land and special valuations are currently being obtained for two leases due for review of rent. We anticipate an increase in yearly rent from an average of \$100 to approximately \$1000 per annum per section.

The trustees are to consider whether it is in their best interest to offer changes in the existing leases to various lessees and would appreciate your comments on the following basic variations.

...

These perpetual leases to be negotiated separately with each lessee.

[18] On 9 December 1974, a trustee meeting was held. Mr Apiata attended the meeting. The minutes of the meeting record:¹¹

Acting Secretary read letter from Mr R. Fletcher, Accountant on suggested lease alternatives which could be offered to certain lessees. This matter is to be referred to Solicitor for his comments and Mr Fletcher's letter circulated to all Trustees. It was agreed that this matter would be discussed in depth at the next meeting.

[19] A further trustee meeting was held on 12 January 1975. Once again, Mr Apiata attended the meeting. At that meeting the trustees discussed a valuation obtained for one of

⁹ 48 Whangarei MB 252 (48 WH 252).

¹⁰ Affidavit of W Tane, 9 November 2017, exhibit "SS".

¹¹ Affidavit of W Tane, 9 November 2017, exhibit "RR".

the leases (which was not a perpetual lease). The minutes record that the valuation indicated an increase in rent from \$140.00 per annum to \$1,052.00 per annum.¹²

[20] A trustee meeting was held on 3 April 1975. Mr Apiata attended. The minutes record that the following resolution was passed:¹³

That lease alternative be offered to lessees only when confirmation is requested that there is no default in present leases or when leases are within 6 months of expiration of first 21 year term.

[21] A trustee meeting was held on 7 September 1975. Mr Apiata attended. The minutes record that lease alternatives had been sent to 32 different lessees. Mr and Mrs Apiata were not included in those offered alternative leases at that time.¹⁴

[22] A trustee meeting was held on 28 May 1978. Mr Apiata attended. The minutes record the following:¹⁵

PERPETUAL LEASES

Discussions took place on the valuations on the blocks and concern was expressed on the ability of the three beneficiary / lessees ability to keep up payments of rates and ground rent when the time came to re-value the ground rent.

Moved That the lessees of Lots 16, 17 and 18 DP61631 be offered an alternative lease at a set rental of \$52.00 per year terminating in the year 2012 otherwise in the same conditions as leases recently negotiated with other lessees and that in consideration of the set annual rental offered the lessee's forego their present perpetual leases.

M. Puriri
M. E. Moon

Carried

[23] On 10 July 1978, the trustees sent a letter to Mr and Mrs Apiata which states:¹⁶

You are the lessee of the above land and rental for the first ten years, expiring 26th July 1981, has been set at \$52.00 p.a. For the remaining 11 years of the first term of the lease, and for any renewal thereof, annual rental is to be determined in accordance with Section 22 of the Public Bodies Leases Act 1969. This lease has perpetual right of renewal.

¹² Affidavit of W Tane, 9 November 2017, exhibit "TT".

¹³ Affidavit of W Tane, 9 November 2017, exhibit "XX".

¹⁴ Affidavit of W Tane, 9 November 2017, exhibit "ZZ".

¹⁵ Affidavit of W Tane, 9 November 2017, exhibit "FFF".

¹⁶ Affidavit of A Biester, 28 August 2014, exhibit "G".

The Trustees are aware of the extremely high land value (that is value of the land without improvements) being assessed by the Valuation Department for the Waitangi area and are concerned that you may have difficulty in meeting the assessed rental under the lease at the expiry of the first 10 year term together with increased land rates.

The Trustees think your main thought is to reside permanently at Waitangi and to enable you to achieve this I have been authorised to offer you the following alternative lease, subject only to consent of Department of Maori Affairs who hold's first mortgage over your section:

1. The present lease containing a perpetual right of renewal be surrendered.
2. That a new lease be entered into for a term of 42 years from 27/7/1971 at a rental of \$52.00 per annum with general terms and conditions as recently negotiated by the Trustees with other lessees.

This offer is available until 11th August 1978.

[24] At the bottom of this letter, written by hand, are the words "We agree to the above proposal." Underneath that, Mr and Mrs Apiata signed the letter and dated it 20 August 1979.¹⁷

[25] A trustee meeting was held on 5 November 1978. Mr Apiata attended the meeting. The minutes record:¹⁸

LOTS 16, 17 & 18 DP 61631

Meeting was advised that, despite the consent of the Maori Trustee, the Solicitor had found it necessary to also obtain consents from Housing Corporation to the surrender of current leases and completion of new leases. Solicitor advised that it was unlikely that the consents would be obtained this year.

[26] A trustee meeting was held on 4 February 1979. Mr Apiata attended. The minutes record that the following resolution was passed:

Lot 17 DP61163 P.H. & M. APIATA

That surrender of Lease with perpetual rights of renewal be accepted and that new lease be executed for period commencing 27th July 1971 to 27th July 2013 with no compensation payable for improvements and with no right of renewal and with annual rental of \$52.00.

[27] On 30 May 1979, the trustees and Mr and Mrs Apiata signed the new substituted lease (the fixed-term lease). The terms of that lease include that:

¹⁷ I comment further on this date below.

¹⁸ Affidavit of W Tane, 9 May 2014, exhibit "X".

- (a) the term of the lease was 42 years commencing 27 July 1971 and terminating 26 July 2013;
- (b) rent was fixed at \$52.00 per annum for the full 42-year term; and
- (c) there was no right to renew the lease after the expiration of that 42-year term.

[28] The new lease was signed by Mr and Mrs Apiata. Their signatures were witnessed by a local Postmaster. Attached to the lease is a memorandum to the District Land Registrar seeking to surrender the perpetual lease and register the fixed-term lease against the title. That memorandum is signed by the “Solicitor for the Lessees”.

He aha ngā pūtake o tēnei tono?

What is the basis of Ms Biester’s application?

[29] It is clear that Ms Biester does not agree with the terms of the fixed-term lease. She asserts that she and her mother’s successors should continue to have a perpetual right to occupy the land. However, the exact nature of her claim is unclear. This is despite the fact that she has been represented by counsel in this proceeding.

[30] At the time Ms Biester’s applications were filed, she was represented by Gerald Sharrock. By the time the applications were heard, Ms Biester changed counsel and was represented by Barney Tūpara. Both Mr Sharrock’s applications, and Mr Tūpara’s closing submissions, are difficult to follow. In addition to that, the closing submission that Mr Tūpara filed does not align with the applications that Mr Sharrock filed.

[31] Mr Sharrock filed two applications:

- (a) The first sought relief against cancellation of the lease per s 253 of the Property Law Act 2007.
- (b) The second application sought to consolidate Ms Biester’s application with similar applications filed by Richard Takimoana and Mereawaroa Davies per s 18(1)(a) of Te Ture Whenua Māori Act 1993 (the Act).

[32] Mr Tūpara’s closing submission only refer to s 18(1)(a) of the Act. It does not seek relief against cancellation of the lease pursuant to the Property Law Act. In that closing, Mr Tūpara makes an unusual submission that terminating the lease will leave Ms Biester homeless, which he says is a form of elder abuse. It is not clear how that relates to the applications filed or the relief sought. Despite that, the general tenor of Mr Tūpara’s closing submission is that:

- (a) the trustees failed to uphold their obligations to their beneficiaries; and
- (b) in particular, the trustees failed to protect Martha Apiata’s interests when negotiating and signing the fixed-term lease.

[33] Generally, an application must:¹⁹

- (a) specify the nature of the order sought, the details of the Act and the relevant section that applies; and
- (b) state the grounds, reasons and any facts relied on so as to fully inform the Court of the true nature of the application.

[34] Per s 66(2) of the Act, any proceeding can be conducted in a way that, in the judge’s opinion, will best avoid unnecessary formality. This provision affords a certain amount of discretion to ensure the Court can properly hear applications without applying the strict requirements of litigation procedure. Such a discretion is important given that the vast majority of parties who appear in this Court are not represented. However, in this case Ms Biester has had legal representation. These applications have been prosecuted in a manner akin to civil litigation in the mainstream courts. Ordinarily, in these circumstances, it would not be appropriate to take a less formal approach particularly when the basis of the application is unclear.

[35] The s 18(1)(a) application was filed by Mr Sharrock as he was seeking an order to “consolidate” these applications along with related applications filed by Mr Takimoana and Ms Davies concerning Lots 16 and 18. These are the other lots for which perpetual leases

¹⁹ See Māori Land Court Rules 2011, rr 4.1–4.2 and form 1.

were granted, which were later substituted with new fixed-term leases. While this application referred to consolidating the claims, Mr Sharrock was actually seeking to join them. This application was also misconceived as s 18(1)(a) of the Act does not relate to joinder. Despite that, on 4 September 2014, I issued a minute declining to join Ms Biester's application with those from Mr Davis and Ms Takimoana.²⁰ That effectively disposed of the s 18(1)(a) application.

[36] The intituling to Mr Tūpara's closing submission only refers to s 18(1)(a) of the Act. As noted, I determined that application when I refused to join this proceeding with the Davis and Takimoana proceedings. The only extant application is per s 253 of the Property Law Act.²¹ Mr Tūpara did not address that in his closing submissions, which ordinarily indicates that the application has been abandoned.

[37] In addition to these considerable hurdles, Ms Biester is a co-executor of her mother's estate along with Pita Apiata Jr. In his closing submissions, Mr Tūpara says Mr Apiata Jr has been kept informed by Ms Biester, but he has not been formally served with the proceeding. Mr Tūpara questions whether a decision can be made in Mr Apiata's absence. On 13 March 2020, I directed Mr Tūpara to serve Mr Apiata Jr with a copy of the proceeding.²² Clearly Mr Tūpara failed to comply with that direction.

[38] I consider that there is a sufficient basis to dismiss this proceeding because of these significant procedural flaws:

- (a) The application does not properly specify the nature of the order sought, the details of the Act and the relevant section that applies.
- (b) The application does not properly set out the grounds, reasons and any facts relied on so as to fully inform the Court and the trustees of the true nature of the application.

²⁰ See 86 Taitokerau MB 64 (86 TTK 64).

²¹ I note that Ms Biester did file an application seeking an interim injunction to prevent her eviction pending the determination of her substantive application. The trustees gave an undertaking that they would not evict her until the Court had determined the substantive application and so an interim injunction was not necessary.

²² 209 Taitokerau MB 159 (209 TTK 159).

- (c) Mr Tūpara relies on the s 18(1)(a) application which has already been determined.
- (d) Mr Tūpara did not refer to the Property Law Act application in his closing submission effectively abandoning that claim.
- (e) Mr Tūpara failed to comply with a direction of the Court as to service justifying dismissal per r 6.28 of the Māori Land Court Rules 2011.

[39] Despite that, given the significance of what is at stake and the length of time that this issue has been before the parties and this Court, I proceed to consider these applications as best I can against the ambiguous nature of the material filed. When doing so, I discern that there are two broad issues brought on Ms Biester's behalf:

- (a) Should relief be granted against cancellation of the lease per the Property Law Act (being the original application)? and
- (b) Did the trustees breach their obligations to Martha Apiata and, if so, should those obligations be enforced (being the crux of Mr Tūpara's closing submission)?

[40] I consider these issues in turn.

Kōrerorero

Discussion

Should relief be granted against cancellation of the lease per the Property Law Act?

[41] Per s 21 of the Act, I can exercise all the powers of the High Court under ss 253 to 260 of the Property Law Act with respect to Māori freehold land.

[42] Section 253 of the Property Law Act provides that a lessee can apply to the Court for relief against cancellation of the lease concerning the breach of a covenant or condition of

the lease. The Court's fundamental approach to granting such relief was set out in *Gill v Lewis*.²³

...save in exceptional circumstances, the function of the court in exercising this equitable jurisdiction is to grant relief when all that is due for rent and costs has been paid up, and (in general) to disregard any other causes of complaint that the landlord may have against the tenant. The question is whether, provided all is paid up, the landlord will not have been fully compensated; and the view taken by the court is that if he gets the whole of his rent and costs, then he has got all he is entitled to so far as rent is concerned, and extraneous matters of breach of covenant, and so forth, are, generally speaking, irrelevant.

[43] The equitable jurisdiction to grant such relief referred to in *Gill* was codified by the Property Law Act.²⁴ Despite that, the nature of the relief remained the same. Section 253 applies where a lessee has breached the lease, such as failing to pay rent, and the lessor takes steps to cancel the lease. In those circumstances, the lessee can seek relief from the Court against cancellation provided that they can demonstrate that the breach has been remedied, such as the outstanding rent being paid.

[44] The trustees are not seeking to cancel the lease on the basis that Ms Biester, or her mother, breached a covenant or condition in the lease. They are seeking to cancel the lease on the basis that the fixed-term has expired. I cannot grant relief against cancellation of the lease per s 253 of the Property Law Act where the fixed term of the lease has expired. This claim cannot succeed.

Did the trustees breach their obligations to Martha Apiata when the perpetual lease was surrendered and the fixed-term lease was signed?

[45] Mr Tūpara argues that at the time the perpetual lease was surrendered, and the fixed-term lease was signed, the trustees had an obligation to protect Martha Apiata's interests. It is clear that trustees owe certain obligations to their beneficiaries. However, it is not clear that Martha Apiata was a beneficiary of this trust.

[46] The trust order for this trust provides that the beneficiaries are the "lineal descendants" of the original 251 owners named in the 1891 order of the Māori Appellate Court.²⁵ Mr Tupara argues that Ms Biester descends from one of those original owners,

²³ *Gill v Lewis* [1956] 2 QB 1 at 13.

²⁴ See Property Law Act 2007, s 243.

²⁵ 128 Taitokerau MB 34–35 (128 TTK 34–35).

Timiwera Taurua. I accept that Ms Biester descends from Timiwera Taurua who is one of the original 251 owners. However, Ms Biester confirmed to me that her whakapapa to Timiwera Taurua is through her biological father Hone Pokai Taurua, not through her mother.²⁶

[47] In a sworn affidavit filed at an early stage of this proceeding, Ms Biester states:²⁷

My mother, Martha Apiata nee Wynyard, did not have shares in Te Tii Waitangi B3 lands.

[48] This statement is a misnomer as shares were never allocated to the owners in this land. However, this appears to be a clear statement from Ms Biester that her mother does not descend from those original owners and is not a beneficiary of the trust. When I questioned Ms Biester about this, she said that her mother does whakapapa to the original owners but “[s]he did not make it public”. Ms Biester asserted that her mother descends from Marama Ngere. Ms Biester was unable to recite that whakapapa to Marama Ngere during the hearing, but she said that she could if she had a chance to think about it.²⁸

[49] The chairperson of the trust, Wiremu Tane, also gave evidence in this proceeding. He said that he was taught whakapapa by two of his kuia, and that his knowledge of whakapapa is recognised in their hapu. Mr Tūpara put it to Mr Tane that Marama Ngere is one of the original 251 owners. Mr Tane strongly disagreed.

[50] Mr Tane accepted that Ms Biester descends from Marama Ngere but he said that Marama is not one of the original 251 owners, and she does not whakapapa to one of the original 251 owners. Mr Tane advised that he also descends from Marama Ngere. He recited his whakapapa to her.

[51] The trust order for this trust also provides for the appointment of Tupuna Whanau Representatives who represent the descendants of those original owners. Tupuna Whanau Representatives play a significant role in this trust as only they can vote at general meetings including when electing trustees.²⁹ Not surprisingly, becoming a Tupuna Whanau Representative is a highly valued position within this trust. Mr Tane has been the chairperson

²⁶ 256 Taitokerau MB 12–54 (256 TTK 12–54) at 27.

²⁷ Affidavit of A Biester, 7 July 2015.

²⁸ 256 Taitokerau 12–54 (256 TTK 12–54) at 28.

²⁹ 128 Taitokerau 34–35 (128 TTK 34–35) at Part 8.

of the trust for 18 years. He said that throughout his tenure, he had never heard Ms Biester, or any other person, assert rights as a descendant of Marama Ngere.

[52] I have reviewed the 1891 order. I agree with Mr Tane. Marama Ngere is not named as one of those original 251 owners. I also accept Mr Tane's evidence that Marama Ngere does not descend from one of those original owners. Ms Biester told me that Marama Ngere was one of the original owners. Mr Tūpara also put this to Mr Tane. Clearly, she is not. Ms Biester has not produced any evidence to show that Marama Ngere descends from those original owners.

[53] I also accept that Mr Tane has expertise on the whakapapa to those original owners. He was taught those whakapapa by his kuia and he was able to demonstrate that expertise reciting whakapapa in Court. Mr Tane is recognised within the hapu for his knowledge of whakapapa. Mr Tane also descends from Marama Ngere and knows her whakapapa connections.

[54] Mr Tane has also been the chairperson for this trust for almost 20 years. When a Tupuna Whanau Representative is appointed, notice has to be given to the trustees that includes whakapapa showing the Tupuna Whanau Representative's relationship to the named original owner.³⁰ Throughout his long tenure, Mr Tane would have seen numerous whakapapa from those Tupuna Whanau Representatives to those original 251 owners.

[55] For these reasons, I find that Martha Apiata was not a descendant of the original owners named in the 1891 order. I also find that she was not a beneficiary of the trust.

[56] I accept that Ms Biester is a beneficiary of this trust. However, that is through her father. This claim is not made through her father. I also accept that Pita Apiata was a beneficiary of this trust. However, Mr Apiata was Ms Biester's stepfather. This claim is not brought through Mr Apiata. This claim is clearly brought on behalf of Martha Apiata. Ms Biester brings that claim as her daughter and as an executor of the estate. However, Martha was not a beneficiary of the trust.

³⁰ 128 Taitokerau 34–35 (128 TTK 34–35) at Part 8.

[57] As Martha Apiata was not a beneficiary of the trust, the trustees could not have owed trustee obligations to her at the time the perpetual lease was surrendered and the fixed-term lease was signed. This claim must also fail.

Is there some other claim against the trustees in equity?

[58] Although Mrs Apiata was not a beneficiary of the trust, in certain circumstances the Court may still intervene in a transaction that is unconscionable.³¹ No such claims have been raised in the pleadings, or in the closing submission. I have already taken a charitable approach by considering claims under the Property Law Act, and whether there has been a breach of trust, despite the significant deficiencies in the pleadings, and the closing submission. It is not my role to scour any other possible argument, that has not been raised by counsel, and for me to raise it on Ms Biester's behalf. Despite that, I accept that on the face of it, surrendering a lease with a perpetual right of renewal, in favour of a fixed-term lease, is a significant step. I make the following observations.

[59] This is not a case where the lessees surrendered a perpetual lease, in favour of a fixed-term lease, without any other consideration. The documentary records show that the trustees at that time had concerns about increasing land valuations, and the impact this would have on the rent for all of their lessees. One of those valuations showed an increase in rent from \$140.00 per annum to \$1,052.00 per annum.³² That did not relate to Lot 17, but it does show an increase in rent of 750%. That is significant.

[60] The trustees offered alternative leases to all of their lessees as a result of those concerns. The trustees did not target Mr and Mrs Apiata or only those who had perpetual leases. They offered this to all of them.

[61] Mr and Mrs Apiata's perpetual lease fixed the rent for the first 10 years, but after that rent would have been reviewed pursuant to the Public Bodies Leases Act 1969. That may well have resulted in a significant rent increase as the trustees feared. Mrs Apiata had the benefit of the rent remaining fixed at a peppercorn rate for a further 32 years. Despite having

³¹ Such as claims of undue influence or unconscionable bargain.

³² Affidavit of W Tane, 9 November 2017, exhibit "TT".

had that benefit, her daughter now argues that she should be able to revert back to the original perpetual lease.

[62] The trustees also discussed the proposed surrender of the perpetual lease, in favour of a fixed-term lease, on numerous occasions at multiple trustee meetings. They had advice from their accountant and their solicitor. Mr Apiata was a trustee. He attended those meetings. He must have known the effect of surrendering the perpetual lease in favour of the fixed-term lease.

[63] There is no objective or cogent evidence about what Mrs Apiata understood when the perpetual lease was surrendered in favour of the fixed-term lease. Ms Biester's evidence that her mother was misled is speculative. Ms Biester left home before the fixed-term lease was entered into. She was not present when her mother surrendered the perpetual lease and signed the new lease and does not know what discussions took place at that time. She said that her mother spoke to her about this "later".³³ That evidence is either hearsay or is unreliable.

[64] Ms Biester said "I can only assume [Pita] was making all the decisions as far as the lease is concerned".³⁴ She says her mother was very unhappy, that she divorced Pita and took over the lease as part of the divorce settlement.³⁵ Once again, her evidence that Pita made a unilateral decision to surrender the perpetual lease in favour of the fixed term lease is speculative. Also, if Pita misled Martha, or otherwise exercised undue influence over her during this arrangement, then Martha's claim would be against her husband. The appropriate time to bring that claim would have been during their divorce and the settlement of their relationship property which included this lease. Ms Biester told me that her mother was represented by Law North in Kerikeri during the divorce.³⁶ Any dealings between Pita and Martha were between a husband and wife, not a trustee and a beneficiary. That does not now give rise to a claim against the trust.

[65] While the evidence as to Martha's understanding of the transaction at the time is not clear, the documentary record shows that:

³³ 256 Taitokerau MB 12–54 (256 TTK 12–54) at 27.

³⁴ At 38.

³⁵ At 38.

³⁶ At 41.

- (a) Pita and Martha signed the letter from the trustees offering the fixed-term lease under the words “We agree to the above proposal”.
- (b) Pita and Martha signed the new fixed-term lease. Their signatures were witnessed by a postmaster.
- (c) A memorandum to the District Land Registrar to surrender the perpetual lease and register the fixed-term lease was signed by the “Solicitor for the lessee”. This shows that they had legal representation at some stage during this transaction.

[66] I accept that when Pita and Martha signed the letter of offer from the trustees, they dated their signatures as 20 August 1979. In an earlier affidavit, Ms Biester says that the perpetual lease and the new fixed-term lease were finalised on 14 March 1979, five months before her mother had agreed to the deal. She claims that this impugns the transaction. I don’t agree.

[67] The trustees sent out the offer on 10 July 1978. The trustees passed a resolution accepting the surrender of the perpetual lease and granting the new fixed-term lease, at a trustee meeting on 4 February 1979. Martha and Pita signed the new lease on 30 May 1979. Their signatures were witnessed by a postmaster.

[68] It makes no sense that Martha and Pita would sign and return the letter of offer three months after they had signed the new fixed-term lease. I consider it is more probable that the date under their signatures on the letter of offer contained an error and should state 10 August 1978 not 10 August 1979. That 1978 timeline is consistent with the other documents and the steps taken for these transactions.

[69] Ms Biester disputes that her mother had legal advice. Again, her evidence is speculative. When I put to her that the memorandum to the District Land Registrar was signed by the solicitor for the lessee, she claimed that she had never seen this in her mother’s files. She said:³⁷

...we can only assume she did not receive it or was not present when it was drawn up.

³⁷ At 40.

[70] Despite her claims that she had never seen this document and it was not part of her mother's files, Ms Biester actually attached a copy of this document to her affidavit of 28 August 2014 at exhibit "J".

[71] Sadly, Martha passed away in 1993. However, she continued to have the benefit of this lease, at a fixed peppercorn rental, for the rest of her life. Her children continued to have the benefit of that peppercorn rent for the remainder of the fixed term, which expired in 2013. They have also continued to have that benefit for a further 12 years after that. Those who seek equity must do equity. It would be difficult to receive the full benefits of the fixed-term lease, and then to turn around and argue that you should also receive the full benefit of the perpetual lease as well.

[72] This is not a case where the transaction is so unconscionable that the Court should intervene of its own motion.

Whakataunga *Decision*

[73] This application is dismissed.

[74] If the trustees seek costs:

- (a) the trustees are to file submissions on costs within one month;
- (b) Ms Biester is to file any submissions in response within one further month;
and
- (c) I will decide costs on the papers.

I whakapuaki i te wā 3:00pm i Whangarei, 8th o ngā rā o Mahuru i te tau 2025.

Pronounced at 3:00pm in Whangarei on this 8th day of September 2025.

M P Armstrong
JUDGE