

I TE KOOTI PĪRA MĀORI O AOTEAROA
I TE ROHE O TE WAIARIKI
In the Māori Appellate Court of New Zealand
Waiariki District

AP-20230000029081

WĀHANGA <i>Under</i>	Section 58, Te Ture Whenua Māori Act 1993
MŌ TE TAKE <i>In the matter of</i>	Tūhoe – Te Uru Taumatua Trust
I WAENGA I A <i>Between</i>	TIMOTI BUDDY NIKORA Kaitono pīra <i>Appellant</i>
ME <i>And</i>	TRUSTEES OF THE TŪHOE – TE URU TAUMATUA TRUST Ngā Kaiurupare pīra <i>Respondents</i>

Nohoanga: <i>Hearing</i>	13 February 2025, 2025 Māori Appellate Court MB 53-83 (Heard at Rotorua)
Kooti: <i>Court</i>	Judge M J Doogan (Presiding) Judge D H Stone Judge A M Thomas
Kanohi kitea: <i>Appearances</i>	M van Alphen Fyfe for Respondents
Whakataunga: <i>Judgment date</i>	5 May 2025

TE WHAKATAUNGA Ā TE KOOTI
Reserved Judgment of the Court

Kōrero tīmatanga*Introduction*

[1] Kua whakawhiwhia te Tūhoe – Te Uru Taumatua Trust (“te Taratī”), hei kanohi mō te iwi o Tūhoe, i ngā rawa i puta ake i tā rātou me te Karauna whakatau i ngā kerēme o-mua mō te Tiriti o Waitangi. Nā konā, ka kīa ake he hinonga whakahaere rawa nō muri whakataunga ia. E kimi ana tētahi kaiwhaipānga, a Timoti Buddy Nikora, te kaitono, i ētahi mōhihio mō te Taratī. Kua whakahētia e te Taratī te tono kia tukua ētahi mōhihio. Kua tukua e Mr Nikora tētahi tono ki te Kooti Whenua Māori mō ngā ōta e kī nei me tuku atu te Taratī i aua mōhihio ki a ia. Kāhore te Kooti Whenua Māori i whakaae kia whakamanatia aua ōta. E tono pīra ana a Mr Nikora ki taua whakataunga.

Whakarāpopototanga*Summary*

[2] E whakaaetia ana tēnei tono pīra. Kua whakakāhoretia te ōta a te Kooti Whenua Māori e whakakōre nei i te tono a Mr Nikora mō ētahi anō mōhihio, ka mutu, e whakahautia ana te Kooti Whenua Māori kia tū anō tēnei tono me tana katoa.

[3] I te mea kāhore tētahi rōia i uru mai hei māngai mō Mr Nikora, kāhore he take o te tuku otā mō ngā utu whakahaere.

Kōrero tīmatanga*Introduction*

[1] The Tūhoe – Te Uru Taumatua Trust (“the Trust”), on behalf of the Tūhoe iwi, has received assets from the Crown in settlement of historical Treaty of Waitangi claims. As such, it is known as a post-settlement governance entity. The appellant, Timoti Buddy Nikora, is a beneficiary of the Trust and seeks information about the Trust. The Trust has refused to provide some of the requested information. Mr Nikora applied to the Māori Land Court for orders requiring the Trust to provide that information to him. The Māori Land Court declined to grant those orders. Mr Nikora appeals that decision.

Whakarāpopototanga*Summary*

[2] The appeal is allowed. The order of the Māori Land Court to dismiss Mr Nikora’s application for further information is annulled and the Māori Land Court is directed to rehear that application in its entirety.

[3] As Mr Nikora was not represented by counsel, there is no order as to costs.

I ahatia?*What has happened?*

[4] I te tau 2019, i tuku tono a Mr Nikora ki te Kooti Whenua Māori e kimihia nei i tētahi ōta tango i ngā tarahitī o te Taratī, waihoki, i tētahi kōpoutanga kaiwhakahaere kia arotakehia ngā mahi o ia rā me ngā mahi whakahaere o te Taratī. I tū tahi ēnei tono me ētahi atu e whai take nei ki te Taratī ki tētahi nohoanga o te Kooti Whenua Māori. I te rā 21 o Apereira 2021, i whakaūngia e te Kooti Whenua Māori kua takahi ngā tarahitī o te Taratī i ngā tikanga taratī. Heoi anō, kāhore te Kooti i whakaae kia tangohia ngā tarahitī o te Taratī i ō rātou tūranga. I te mutunga iho, kua whakakorehia e te Kooti ngā tono a Mr Nikora.¹

[5] I te rā 29 o Maehe 2022 i whāia rā, i tuku a Mr Nikora i tētahi tono e ai ki w 236(1)(b) me w 67 o Te Ture Whenua Māori Act 1993 (“te Ture”).² Katahi ka whakahou anō ia i te tono kia tāpirihia a w 238 o te Ture, e tuku nei i te āheinga ki te Kooti Whenua Māori kia mea atu me whakaū ki ngā takohanga taratī. I te kimi taua tono i ngā ota ā-Kooti e ki nei ki te Taratī me tuku atu ētahi mōhiohio whāiti ki a Mr Nikora kia “sustain a case for the

I ahatia?*What has happened?*

[4] Mr Nikora filed applications in the Māori Land Court in 2019 seeking the removal of the trustees of the Trust and the appointment of administrators to undertake a review of the operations and governance of the Trust. These applications were heard by the Māori Land Court together with other applications relating to the Trust. On 21 April 2021, the Māori Land Court held that the trustees of the Trust had acted in breach of trust. However, the Court declined to remove the trustees of the Trust from office. Ultimately, the Court dismissed Mr Nikora’s applications.¹

[5] Subsequently, on 29 March 2022 Mr Nikora filed an application per ss 236(1)(b) and 67 of Te Ture Whenua Māori Act 1993 (“the Act”).² He then amended the application to include s 238 of the Act, which allows the Māori Land Court to enforce trust obligations. The application sought Court orders to require the Trust to provide specified information to Mr Nikora so that he could “sustain a case for the removal of trustees”. The requested information was:

¹ 252 Waiāriki MB 175-176.

² The application erroneously referred to s 362(1)(b) of the Act, when Mr Nikora intended to refer to s 236(1)(b) of the Act. This is the section that gives the Māori Land Court jurisdiction over the Trust.

removal of trustees” ai ia. E mea nei aua mōhiohio:

- | | |
|--|---|
| <p>a) Ko ngā tahua pūtea a te Taratī (me ētahi miniti whai take e whakaaetia nei aua pepa) mō ngā tau 2020, 2021 me te tau 2022 mutu ana ki te 31 o Maehe.</p> | <p>a) The Trust budgets (and associated trustee minutes approving them) for the years ending 31 March 2020, 2021 and 2022.</p> |
| <p>b) Ko ngā miniti tarahitī (mai i te takiwā o te tau 2014 – 216) e whakaaetia nei te tūtohunga a te Investment Committee mō te tuku pūtea penapena a te Taratī ki te Ruatahuna Motels and Store.</p> | <p>b) Trustee minutes (from about 2014-2016) approving the Investment Committee’s recommendation for the investment by the Trust in the Ruatahuna Motels and Store.</p> |
| <p>c) Ko te Tauākī Pikinga me te Hekenga Utu me te Whakarāpopototanga Utu o te Ruatahuna Motels and Store mō ngā tau 2019, 2020 me te tau 2021 mutu ana ki te 31 o Maehe.</p> | <p>c) The Statement of Profit and Loss and Balance Sheet for the Ruatahuna Motels and Store for the years ending 31 March 2019, 2020 and 2021.</p> |

[6] Kua inoitia kētia e Mr Nikora mō ēnei mōhiohio mai i te Taratī.³ Kua pātai hoki ia ki te kaikaute o te Taratī mō ētahi o ēnei mōhiohio.⁴ Kia mōhio ai, kāhore i tukua ki te Kooti Whenua Māori ētahi taunakitanga e whakaatuhia nei te whakautu a te Taratī ki aua inoi. Nā tā Mr Nikora tuku i tētahi tono mō ēnei mōhiohio e whakapae nei mātou, i whakahētia e te Taratī aua inoi.

[7] I te rā 24 o Māehe 2023, i tū te tono ki te Kooti Whenua Māori ka whakakorehia ai ia.⁵ Kāhore he take o tā mātou āta whakarārangi mai i ngā take i whakakorehia ai e te Kooti Whenua Māori te tono, inā hoki he kōtitanga anō tēnei. I te rā 24 o Mei 2023, i tuku atu ai a Mr Nikora i tana tono pīra ki tērā whakataunga. I taua wā, kei te tū tahi ētahi whakahaerenga ā-ture ki mua i te Kōti Mana Nui mō te mana ā-ture o te Kooti Whenua Māori kia rangona ngā whakahaerenga ā-ture mō te Taratī.⁶ Nā konā, kua whakatārewahia te tono pīra tae noa atu ki te whakataunga o te Kōti Mana Nui.

[8] I te rā 30 o Oketopa 2024, i whakaūngia e te Kōti Mana Nui kei a te Kooti Whenua Māori (waihoki, kei a te Kooti Pīra Māori) te mana ā-ture ki te

[6] Mr Nikora had already asked for this information from the Trust.³ He had also sought some of the information from the Trust's accountant.⁴ Importantly, no evidence was filed with the Māori Land Court regarding the Trust's responses to those information requests. On the basis that Mr Nikora had to apply to the Court to seek this information, we must assume that the Trust declined these requests.

[7] The application was heard and dismissed by the Māori Land Court on 24 March 2023.⁵ Because this is an appeal by way of rehearing, we need not set out in detail the reasons expressed by the Māori Land Court for dismissing the application. Mr Nikora filed his appeal of that decision on 24 May 2023. At that time, there were concurrent proceedings before the Supreme Court regarding the jurisdiction of the Māori Land Court to hear proceedings concerning the Trust.⁶ The appeal was therefore adjourned pending the Supreme Court's decision.

[8] The Supreme Court confirmed on 3 October 2024 that the Māori Land Court (and, by implication, the Māori Appellate Court) has jurisdiction to hear proceedings

³ By letters dated 8 June 2021 and 29 January 2022.

⁴ By letter dated 29 January 2022.

⁵ 292 Waiāriki MB 6-10.

⁶ *Nikora v Kruger* [2024] NZSC 130.

whakarongo ki ngā whakahaerenga ā-ture mō te Taratī.⁷ Kua whakaritea te tono pira a Mr Nikora kia tū ki tētahi kōtitanga a te rā 13 o Pēpuere 2025.

Te ture

The law

[9] Ka whakahaerehia tēnei pira mā tētahi kōtitanga anō. Me titiro mātou ki tēnei tono anō nei he mea hou, nā runga anō hoki i te ture o tēnei wā.⁸

[10] I whakatūria te Taratī e tētahi tuhinga tikanga a te Taratī i te rā 13 o Tihema 2013 (“te Tuhinga Tikanga”). He whānui tana kai o roto, me te tika hoki mō tētahi hinonga kua whakawhiwhia ngā puretumu nā te Karauna hei whakataunga i ngā kerēme ō-mua mō te Tiriti o Waitangi. Kei roto i a ia ētahi wāhanga e kī nei me tuku atu ētahi mōhihio ki ngā kaiwhaipānga o te Taratī. Ki te noho atu ngā mōhihio e kimihia nei e Mr Nikora ki te whānuitanga o ēnei wāhanga, e tika ana me tuku atu ēnei e te Taratī. E mea nei ngā wāhanga e whai take ana:

13. Plans and Reporting

13.1 Without derogating from its duties under any enactment or at law, the Trust has reporting responsibilities in relation to:

- (a) its own performance;
- (b) the performance of Trust Entity; and

concerning the Trust.⁷ Mr Nikora’s appeal was accordingly set down for hearing on 13 February 2025.

Te ture

The law

[9] This appeal is by way of rehearing. We must consider the application anew, by reference to the law as it stands now.⁸

[10] The Trust is constituted by a trust deed dated 13 December 2013 (“the Trust Deed”). It is comprehensive, as expected for an entity that has received redress from the Crown in settlement of historical Treaty of Waitangi claims. It includes provisions that require the provision of information to the Trust beneficiaries. If the information sought by Mr Nikora falls within the scope of these provisions, the Trust is required to provide it. The relevant provisions are as follows:

⁷ As above.

⁸ Te Ture Whenua Māori Act 1993, s 55(1) and *Austin, Nichols & Co Inc v Stichting Lodestar* [2007] NZSC 103.

- (c) the performance of any joint venture or other entity that concludes business using the Trust's assets or in which the trust holds shares;

13.2 The Trustees must, within four months after the end of each Financial Year and at least 20 days prior to the Annual General Meeting, cause to be prepared and published an Annual Report and Plan on the affairs of the Trust and any Trust Entities covering the accountant period at the end of that Financial Year which includes:

- (a) the Financial Statements so as to give a true and fair view of the financial affairs of the Trust and any Trust Entities for that Financial Year;
- (b) an evaluation by the Trustees of the activities of the Trust and the Trust Entities and of the annual plans of Trust and the Trust Entities.

13.3 The Annual Report and Plan shall also include:

- (a) the objectives of the annual plan;
- (b) the strategic vision for the Trust and any Trust Entities;
- (c) the nature and scope of the activities proposed by the Trust for the Trust and any Trust Entities in the performance of the Purposes of the Trust;
- (d) the ratio of capital to total assets;
- (e) the performance targets and measurements by which performance of the Trust and any Trust Entities may be judged;
- (f) the manner in which it is proposed that projected income will be dealt with;
- (g) any amendments made to, or proposals to amend, the this Deed or the constitutional documents of any Trust Entity;
- (h) any proposals for the ongoing management of the Trust's Assets having regard to the interests of all Tūhoe Iwi Members; and
- (j) information on the steps taken by the Trust to increase the number of Tūhoe Registered members.

13.4 The Trustees shall (i) hold their offices, (ii) make available for inspection by any Tūhoe Registered Members during normal business hours on any Business Day, and (iii) provide no later than 10 Business Days after receipt by the Registered Office of a written request from a Tūhoe Registered Member:

- (a) the Annual Report and Plan for each of the preceding three (3) Income Years;
- (b) the Financial Statements for the preceding three (3) Income Years;
- (c) a copy of any resolutions passed by the Trustees or at a General Meeting;

- (d) their own personal details on the Tūhoe iwi Register;
- (e) the Deed and any amendment to the Deed; and
- (f) the current constitution of any Trust Entity.

14. Accounts

- 14.1 The Trustees must ensure that financial records are kept.
- 14.2 The financial records must present the Trust's receipts, credits, payments, assets, liabilities and all other matters necessary or appropriate in a way that shows the true state and condition of the financial affairs of the Trust.
- 14.3 The financial records and Financial Statements will be kept at the Registered Office and at such other place as the Trustees think fit.
- 14.4 The financial records and Financial Statements must always be available to be inspected by the Trustees.
- 14.5 the Trustees shall prepare, or cause to be prepared, financial statements for each Financial Year (which will be the Financial Statements).
- 14.6 The Trustees shall ensure that the Financial Statements for each Financial Year are audited by a chartered accountant in public practice prior to the date for giving notice of the Annual General Meeting.
- 14.7 The auditor shall be appointed by the Trustees and approved at the Annual General Meeting prior to the end of the Financial Year to which the audit relates an, where possible, the fee of the auditor shall also be fixed at that time. No trustee or employee of the Trust (including any firm of which such a person is a member or employee) may be appointed as the auditor. For the avoidance of doubt, the Trust's accountant shall not be appointed as the auditor.
- 14.8 At least once every calendar year, the Trustees shall present an Annual Report and Plan including the Financial Statements for the most recent Financial Year, to an Annual General Meeting.

[11] Ka whai take tētahi wāhanga o te inoi mōhiohio a Mr Nikora ki te kōmiti pūtea penapena o te Taratī. Kei te whiti 15 o te Tuhinga Tikanga te mana ki te whakatū i tētahi kōmiti pērā. Hei ko tana:

[11] Part of Mr Nikora's information request relates to the Trust's investment committee. The power to establish such a committee is provided in clause 15 of the Trust Deed. It provides:

15. Investments

- 15.1 The Trustees shall consider and decide on a Statement of Investment Policies and Objectives (the SIPO) which provides for the prudent Investment of the whole of the Trust Fund (and of trust Entity that is designated by the trustees as an Investment entity for the purposes of this clause 16) in accordance with

sections 13B to 13E (inclusive) of the Trustees Act 1958. The SIPO shall be reviewed at least annually by the Trustees.

- 15.2 The Trustees shall invest the Trust Fund or cause it to be invested in accordance with the SIPO.
- 15.3 The Trustees may appoint one or more individuals or companies to be an Investment Advisor of the Trust.
- 15.4 the Investment Advisor shall, if the Trustees direct in writing, have full authority and responsibility to invest in accordance with the SIPO the part of the Trust Fund designated by the Trustees in their direction.
- 15.5 The Trustees may appoint an investment Committee comprising appropriately qualified individuals. The Investment Committee shall;
 - (a) Prepare a draft SIPO for consideration and (if considered appropriate by the Trustees) approval (with or without amendments) by the Trustees;
 - (b) Review the SIPO and submit a report with (if necessary a revised draft SIPO each year to the Trustees;
 - (c) review the performance of any Investment Advisor at least once each year and report to the Trustees;
 - (d) (If authorised by the trustees) have the power in circumstances of urgency or expediency to acquire, re-invest and dispose of (I) term deposits with registered New Zealand banks of up to Fifteen Million Dollars (\$15,000,000.00) and (II) other debt investments and equity investments of up to Two Million Dollars (\$2,000,000.00);
 - (e) Report within 15 Business Days of the end of each quarter to the Trustees on all acquisitions, re-investments and disposals of term deposits, other debt investments and equity investments.
- 15.6 the Trustees may by Special Resolution, after consulting with the Investment Committee, specify the maximum amount of transactions that may be authorised under Clause 15.5(d).

[12] Ka whai take te Trusts Act 2019 (“te Trusts Act”) ki te Taratī. Kei roto i a ia ētahi wāhanga e kī nei me tuku atu ngā tarahitī i ētahi mōhiohio ki ā rātou kaiwhaipānga. Ki te noho atu ngā mōhiohio e kimihia nei e Mr Nikora ki te whānuitanga o ēnei wāhanga, e tika ana me tuku atu ēnei e te Taratī. E mea nei ngā wāhanga e whai take ana:

[12] The Trusts Act 2019 (“the Trusts Act”) applies to the Trust. It contains provisions that require trustees to provide certain information to their beneficiaries. If the information sought by Mr Nikora falls within the scope of these provisions, the Trust is required to provide it. The relevant provisions are as follows:

49 Definitions for purposes of sections 50 to 55

In this section and in sections 50 to 55,—

representative means the parent, guardian, attorney, or property manager of a beneficiary who lacks capacity

trust information—

(a) means any information—

- (i) regarding the terms of the trust, the administration of the trust, or the trust property; and
- (ii) that it is reasonably necessary for the beneficiary to have to enable the trust to be enforced; but

(b) does not include reasons for trustees' decisions.

50 Purpose and application of sections 51 to 55

- (1) The purpose of sections 51 to 55 is to ensure that beneficiaries have sufficient information to enable the terms of the trust and the trustees' duties to be enforced against the trustees.
- (2) Sections 51 to 55 do not apply to charitable trusts or to other trusts for a permitted purpose that do not have beneficiaries.

51 Presumption that trustee must notify basic trust information

- (1) There is a presumption that a trustee must make available to every beneficiary or representative of a beneficiary the basic trust information set out in subsection (3).
- (2) However,—
 - (a) before giving the information, the trustee must consider the factors set out in section 53; and
 - (b) if the trustee reasonably considers (after taking into account those factors) that the information should not be made available to every beneficiary,—
 - (i) the presumption does not apply; and
 - (ii) the trustee may decide to withhold some or all of the basic trust information from 1 or more particular beneficiaries or classes of beneficiaries.
- (3) The basic trust information is—
 - (a) the fact that a person is a beneficiary of the trust; and
 - (b) the name and contact details of the trustee; and

- (c) the occurrence of, and details of, each appointment, removal, and retirement of a trustee as it occurs; and
 - (d) the right of the beneficiary to request a copy of the terms of the trust or trust information.
- (4) A trustee is required to consider at reasonable intervals whether the trustee should be making the basic trust information available under this section.

52 Presumption that trustee must give information on request

- (1) There is a presumption that a trustee must within a reasonable period of time give a beneficiary or the representative of a beneficiary the trust information that person has requested.
- (2) However,—
- (a) before giving the information, the trustee must consider the factors set out in section 53; and
 - (b) if the trustee reasonably considers (after taking into account those factors) that the information should not be given to the person,—
 - (i) the presumption does not apply; and
 - (ii) the trustee may decide to refuse the request for trust information.

53 Procedure for deciding whether presumption applies

The factors that the trustee must consider (for the purposes of sections 51(2)(a) and 52(2)(a)) are the following:

- (a) the nature of the interests in the trust held by the beneficiary and the other beneficiaries of the trust, including the degree and extent of the beneficiary's interest in the trust and the likelihood of the beneficiary receiving trust property in the future:
- (b) whether the information is subject to personal or commercial confidentiality:
- (c) the expectations and intentions of the settlor at the time of the creation of the trust (if known) as to whether the beneficiaries as a whole and the beneficiary in particular would be given information:
- (d) the age and circumstances of the beneficiary:
- (e) the age and circumstances of the other beneficiaries of the trust:
- (f) the effect on the beneficiary of giving the information:
- (g) the effect on the trustees, other beneficiaries of the trust, and third parties of giving the information:
- (h) in the case of a family trust, the effect of giving the information on—

- (i) relationships within the family:
- (ii) the relationship between the trustees and some or all of the beneficiaries to the detriment of the beneficiaries as a whole:
- (iii) in a trust that has a large number of beneficiaries or unascertainable beneficiaries, the practicality of giving information to all beneficiaries or all members of a class of beneficiaries:
- (j) the practicality of imposing restrictions and other safeguards on the use of the information (for example, by way of an undertaking, or restricting who may inspect the documents):
- (k) the practicality of giving some or all of the information to the beneficiary in redacted form:
- (l) if a beneficiary has requested information, the nature and context of the request:
- (m) any other factor that the trustee reasonably considers is relevant to determining whether the presumption applies.

54 Procedure when trustee decides to give no information

- (1) This section applies in relation to a trust if, as a result of 1 or more of the following circumstances or events, no beneficiary has any trust information:
 - (a) the trustee cannot identify any beneficiary to whom information can be given:
 - (b) the trustee decides under section 51(2)(b) to withhold all of the basic trust information from all beneficiaries:
 - (c) the trustee decides under section 52(2) to refuse a request for trust information.
- (2) The trustee must apply to the court for directions in relation to—
 - (a) whether the trustee’s determination that there is no beneficiary to whom information can be given, or to withhold information or refuse a request for information, is reasonable in the circumstances; and
 - (b) the alternative means by which the trustee can be accountable and the trust can be enforced.
- (3) However, the trustee is not required to apply to the court for directions if—
 - (a) the period during which no beneficiary has any trust information is less than 12 months; and
 - (b) at the end of that period, the trustee gives to at least 1 beneficiary of the trust the basic trust information.
- (4) In giving directions under this section, the court must take into account the following principles:

- (a) trust information may be withheld from all beneficiaries only in exceptional circumstances;
- (b) alternative means of enforcing a trust pending disclosure of information to beneficiaries must be consistent with the objectives of the trust and not adversely affect its administration.

55 Beneficiary may be required to pay cost of giving information

- (1) A trustee may require the beneficiary to whom trust information is given under section 52 or in accordance with the terms of the trust to pay the reasonable cost of giving that information.
- (2) The trustee may require the beneficiary to pay

[13] I whakarerekētia te tono a Mr Nikora kia whai wāhi atu a w 238 o te Ture. E ai ki taua wehenga:

[13] Mr Nikora's application was amended to include a reference to s 238 of the Act. That section provides:

238 Enforcement of obligations of trust

- (1) The court may at any time require any trustee of a trust to file in the court a written report, and to appear before the court for questioning on the report, or on any matter relating to the administration of the trust or the performance of his or her duties as a trustee.
- (2) The court may at any time, in respect of any trustee of a trust to which this section applies, enforce the obligations of his or her trust (whether by way of injunction or otherwise).

[14] E ai ki wehenga 238, he whānui te mana ārahi, te mana whakaū anō hoki o te Kooti.⁹ Hei tauira, tērā pea ka tohua e te Kooti kia tukua mai e tētahi Tarahitī he rīpoata ā-tuhi mō tētahi take e pā ana ki ngā whakahaerenga o te Taratī, ki te whakatutukinga o ōna takohanga rānei hei tarahitī. Nā konā, e ai ki w 238 kei a te Kooti te mana ki te kī me tuku mai te Taratī i ngā mōhiōhio e kimihia nei e Mr Nikora.

[14] The Court has wide supervisory and enforcement powers under s 238.⁹ For example, the Court may require any trustee to furnish a written report on any matter relating to the administration of the trust or the performance of his or her duties as a trustee. Thus, the Court has the power under s 238 of the Act to require the Trust to provide to it the information sought by Mr Nikora.

⁹ *Clarke v Karaitiana* [2011] NZCA 154 at [36].

Ngā take
The issues

[15] Kua kōrerotia e Mr Nikora ngā momo take ki tana tono pīra. Ki te Kōtitanga, i whakawhāiti ia i ōna whakaaro ki ngā take e tika ana kia whiwhi ia i ngā mōhiohio e kimihia nei e ia. I a mātou hoki te āwhina nui nā ngā tāpaetanga a te rōia o te Taratī, me tana āta whakaae, ko te take matua kia whakatauhia, āe ranei e tika ana kia whakawhiwia a Mr Nikora i ngā mōhiohio ā-taratī e kimihia nei e ia.¹⁰ Ka aro atu mātou ki taua take matua.

[16] E whakautu ai i te take matua, me titiro ki ngā pātai e whai ake nei:

1. Ae rānei me tuku atu te Taratī i ngā mōhiohio e kimihia nei e Mr Nikora e ai ki te Trusts Act?

Ki te kore, ae rānei, me tuku atu te Taratī i ngā mōhiohio e kimihia nei e Mr Nikora e ai ki te Tuhinga Tikanga?

Ngā take
The issues

[15] Mr Nikora has raised various issues on appeal. At the hearing, he helpfully focussed on the reasons why he is entitled to the Trust's information he seeks. We also had the benefit of receiving helpful submissions from counsel for the Trust, who prudently agreed that the primary issue for determination is whether Mr Nikora is entitled to receive the Trust information that he seeks.¹⁰ We focus on that primary issue.

[16] To answer the primary issue, the following questions arise:

1. Is the Trust required to provide the information requested by Mr Nikora under the Trusts Act?

2. If not, is the Trust required to provide the information requested by Mr Nikora under the Trust Deed?

¹⁰ 2025 Māori Appellate Court MB 53-83 at 81-83.

Ki te kore, ae rānei, me tuku
atu te Taratī i ngā
mōhiohio e kimihia
nei e Mr Nikora e ai ki
w 238 o te Ture?

3. If not, should the
Trust be required to
provide the
information requested
by Mr Nikora under s
238 of the Act?

Kōrerorero

Discussion

*Ae rānei me tuku atu te Taratī i ngā
mōhiohio e kimihia nei e Mr Nikora e ai ki
te Trusts Act?*

[17] Ka whai take ngā wāhanga tūhura o
te Trusts Act ki ngā mōhiohio taratī. Kua
whakamāramatia taua rerenga i w 49 o te
Trusts Act. Ka mutu, mō tā tātou take, ka
tae atu taua whakamāramatanga ki ngā
mōhiohio e tika ana me tuku atu ki a Mr
Nikora kia āhei ai ia te whai whakaūtanga
i ngā tikanga o te Taratī.

[18] I whakapaetia e te rōia o te Taratī,
kāhore e tika ana me tuku atu ngā
mōhiohio e kimihia nei e Mr Nikora kia
āhei ai ia te whai whakaūtanga i ngā
tikanga o te Taratī. Hei ko tāna, me
whakatutuki e Mr Nikora te
whakamātautau taupae, he nui ake te
tūponotanga, e tika ana me tuku atu ngā
mōhiohio e kimihia nei e ia. Hei ko tāna,
kāhore i whakatutukihia tēnei
whakamātautau taupae, inā hoki kāhore te

Kōrerorero

Discussion

*Is the Trust required to provide the
information requested by Mr Nikora under
the Trusts Act?*

[17] The disclosure provisions of the
Trusts Act apply to trust information. That
phrase is defined in s 49 of the Trusts Act.
Relevantly for our purposes, it includes
information that it is reasonably necessary
for Mr Nikora to have, to enable the terms
of the Trust to be enforced.

[18] Counsel for the Trust submitted
that the information sought by Mr Nikora
is not reasonably necessary to enforce the
terms of the Trust. She says that Mr Nikora
must satisfy a threshold question that, on
the balance of probabilities, the
information he requests is reasonably
necessary. She argues this threshold test is
not met, particularly because Mr Nikora's
request did not state why the information

inoi a Mr Nikora i whakamōhio atu i ngā take mō te tuku atu i ngā mōhiohio hei whakaū i ngā tikanga o te Taratī.

[19] E tika ana, kāhore ngā reta a Mr Nikora e kimi nei i ngā mōhiohio i āta whakatakoto i ngā take mō te inoi, ka mutu, i whakamōhio atu he mōhiohio me tuku atu kia āhei ai te whai whakaūtanga i ngā tikanga o te Taratī. Heoi anō, e māraakerake ana te kitea i te horopaki o tā Mr Nikora tono, i te kimi ia i ngā mōhiohio kia āhei ai ia te whai whakaūtanga i ngā tikanga o te Taratī. Kua whai kē ia i te tangohanga o ngā tarahitī o te Taratī nā runga anō i tana whakapae, kua takahia kētia ngā tikanga o te Taratī. Ahakoa kua whakakorea e te Kooti Whenua Māori aua tono, kua mōhio kē te Taratī kāhore ia i te whakaae ki ētahi whakataunga a ngā tarahitī. Me te mea ake, kua tino mārama ake tana tono ki te Kooti i te inoi ia i ngā mōhiohio kia whai whakaūtanga i ngā tikanga a te Taratī. I tino whakatakoto tana tono i tana hiahia kia āwhinatia ia e te Kooti kia whiwhi ai ia i ētahi anō mōhiohio nā te Taratī kia haere tonu tana kēhi kia tango tarahitī.

[20] Ka tū tātou i konei ki te whakamōhio atu, ko te inoi mōhiohio a Mr Nikora he mahi ka puta i tētahi whakataunga ō mua o te Kooti Whenua

was needed to enforce the terms of the Trust.

[19] We accept that Mr Nikora's letters to the Trust seeking information did not clearly articulate the reason for the requests or allege that the information was necessary to enforce the terms of the Trust. However, it is clear from the procedural background to Mr Nikora's application that he sought information to enforce the terms of the Trust. He had previously sought the removal of the trustees of the Trust based on various alleged breaches of the terms of the Trust. Although those applications were dismissed by the Māori Land Court, the Trust was on notice that he took issue with some of the trustee decisions. More importantly, his application to the Court clearly indicated that he was requesting the information to enforce the terms of the Trust. His application expressly stated that he needed the assistance of the Court to get more information from the Trust to sustain a case to remove the trustees.

[20] We pause here to observe that Mr Nikora's request for information was, in part, made in response to the earlier decision of the Māori Land Court which

Māori i kitea ai ngā momo takahitanga o te taratī, engari kāhore i whakaaetia kia tango tarahitī.¹¹ I taua whakataunga, i kī pēnei rā te Hōnore Kaiwhakawā Coxhead:¹²

found various breaches of trust had occurred, but declined to remove trustees.¹¹ In that decision, His Honour Judge Coxhead (as he then was) found:¹²

I find that the TUT trustees have breached the trust deed in terms of the election process (sch 3), the internal process for resolving disputes (cl 19), and the AGM process (sch 4). However, while the conduct of the trustees and the extent to which they are failing to adhere to their trust deed is concerning, many of the breaches are technical in nature. The removal of trustees is a serious step not undertaken lightly and it is not every unsatisfactory act or omission which should lead to removal. No evidence has been provided to show that the conduct of the trustees have put the assets of the trust at risk or that there has been serious loss or malfeasance.

(Citations omitted)

[21] Nā tēnei whakataunga i tuku ai a Mr Nikora i tana inoi. I mea ia i ana tuhinga ki te Kooti:¹³

[21] This decision prompted Mr Nikora's information request. As he put it in his request to the Court:¹³

For me to sustain a case for the removal of trustees, I have to prove malfeasance, loss of assets or abuse of power... I believe I can do this, but I need the assistance of the Court to get more information from the Trust.¹⁴

[22] E mārama ana tātou, he kaikaute ō-mua a Mr Nikora. Kua roa ia e whai pānga ana, e whai take ana ki ngā mahi me ngā whakahaerenga o te iwi o Ngai Tūhoe. Me te kī ake, he horopaki hirahira ana tonono ki te Kooti me tana inoi mōhiohio. Kua tuku hoki tana tuakana, a Paki Nikora, i ētahi tonono ki te Kooti mō ngā takahitanga o te ōta taratī, arā, ko ngā takahitanga o te hātepe pōtitanga me whai mō ētahi o ngā tarahitī ki o te Taratī. Ko te ōta a te Hōnore

[22] We understand that Mr Nikora is a retired chartered accountant. He has a longstanding involvement and interest in Ngai Tūhoe iwi affairs and administration. In other words, his applications to the Court and his request for information have an important context. His brother, the late Paki Nikora, had also made applications to the Court concerning breaches of the trust order and in particular breaches of the required election process for some of the

¹¹ *Nikora v Trustees of Tuhoe- Tuhoe Te Uru Taumata Trust* (2021) 252 Waiāriki MB 157 at [83].

¹² At [70].

¹³ Request for information from Tuhoe-Te Uru Taumata (The Trust) submission, Timoti Nikora, 30 March 2022 - Record of Appeal at 260.

¹⁴ Record of Appeal at 260.

Kaiwhakawā Coxhead kia whakahoutia ngā pōtitanga, he whakautu ki te tono a Mr Paki Nikora.¹⁵

trustees of the Trust. It was in response to Mr Paki Nikora's application that His Honour Judge Coxhead ordered fresh elections be held.¹⁵

[23] E whakaae ana mātou ki te Hōnore Kaiwhakawā Coxhead me tana kī he mōtika tūturu ki ngā uri o Ngai Tūhoe te āheinga ki te tuku pōti ki ngā pōtitanga tarahitī, ka mutu, e tika ana te whakapae a ngā mema ka whai ngā pōtitanga i ngā tino hātepe i roto i te tuinga whakatau tikanga a te taratī. I taua whakataunga, i kitea e Kaiwhakawā Coxhead ngā takahitanga o te hātepe pōtitanga, te hātepe o roto mō te whakatau i ngā raru me ngā hātepe o ngā hui ā-tau. Ahakoa i tuku ia i ngā kupu whakahau kia tū mai he pōtitanga hou mō ngā tūranga tarahitī e rua, i whakakahorehia e ia te tono a Mr Nikora ki te tango i ngā tarahitī mō ngā take e pēnei nei.¹⁶

[23] We agree with His Honour Judge Coxhead that the ability to vote in trustee elections is a fundamental right of any member of Ngai Tūhoe, and that members should expect that elections are in accordance with the detailed processes contained within the trust deed. In that decision, Judge Coxhead found breaches of the election process, the internal process for resolving disputes and the AGM process. While he directed new elections with respect to two of the trustees' positions, he declined Mr Buddy Nikora's application for removal of trustees, evidently on the basis that:¹⁶

... while the conduct of the trustees and the extent to which they are failing to adhere to the trust deed is concerning, many of the breaches are technical in nature.¹⁷

[24] Kāhore te Taratī i tū ki mua i te Kooti Whenua Māori, nō reira, kāhore mātou i te mōhio ki te taketakenga o te whakaaro he "technical in nature" ngā takahitanga. Ki ō mātou whakaaro, ka whai take tōtika ngā wāhanga taratī e hāngai ana

[24] The Trust did not appear in the Māori Land Court proceedings, so it is not clear to us how it came to the view that the breaches of trust were 'technical in nature.' In our view, trust provisions that relate to the election of trustees, internal dispute

¹⁵ *Nikora v Trustees of Tuhoe* above n 11.

¹⁶ As above at [70].

¹⁷ *Paki Nikora v Trustees of Tuhoe* [2021] 252 Waiāriki MB 157, 21 April.

ki ngā pōtitanga tarahitī, ki ngā whakataunga raru me ngā tukanga o ngā hui ā-tau ki te mātāpono matua o tā te tarahitī noho haepapa ki ngā kaiwhaipānga. Koia hoki te mātāpono e tika ana me noho hei whakaarotanga mō te inoi nā tētahi kaiwhaipānga mō ngā mōhiohio.

[25] Hei tōai noa, ka whai take ngā wāhanga tūhura i te Trusts Act ki ngā mōhiohio ā-taratī. Me te mea hāngai, ko te mōhiohio ā-taratī, he mōhiohio e tika ana me pūpuri e te kaiwhaipānga kia whai ai ia ki te whakaū i te taratī. I *Taylor v Inder*, i whakaarohia e te Kōti Matua te take, āe rānei e tika ana me whai wāhi ngā mōhiohio whāiti ā-taratī kua tonoa e te kaiwhaipānga kia whakaū ai i te taratī. I tā rātou whakatau i taua take, i whakaarohia e te Kōti ngā take e toru: āe rānei e tika ana me whai wāhi atu ngā mōhiohio kia whakaū ai i te taratī; te āhua motuhake o te taratī;¹⁸ waihoki, āe rānei ka uaua te haere o ngā kōrerero herekore, hāngai anō hoki ki waenga i ngā tarahitī me ngā hunga o waho i te tūhuratanga.¹⁹ Kua tino hāngai te take tuatahi, tuarua hoki ki a mātou.

[26] I a rātou e whakaaro ana āe rānei he mōhiohio ā-taratī ngā mōhiohio kua

resolution, and AGM procedures are all directly relevant to the fundamental principle of trustee accountability to beneficiaries. That is also the principle against which a request by a beneficiary for information must be assessed.

[25] As noted, the disclosure provisions in the Trusts Act apply to trust information. Relevantly, trust information is defined as information that it is reasonably necessary for the beneficiary to have to enable the trust to be enforced. In *Taylor v Inder*, the High Court considered whether detailed trust information requested by a beneficiary was reasonably necessary to enforce the trust. In deciding that question, the Court considered three factors: whether the information was reasonably necessary to enforce the trust; the distinctive nature of the trust;¹⁸ and whether disclosure would inhibit free and frank communications between trustees and third parties.¹⁹ The first two factors are of particular relevance to us.

[26] When considering whether the information requested was trust

¹⁸ The trust in this case was Marlborough Electric Power Trust, which holds the shares in the Marlborough Electricity Lines Company. The trust is an energy trust of which electricity customers in the Marlborough region are beneficiaries.

¹⁹ *Taylor v Inder* [2022] HCNZ 73 at [47].

inoitia, i mea atu te Kōti Matua i *Taylor v Inder* kua whiwhi kē te kaiwhaipānga e inoi nei i ngā mōhiohio i ētahi mōhiohio nui nei mō te taratī, ka mutu, he “mahi hī ika” te inoi mō ētahi anō mōhiohio, me te tahuri ki ngā tauākī i te whakataunga hirahira a te Kōti Mana Nui, i *Erceg v Erceg* i ki ai, kāhore e whakaae noa ana te tuku tūhuratanga mēnā he huarahi tērā e whāia nei e te kaitono kia kite ai mēnā he take kei reira mō tētahi whakahaerenga ā-ture kia tohea.²⁰ Nā konā, i whakatauhia e te Kōti Matua, kei tua atu te inoi mōhiohio a te kaiwhaipānga i te roherohenga o te tika ki te pūmau i ngā tarahitī ki ō rātou kawenga. He rerekē te tono a Mr Nikora. I tēnei take, kua tukua kētia e Mr Nikora tētahi tono e whakapae ana he takahi taratī ngā mahi a te Taratī mō te hoko me te whakahaere i te Ruatahuna Motels and Store. He kerēme motuhake kei roto mō tētahi whakataunga motuhake a te Taratī e hāngai nei ki ētahi rawa motuhake. Ki ō mātou whakaaro, ehara tēnei i tētahi inoi hī ika. Kei te mōhio a Mr Nikora ki tāna e hiahia ana ki te whiwhi nā te Taratī me te take ka pērā.

[27] Nā, ka tahuri ki te motuhaketanga o tō te Taratī āhua, i *Taylor v Inder*, i whai atu te Kōti Matua i te pūrongo a te Law Commission e kia nei *Review of the Law of*

information, the High Court in *Taylor v Inder* observed that the beneficiary requesting the information had already received considerable information about the trust and the further information sought amounted to a “fishing expedition”, referring to the statements in the seminal decision of the Supreme Court in *Erceg v Erceg* that disclosure will not ordinarily be made if designed to enable an applicant to see if there are grounds for hostile litigation.²⁰ As a result, the High Court determined that the beneficiary’s information request went beyond what is reasonably necessary to hold trustees to account. Mr Nikora’s application is different. Here, Mr Nikora has already filed an application alleging breach of trust in relation to the purchase and operation by the Trust of the Ruatahuna Motels and Store. There is a specific claim in relation to specific decisions of the Trust over specific assets. We do not think this request is a fishing expedition. Mr Nikora knows what he wants to receive from the Trust and why.

[27] Turning to the distinctive nature of the trust, the High Court in *Taylor v Inder* referenced the report of the Law Commission entitled *Review of the Law of*

²⁰ *Erceg v Erceg* [2017] NZSC 28; [2017] 1 NZLR 320, referencing *BC Trust Company (Jersey) Ltd v E* [2010] JCA 231 at [34(ii)].

*Trusts: A Trust Act for New Zealand*²¹ me te ki ake, mō ngā taratī pūngao, ko te āhua nei e tika ana te whakaaro kāhore e whai take te tūhuratanga o ngā mōhiohio ā-taratī ki ngā kaiwhaipānga.²² I ōrite te kitenga a tēnei pūrongo a te Law Commission mō ngā hinonga whakahaere rawa mō muri whakataunga (pēnei i tēnei Taratī), me te ki ake “some trusts already contain perfectly adequate information provision schemes within the terms of the trust, such as some Treaty settlement trusts.” E whakapae ana ēnei kitenga kāhore he kawenga o tēnei Taratī, hei hinonga whakahaere rawa mō muri whakataunga e pūpuri nei i tētahi wāhanga pū mō ngā mōhiohio i tā rātou tuhinga tikanga, ki te tūhura i ētahi anō mōhiohio ki ngā kaiwhaipānga.

[28] Ahakoa e whakaae ana mātou kua mārāma te kite i ngā haepapa e ki nei me whai ngā tarahitī i ngā tikanga o te ōta o te taratī, ki a mātou, kāhore pea e tika ana tā te Kooti tahuri ki te take o te tūhuratanga, anō nei kua whakaturehia e te ōta o te taratī te whānuitanga o tā te taratī haepapa mō te tūhuratanga. Ki te puta mai tētahi tohe mō te kounga o te tūhuratanga, me kaua te kooti e tahuri ki te take o te whakatutukitanga o ngā wāhanga o te ota

*Trusts: A Trust Act for New Zealand*²¹ to observe that, in relation to energy trusts, it would be highly likely that the presumption of disclosure of trust information to beneficiaries would not apply.²² This Law Commission report made the same observation about post-settlement governance entities (such as the Trust), noting that “some trusts already contain perfectly adequate information provision schemes within the terms of the trust, such as some Treaty settlement trusts.” These observations would suggest that the Trust, as a post-settlement governance entity that has a reasonably detailed information provision scheme within its Trust Deed, ought not be required to disclose more information to beneficiaries.

[28] While we accept it is axiomatic that trustees must comply with the terms of the trust order, we do not think it is right that the court should approach the issue of disclosure as if the trust order effectively codifies the extent of the trust’s disclosure obligations. Where there is a dispute over the adequacy of disclosure, the court must not only look at the question of compliance with the provisions of the trust order but also whether on the particular facts of the

²¹ Te Aka Matua o te Ture | Law Commission *Review of the Law of Trusts: A Trust Act for New Zealand* (NZLC R130, 2013) at [5.53].

²² *Taylor v Inder*, above n 20 at [55]-[67].

taratī anahe, me tahuri hoki ki te kite mēnā rānei kua whakatutukihia ngā wāhanga hāngai o te Trusts Act.

[29] Ka mutu, mō tētahi taratī e pupuri nei i ngā rawa i puta ake i ngā whakataunga Tiriti o Waitangi, he hirahira tonu kia whai wāhi ngā kaiwhaipānga ki ngā mōhihio ā-taratī ki te tō mai ngā tarahitī ki ō rātou haepapa. E mea ana a Mr Nikora, kua horapa whānui ngā kōrero mō Ruatahuna Motels and Stores me tā rātou hekenga i ngā wā o mua. Nā tēnei hītorī e tika nei ā ngā tarahitī o te Taratī whakaatu i ngā āwangawanga mō tētahi tuku pūtea penapena ki ēnei rawa, tērā pea he tukunga whakaaro kore. Ina hoki, he whāiti te āhua o ēnei rawa, kāhore pea e tino taumaha ana te mahi a ngā tarahitī ki te tuku i ngā mōhihio e kimihia nei.

[30] Nā konā, e whakaae ana mātou ko ngā mōhihio e kimihia nei e Mr Nikora, he mōhihio ā-taratī e ai ki w 49 o te Trusts Act.

[31] Ko te whakaaro ia i w 52(1) o te Trusts Act e mea nei e tika ana me tuku atu ngā tarahitī o te Taratī ngā mōhihio e kimihia nei e Mr Nikora. I mua i tērā, i mate ngā tarahitī ki te aro atu ki ngā kaupapa e 13 i w 53 o te Trusts Act. Whai muri i tā ratou tahuri ki aua kaupapa, ki te whakaae tonu rātou kāhore e tika ana kia

case, there has been compliance with the relevant provisions of the Trusts Act.

[29] Furthermore, for a trust that holds Treaty of Waitangi settlement assets, it is equally important that beneficiaries have access to trust information to hold the trustees of the trust to account. Mr Nikora says that it is common knowledge that the Ruatahuna Motels and Stores have previously failed as going concerns. This history means that it is reasonable for the trustees of the Trust to allay concerns that an investment in these assets is imprudent. Because the assets are discrete in nature, it is unlikely to be overly burdensome for the trustees of the Trust to provide the information sought.

[30] We therefore consider that the information requested by Mr Nikora is trust information as defined in s 49 of the Trusts Act.

[31] The presumption in s 52(1) of the Trusts Act means that the trustees of the Trust were required to give to Mr Nikora the information he requested. Before doing so, the trustees were required to consider the 13 factors in s 53 of the Trusts Act. If, after considering those factors, the trustees of the Trust reasonably considered

tukua ngā mōhiohio ki a Mr Nikora, i te āheī rātou ki te whakahē i te tono kia kaua e tukua aua mōhiohio ki a ia.

[32] I whakapaetia e te rōia mō te Taratī, i whakaarohia e ngā tarahitī ngā wāhanga i w 53 o te Trusts Act me tā rātou āta whakatau kia kaua e tuku ngā mōhiohio i kimihia ai e Mr Nikora. Ko te mate kē, kāhore he taunakitanga ki mua i te Kooti Whenua Māori i whakaatū pēnā rā. Kāhore i tukua mai tētahi anō taunakitanga. Nā konā, kāhore mātou i te tino mōhio mēnā rānei i whai ngā tarahitī o te Taratī i ngā paearu me whai e ai ki ww 52 me 53 o te Trusts Act. Ki te hiahia tonu ngā tarahitī o te Taratī ki te whai i ngā wāhanga tuhura o te Trusts Act kia whakahētia te whakaaro mō te tuhuratanga, me whai rātou i te tukanga ā-ture.

[33] I whakapaetia anō e te rōia mō te Taratī, ahakoa te iti o ngā taunakitanga ki mua i a mātou e whakaatū nei i tā ngā tarahitī o te Taratī whai i ww 52 me 53 o te Trusts Act, e āheī ana mātou ki te arotake i te whakataunga o ngā tarahitī e ai ki w 126 o te Trusts Act me te whakatau ake, e tika ana te āheinga o ngā tarahitī ki te whakahē i te tukunga atu o ngā mōhiohio i kimihia ai e Mr Nikora. Kāhore mātou i te whakaae kia pērā. Tuatahi ake, kāhore mātou i te

that the information requested by Mr Nikora should not be given to him, they were entitled to refuse to provide that information to him.

[32] Counsel for the Trust submitted that the trustees of the Trust considered the factors in s 53 of the Trusts Act and reasonably decided not to provide to Mr Nikora the information he had requested. Unfortunately, there was no evidence before the Māori Land Court to this effect. No further evidence was filed with us. Accordingly, we cannot be certain that the trustees of the Trust complied with the mandatory requirements of ss 52 and 53 of the Trusts Act. If the trustees of the Trust seek to rely on the disclosure provisions of the Trusts Act to rebut the presumption for disclosure, they must follow the statutory procedure.

[33] Counsel for the Trust further submitted that, despite the lack of evidence before us to prove that the trustees of the Trust complied with ss 52 and 53 of the Trusts Act, we may review the trustees' decision under s 126 of the Trusts Act and determine that it was reasonably open to the trustees to refuse to provide the information requested by Mr Nikora. We decline to do so. First, it is not clear to us that we have the power to invoke s 126 of

tino mōhio mēnā rānei kei a mātou te mana ki te whakamahi i w 126 o te Trusts Act inā hoki mā tētahi tono nā tētahi kaiwhaipānga anahe e tīmata ai tētahi arotakenga e ai ki taua wāhanga. Tuarua, ka pā hoki taua raru o te tono mō ngā wāhanga tūhura o te Trusts Act ki tētahi arotakenga pēnā inā hoki – kāhore tonu ngā taunakitanga e whakaatū nei i tā ngā tarahitī mahi ki te whakatau i te take i tae mai ki a mātou.

[34] Hei whakamutu atu, e mārama ana mātou kāhore te Kooti Whenua Māori i whakamahi i tētahi tātaritanga o ngā wāhanga tūhura o te Trusts Act. I te Hūrae o 2022, i tana tae tuatahi ki te Kooti mā tētahi hui kaiwhakawā, i tuku te Kooti i te whakaaro kia whakatārewahia te take kia tū ai tētahi rōia motuhake hei arotake i ngā ww 49 – 55 o te Trusts Act me te tuku ripoata ki te Kooti. Taro rawa kau, nā ētahi tōmuritanga i puta i whakaae ai a Mr Nikora kia haere tonu te kaupapa ki tētahi Kōtitanga i te korenga o te tukua mai e ngā rōia tētahi ripoata mō ēnei wāhanga. Heoi anō, e whakaaetia katoatia ana, ka whai take ngā wāhanga tūhura o te Trusts Act.

[35] Inā hoki ko te mōhiohio i kimihia rā e Mr Nikora, he mōhiohio ā-taratī, waihoki, kāhore i ā mātou ngā tāpaetanga e whakaū nei i tā ngā tarahitī o te Taratī whai i te tukanga e ai ki ww52 me 53 o te

the Trusts Act, because a review under that provision can be undertaken on application only by a beneficiary. Second, such a review suffers from the same problem as the application of the disclosure provisions of the Trusts Act – we simply have no evidence before us as to how the trustees made the decision that we are asked to review.

[34] Finally, we are mindful that the Māori Land Court did not undertake an analysis of the disclosure provisions of the Trusts Act. When the matter first came before that Court by way of a judicial conference in July 2022, the Court proposed adjourning the matter so that an independent counsel could be appointed to review ss 49 – 55 of the Trusts Act and report to the Court. Subsequent delays meant that Mr Nikora eventually agreed to proceed to hearing without the benefit of a report from counsel on these provisions. It is common ground, however, that the disclosure provisions of the Trusts Act apply.

[35] Because the information requested by Mr Nikora is trust information, and because there was no evidence before the Māori Land Court or us to confirm that the trustees of the Trust followed the procedure

Trusts Act, e whakaae ana mātou kia haere tonu tēnei pīra ka hoki anō ai ia ki te Kooti Whenua Māori mō tētahi Kōtitanga anō.

set out in ss 52 and 53 of the Trusts Act, we allow the appeal and refer the matter back to the Māori Land Court for rehearing.

Ae rānei me tuku atu te Taratī i ngā mōhiohio e kimihia nei e Mr Nikora e ai ki te Tuhinga Tikanga?

Is the Trust required to provide the information requested by Mr Nikora under the Trust Deed?

[36] Nā runga i tā mātou whakatau ki runga, kāhore he take o tā mātou whakatau mēnā rānei me tuku te Taratī i ngā mōhiohio i inoi rā e Mr Nikora e ai ki te Tuhinga Tikanga. Heoi anō, hei āwhina noa i tā te Kooti Whenua Māori whakarongo anō ki tēnei tono, anei ētahi o ō mātou tirohanga:

[36] Given our conclusion above, we need not determine whether the Trust is required to provide the information requested by Mr Nikora under the Trust Deed. However, to assist the Māori Land Court to rehear the application, we make the following observations:

- a) I tā Nikora tohe, ka noho atu ngā tahua pūtea a te Taratī hei wāhanga o te Pūrongo me te Mahere ā-Tau o te Taratī (kua whakamāramatia taua rerenga ki wāhanga 1.1 o te Tuhinga Tikanga), nā konā me tuku atu e a ki wāhanga 13.4(a) o te Tuhinga Tikanga o te Taratī. E mārakerake ana te kite e tika ana me noho atu ko ngā tauākī pūtea hei

- a) Mr Nikora argued that the Trust's budgets are part of the Trust's Annual Report and Plan (as that phrase is defined in clause 1.1 of the Trust Deed) and therefore must be disclosed under clause 13.4(a) of the Trust Deed. It is clear that audited financial statements are required to form part of the Annual Report and Plan presented to beneficiaries (clause

wāhanga o te Pūrongo me te Mahere ā Tau ka tukua ki ngā kaiwhaipānga (wāhanga 14.8). Ko tā mātou, ehara i te mea me noho atu ngā tahua pūtea ki tēnei momo mōhiohio. Hāunga tērā, e mea ana a wāhanga 13.3(e) o te Tuhinga Tikanga ka tae atu te Pūrongo me te Mahere ā-Tau ki ngā whāinga me ngā ine mahi, mā ēnei ngā mahi a te Taratī me ōna hinonga (e ai ki te whakamāramatanga i te Tuhinga Tikanga) e

- b) E kimi ana a Mr Nikora i ngā mōhiohio pūtea mō te Ruatahuna Motels and Store. Ahakoa kāhore i tukua ētahi taunakitanga ki mua i te Kooti Whenua Māori mō te āhua o tā te Taratī pūpuri i aua rawa, tērā pea kua pūritia kōtahitia aua

14.8). We do not agree that the budgets would ordinarily fall into this class of information. That said, clause 13.3(e) of the Trust Deed requires the Annual Report and Plan to include the performance targets and measurements by which performance of the Trust and any trust entities (as that term is defined in the Trust Deed) may be judged.

- b) Mr Nikora seeks financial information relating to the Ruatahuna Motels and Store. Although there was no evidence before the Māori Land Court as to how those assets were held by the Trust, it is possible that those assets were held collectively with

rawa me ētahi atu
 rawa o te Taratī. Ki te
 pēnā, kāhore te
 Tuhunga Tikanga e kī
 atu me pērā rawa te
 whāititanga i ngā
 taipitopito ka tuhura.
 Heoi anō, mō ngā take
 o runga, kāhore pea
 tēnei i te mutunga o te
 take. Kei a te Kooti
 Whenua Māori te
 aheinga ki te
 whakatau i te
 whāititanga o ngā
 taipitopito me tuku
 atu kia whai ai a Mr
 Nikora i tana tono ki
 te whakaū i ngā
 haepapa o te Taratī.

all of the other assets
 of the Trust. If so, the
 Trust Deed does not
 require that level of
 detail to be disclosed.
 But this is not
 necessarily the end of
 the matter for the
 reasons we have
 outlined above. It
 remains open to the
 Māori Land Court to
 determine what level
 of detail is reasonably
 necessary to enable
 Mr Nikora to enforce
 the obligations of the
 Trust.

*Ae rānei me tuku atu te Taratī i ngā
 mōhiohio e kimihia nei e Mr Nikora e ai ki
 w 238 o te Ture?*

*Is the Trust required to provide the
 information requested by Mr Nikora per s
 238 of the Act?*

[37] Inā hoki kua whakatauhia e mātou
 kia whakahoki atu tēnei tono ki te Kooti
 Whenua Māori kia rangona anō, kāhore he
 take o tā mātou whakatau mēnā rānei, e ai
 ki w 238 o te Ture, me tuku ngā tarahitī o
 te Taratī i ngā mōhiohio i inoitia rā. I mea
 atu te Kooti Whenua Māori, kāhore ā rātou
 āheinga ki te tuku whakahau kia tūhuratia
 ngā mōhiohio i mua i te kite atu i tētahi

[37] Because we have decided to refer
 the application back to the Māori Land
 Court for rehearing, we need not decide
 whether the trustees of the Trust should
 provide the requested information to the
 Court per s 238 of the Act. The Māori Land
 Court held that it cannot direct the
 disclosure of information without first
 finding that the trustees are acting in breach

takahitanga a ngā tarahitī i te taratī. Heoi anō tā mātou he kī atu, kāhore he take o tā Mr Nikora whakaatu atu i te tuatahi i tā ngā tarahitī takahi i te taratī, i mua i tā te Kooti tuku whakahau ki ngā tarahitī me tuku ngā mōhiohio ki te Kooti. Mā wehenga 238 e tuku ki te Kooti tētahi mana ārahi whānui, mana whakaū anō hoki kia whakamahia ‘i ngā wā ake nei’ (wehenga 238(1)). Ki te kī ake, me whakaatu te kaitono i tētahi takahitanga taratī i mua i te whakamahi i aua mana, he whakaaro whakakāhore tērā i ngā aronga ārahi, taupā anō hoki nō taua wāhanga.

Whakataunga
Decision

[38] E whakaaetia ana tēnei tono pīra. Kua whakakāhoretia te ōta a te Kooti Whenua Māori e whakakōre nei i te tono a Mr Nikora mō ētahi anō mōhiohio, ka mutu, e whakahautia ana te Kooti Whenua Māori kia tū anō tēnei tono me tana katoa.

[39] I te mea kāhore tētahi rōia i uru mai hei māngai mō Mr Nikora, kāhore he take o te tuku otā mō ngā utu whakahaere.

of trust. We simply observe that it is not necessary for Mr Nikora to first prove that the trustees of the Trust are acting in breach of trust before the Court can require the trustees to provide the information to the Court. Section 238(1) gives the Court wide supervisory and enforcement powers that may be exercised ‘at any time’. To require an applicant to prove a breach of trust before invoking those powers negates the supervisory and potentially prophylactic purposes of that provision.

Whakataunga
Decision

[38] The appeal is allowed. The order of the Māori Land Court to dismiss Mr Nikora’s application for further information is annulled and the Māori Land Court is directed to rehear that application in its entirety.

[39] As Mr Nikora was not represented by counsel, there is no order as to costs.

I whakapuaki i te 3.00 pm i Te Whanganui a Tara, i te 5 o ngā rā o Mei i te tau 2025.

M J Doogan (Presiding)
JUDGE

D H Stone
JUDGE

A M Thomas
JUDGE