

IN THE SUPREME COURT OF NEW ZEALAND

**SC 40/2007
[2007] NZSC 92**

BETWEEN GEORGINA KAIN, GEORGE HARRY
 COUPER KAIN, GEORGE CHARLES
 KAIN, GEORGE THOMAS CARLTON
 KAIN AND GEORGE MICHAEL KAIN
 First Appellants

AND GEORGE THOMAS CARLTON KAIN
 Second Appellant

AND JONATHON RHODES HUTTON
 First Respondent

AND WILLIAM ALEXANDER XAVIER
 COUPER
 Second Respondent

AND ANNETTE ELIZABETH COUPER
 Third Respondent

AND WAYNE KEITH STARTUP
 Fourth Respondent

AND GEORGE THOMAS KAIN
 Fifth Respondent

AND MARY HUTTON
 Sixth Respondent

Hearing: 19 November 2007

Court: Tipping, McGrath and Anderson JJ

Counsel: J S Kós QC and J V Ormsby for Appellants
 M R Camp QC for Second Respondent
 R A Osborne for Third Respondent

Judgment: 20 November 2007

JUDGMENT OF THE COURT

A. The application for leave to appeal is granted as regards proposed grounds 1 and 2 and refused as regards proposed grounds 3, 4 and 5.

B. Costs are reserved.

C. The approved grounds are:

(1) Whether the Court of Appeal was correct to uphold the resettlement of the balance of the old Mangaheia trust on the new Mangaheia trust.

(2) Whether the Court of Appeal was correct to uphold the appointment of the shares in Ponui Station to Mrs A E Couper.

REASONS

(for refusing leave)

[1] The oral hearing which we held related to proposed ground 3. We have decided to decline leave on that ground because we are not satisfied that it is necessary in the interests of justice to grant leave, that being the ultimate criterion specified in s 13(1) of the Supreme Court Act 2003. Without prejudice to whether any issue of general importance underlay the proposed ground, we do not consider that the ground can be fairly or satisfactorily examined in this Court in the light of the absence of a specific pleading directed to it, and in the light of the fact that no relief by way of account of profits was sought in the second amended statement of claim on which the case went to trial.

[2] There is accordingly no evidence directed specifically to the relief now sought. Its absence might, in our view, cause an injustice to be done. It would, in this case, be inappropriate for this Court to state legal principles in relatively abstract terms and then remit the case to the High Court for further inquiry and quite probably further evidence. All in all, the restitutionary basis upon which the remedy

now sought is founded has not been properly set up, either in the pleading or in terms of the course which the case took at trial.

[3] The matters underlying proposed grounds 4 and 5 do not have sufficient general or public importance, or commercial significance; nor are we brought to the view that a substantial miscarriage of justice will or may occur unless the Court entertains them.

Solicitors:
Wynn Williams & Co, Christchurch for Appellants
DLA Phillips Fox, Wellington for Second Respondent
Duncan Cotterill, Christchurch for Third Respondent