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N2LR.

IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

CP No 2/86

BETWEEN GLORIA JOY HUMPHRIES of Pakuranga, Auckland, married woman

Plaintiff

A N D HOWICK PONY CLUB (INCORPORATED) a duly incorporated society under the Incorporated Societies Act 1908, having its registered office at Howick, Pony Club

First Defendant

A N D KAREN LYNETTE VALDER of Howick, married woman

Second Defendant

A N D MICHAEL LOBB of Pakuranga, Clerk,

Third Defendant

Hearing: 13 January 1986

Counsel: Mr Z. Mohamed for plaintiff
Mr H.J. Dawson for defendants

Judgment: 13 January 1986

JUDGMENT OF THORP J

This is an application for an interim injunction by a member of the first defendant, the Howick Pony Club

(Incorporated), a Mrs Humphries, seeking to restrain the Club, its President and Grazing Officer and the servants and agents of the Club from removing the applicant's horse, Niki, from the Club's grounds at Nicholas Road, Howick, or doing anything whereby such removal becomes necessary, upon the grounds that the removal of the horse would cause the plaintiff irreparable injury.

Mr Mohamed appears in support of the application and no notice of opposition under Rule 243 has been filed. However Mr Dawson now appears for all three defendants, advising me that his instructions from the Club were received only yesterday, which would make it impracticable for him to have complied with Rule 243 in any event, and that he had received an assurance from Mr Mohamed that the latter would not object to his appearing today in opposition of the application. I doubt whether Mr Dawson can be heard in opposition in view of the imperative terms of Rule 243. I note that in the material which was supplied to the New Zealand Law Society Seminar relating to the new rules it was stated that the Auckland District Law Society had asked the Rules Committee to amend rule 243 to cope with such situations as the present; that the Rules Committee had received that application favourably, but that no amendment had then been made. The suggested procedure to cope with this situation is either that there be an oral application under Rule 6 enlarging the time within which to file and serve notice of opposition or

that the application be adjourned to permit an application in such terms to be filed.

In the present case, in view of Mr Mohamed's non-opposition to Mr Dawson's participation in these proceedings I invited Mr Dawson to inform me what position the defendants took. He stated that they oppose the making of any injunction, firstly because in their view no restraint is necessary, there being no present intention to remove the horse from the Club's grounds, and, secondly, because the Club intends, as a matter of some urgency, to review the whole of its rules relating to members' grazing rights with the intention that these should be made plain and sufficiently practicable to minimise problems such as have occurred in this case.

As the papers presently stand I do not believe that they indicate with sufficient clarity the basis of the right claimed by the plaintiff applicant to justify the Court making the injunction sought. I cannot see in the papers with any clarity any provision in the rules of the Club, or in the customary arrangements which have developed between the club and its members, which would give the possessory or grazing right which she claims. Moreover the defendant's willingness to defer removal of the horse pending the hearing of the substantive action makes it all the less attractive to impose upon the Club any mandatory direction from the Court.

This is not the type of dispute which should be determined by the Court in any event. The rights of the members of the Pony Club to use the club's premises for grazing horses should be determined by a proper majority determination of the Club's membership according to its Rules, and one would surely hope that if time were given to clarify those arrangements the Club is capable of managing its own affairs without assistance from this Court.

To my mind the appropriate determination of the proceedings as they stand at this stage is to adjourn the motion sine die, subject to the three defendants confirming the offer made by Mr Dawson this morning of undertakings not to remove the horse in question pending the determination of the substantive application by filing signed undertakings by each of the three defendants within three days from the present date, and on terms which would ensure that if the parties cannot solve their own problems the substantive application will come to a hearing without undue delay.

For that purpose in terms of the new rules I make a timetable order, which I note has been discussed with counsel and presently has their approval. This requires that in respect of the substantive action an amended statement of claim be filed and served by 3 pm on

20.1.86.; that statements of defence be filed and served by each of the three defendants by the same time on Friday, 27.1.86.; that mutual discovery be completed within a further seven days, and that both parties co-operate in making all discovered documents required available for inspection by opposite parties; that any further interlocutory applications be filed and served together with copies of any affidavits in support by the 3.2.86 with affidavits in answer by the 10th February 1986 and affidavits in reply by the 14.2.86.; that a praecipe be completed and filed by the 21st February 1986; and that a Rule 438 conference be held at 10 am, Wednesday 26.2.86 for the purposes of hearing and determining any outstanding interlocutory applications and for determining any business appropriate to such a conference such as admissions, mode of trial and issues at trial, it being the intention that at that time there shall either be a final conclusion of these proceedings or else confirmation of a hearing of the substantive proceedings, for which purpose I am informed a one day fixture would be sufficient, at a date in the third week in March. I request that the Registrar conditionally reserve the necessary time for that purpose. Of course, in accordance with the new rules, counsel must advise the Registrar if at any earlier time it becomes apparent that that fixture is not required.

Costs of today's hearing and attendances on the present application are reserved.

Since pronouncing the foregoing judgment I have received from the registry an undated copy of the High Court Amendment Rules, 1986, which I believe to have been promulgated prior to the end of the 1985 year and which include an appropriate amendment of Rule 243, inserting after the words "in opposition thereto" the words "without the leave of the Court".

Had confirmation of that amendment been available at the time counsel were heard I should certainly have granted Mr Dawson leave. Since that circumstance would have in no way altered the conclusion reached, the matter is noted by way of addendum only.