

**IN THE HIGH COURT OF NEW ZEALAND  
AUCKLAND REGISTRY**

**CRI-2009-404-000003**

**APD PROPERTY DEVELOPMENTS LIMITED**  
Appellant

v

**PAPAKURA DISTRICT COUNCIL**  
Respondent

Hearing: 27 April 2009

Appearances: T Rakau for Appellant  
H Atkins for Respondent

Judgment: 27 April 2009 at 4.45 p.m.

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**JUDGMENT OF VENNING J**

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**This judgment was delivered by me on 27 April 2009 at 4.45 pm, pursuant to Rule 11.5 of the High Court Rules.**

**Registrar/Deputy Registrar**

**Date.....**

Solicitors: Atkins Holm Joseph Majurey, Auckland  
Copy to: T Rakau, Ngai Tupango Hapu (Inc.), PO Box 206, Takanini 2245  
APD Property Developments Ltd, c/- Ngai Tupango Hapu (Inc.), PO Box 206,  
Takanini 2245

## **Introduction**

[1] On 4 December 2008 APD Property Developments Limited (APD) was convicted on two charges under the Building Act 2004 relating to building work carried out without a consent, and failure to comply with a notice to rectify. The convictions were entered following a formal proof hearing before Judge Whiting in the District Court. The Judge made an order pursuant to s 381 of the Building Act 2004 that the company was to remove the unauthorised building work and restore the site. APD was also ordered to pay a solicitor's fee and Court costs.

[2] The entry of formal proof and sentence followed the Judge's rejection of a challenge to jurisdiction on behalf of APD. The Judge recorded in his notes that the Council had withdrawn charges against Ms Barnes, a director of the company, and had also withdrawn a number of charges against APD under the Resource Management Act 1991.

## **Appeal**

[3] An appeal was filed on behalf of APD on 6 January 2009. The grounds specified in the notice of appeal were:

- the Court has erred in numerous points in fact and in law;
- the case has already been heard by tribal counsel o te Marae Kooti in accordance with Tikanga Maori where determination was reached;
- no jurisdiction, thereby breaching Crimes Act 1961, s 7;
- breach of our natural rights of Rangatiratanga and Tikanga;
- violation of the Magna Carta, ss 520, 530, 531, 539, 540;

- applicants failed to provide full disclosure when asked, in accordance with Bill of Rights;
- no consent has been given;
- Judge did not take in account of disclosure provided;
- Judge did not take in Court full disclosure provided;
- Judge did not take in Court Orders from Marae Kooti;
- Breach of trust from bench;
- Judge was practising from bench;
- Judge was leading counsel to practice;
- Breach of Ture-preamble, ss 1, 2(1)(2)(3), 3, 4, 5;
- Breach of Crimes Act 1961, s 98 by in fiction, trialling a free man by the conveyance of an unlawful language.

### **Written submissions**

[4] The appellant did not file any submissions in advance of the appeal to support the appeal. In the absence of submissions from the appellant, the respondent Council filed submissions directed at the issue of jurisdiction which had been the principal issue before the District Court.

### **Representation**

[5] A person calling himself Rakau appeared to represent APD on the appeal. Mr Rakau confirmed that he was not a director of APD. Nor is he a barrister and solicitor of this Court. Strictly speaking there was no basis for him to represent APD

on the appeal. However, rather than dismiss the appeal outright, I heard from Mr Rakau.

### **Oral submissions**

[6] Mr Rakau did not directly address the matters referred to in the notice of appeal. In his oral submissions he traversed a number of concepts which bore no relevance to the matters that might properly have been the subject of an appeal from the decision of the District Court Judge. Mr Rakau addressed the Court on his view of language and words. He invited the Court to listen to a CD recording from a David-Wynn: Miller on the issue, an invitation I declined. Amongst other things, Mr Rakau submitted he was “looking for the truth in the noun”. Mr Rakau also tendered a number of documents to the Court, the effect of which seemed to be seeking to exclude a number of entities (including APD) from the authority of the relevant legislation and the Courts. The documents were created by an entity calling itself Ngai Tupango Hapu Inc. It was impossible to determine a point on appeal from Mr Rakau’s oral submissions or from the material he handed up to the Court.

[7] It was unnecessary to call on the respondent to add anything to the written submissions filed.

### **Decision**

[8] Although Mr Rakau did not engage directly with the issue, the only ground for the appeal by APD must be the broad ground of jurisdiction. The jurisdiction issue was more fully traversed before Judge Whiting and was dealt with succinctly by the Judge in his decision on 4 December.

[9] The issue of the authority of Parliament and the authority of the Courts of New Zealand have been considered by the Courts, including the Court of Appeal, in a number of cases. In short the position is as follows. The New Zealand Parliament is empowered to make legislation: *Warren v Police* HC HAM AP133/99, 9 February 2000, Penlington J at [39]. The Crown established sovereignty over New

Zealand through proclamation and the gazetting of the acquisition of New Zealand by the Crown in the *London Gazette* on 2 October 1840. The sovereignty of the Crown was then beyond dispute: *New Zealand Maori Council v Attorney-General* [1987] 1 NZLR 641, 690. Subsequent Acts of Parliament are binding on all persons within the territory of New Zealand, regardless of whether they are Maori or Pakeha.

[10] The Courts of New Zealand are obliged to give effect to Acts of Parliament as the Courts are subservient to Parliament: *R v Fuimaono* CA159/96 24 October 1996. There is no right for a person charged with an offence to be tried under tikanga law: *R v Mitchell* CA68/04 23 August 2004.

[11] Next, the Magna Carta is not supreme law in the sense that it can limit Parliamentary sovereignty: *Shaw v CIR* [1999] 3 NZLR 154.

[12] While the Constitution Act 1852 preserved Maori law and customs under s 71, and empowered the Governor to create Maori districts, none were ever created and Maori did not have power amongst themselves to create districts and, in any event it was repealed and replaced by the Constitution Act 1986: *Kaihau v Police* HC PMN AP5/2000 11 May 2000 Durie J.

[13] The Declaration of Independence 1835 does not advance the appellant's case. Unless the legislation specifically refers to the Declaration of Independence 1835, it cannot be enforced as municipal law: *R v Pairama* (1995) 13 CRNZ 496. Nor does the Te Ture Whenua Maori Act 1993/Maori Land Act 1993 confer criminal jurisdiction over Maori on Maori institutions: *R v Miru* CA65/01 26 July 2001.

[14] As Williams J held in *R v McKinnon* (2004) 20 CRNZ 709, 717-718, the argument for the appellant has been raised by a number of accused in various Courts in New Zealand over the years. Without exception it has been rejected.

[15] The convictions in this case were entered under the Building Act 2004. The provisions of the Building Act 2004 apply to APD and to land owned by that company. The position in the present case is even stronger than that considered by the Court in *Taiwhanga v Thames-Coromandel District Council* (unreported HC

HAM CRI 2005-075-1321 Rodney Hansen J 17 August 2006). In that case the Court considered the effect of the Building Act on Maori freehold land. The Court held:

The proposition that laws of general application do not apply to Maori because of their status as tangata whenua has been considered and rejected many times by the Courts. Some legislation does recognise and incorporate Maori customary law and the customary rights of Maori, or makes special provision for recognising the unique place of Maori in New Zealand society. But where a statute is expressed to have general application, the Courts are obliged to recognise the supreme law-making power of Parliament and are empowered to apply its laws.

[16] The Building Act is a statute of general application. There is nothing in the Act to suggest that Maori or Maori land are exempted from its provisions. The purported determination by the entity known as Ngai Tupango Hapu (Inc) as to the status of APD has no proper authority or validity before the Court.

### **Result**

[17] The appeal is without merit. It is dismissed.

### **Costs**

[18] I make an order for costs in the respondent's favour in the sum of \$226.00 in accordance with the regulations to the Costs in Criminal Cases Act 1967.

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Venning J

### **Addendum**

[19] During the course of the hearing Mr Rakau produced a number of documents to the Court. I have photocopied the documents for the file. The originals (or copies

handed to the Court) have been placed in a sealed envelope. They are to be returned to Mr Rakau together with the CD of Mr David-Wynn: Miller's presentation.

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Venning J