

**IN THE HIGH COURT OF NEW ZEALAND
PALMERSTON NORTH REGISTRY**

CIV-2009-454-794

UNDER	The Trustee Act 1956
IN THE MATTER OF	The Poheutai Trust
BETWEEN	VICTORIA EMMA KNIGHT NICOLA MARY ROBERTS Applicants
AND	ANDREW STEPHEN BOWER KNIGHT TIMOTHY BOWER KNIGHT DAVID BOWER KNIGHT First Class of Beneficiaries
AND	MARITA GEORGINA KNIGHT CHARMAIN ELIZABETH KNIGHT HELEN WINIFRED LAMB Second Class of Beneficiaries
AND	STEPHEN CASIMIR BOWER KNIGHT AMARYLLIS SALIMA BOWER KNIGHT AFSANEH ZOE BOWER KNIGHT EDMUND WILLIAM KNIGHT FRANCES ROSEMARY LARSON VICTORIA EMMA KNIGHT CHRISTOPHER DAVID KNIGHT RICHARD ALEXANDER KNIGHT Third Class Of Beneficiaries
AND	ANDREW STEPHEN BOWER KNIGHT TIMOTHY BOWER KNIGHT DAVID BOWER KNIGHT Fourth Class Of Beneficiaries

Hearing: On the papers

Counsel: G F Kelly for Applicants
J Mills for First and Second Classes of Beneficiaries
J Reardon and R O'Brien for Third and Fourth Classes of Beneficiaries

Judgment: 15 December 2009 at 4pm

I direct the Registrar to endorse this judgment with a delivery time of 4rpm on the 15th day of December 2009.

JUDGMENT OF MACKENZIE J

[1] This is application under s 64A of the Trustee Act 1956 for an order varying the Trust Deed.

[2] The facts as they appear from the statement of claim are that the Pohuetai Trust (the Trust) was established by a Trust Deed dated 16 August 1989. The beneficiaries fall into four categories. The first three represent the sons, spouses of the sons, and grandchildren of the settlor of the Trust, who are all of the persons falling within the category of beneficiaries currently living. All of those persons are adult and independent. The fourth class of beneficiaries are persons who might in the future become beneficiaries in certain events, in particular unborn or adopted children and future spouses of the sons of the settlor.

[3] The size and value of the land owned by the Trust has increased significantly since the Trust was established in 1989 and the Trustees need more extensive powers to administer the Trust's assets on a long term basis. A greater degree of flexibility in terms of distribution of the Trust assets to the beneficiaries is also seen as desirable. The Trustees and the first three classes of beneficiaries are in agreement that the Trust Deed should be amended, and have signed a deed to that effect. However they lack specific powers in the Trust Deed to effect those changes. Counsel has been appointed to represent the fourth class of beneficiaries, and counsel also seeks an order varying the terms in terms of the new deed.

[4] The order is sought under s 64A of the Trustee Act 1956. Under that section, the Court has power to approve the arrangement on behalf of the fourth class of beneficiaries. The statement of claim asserts that the present trustees and the first three class of beneficiaries lack specific power in the Trust Deed to vary the terms of

the Trust. In those circumstances, it appears that an order under s 64 of the Act will also be necessary.

[5] Having reviewed the papers, and having regard to the fact the variation is in accordance with the wishes of all of the present beneficiaries, and that counsel for the potential beneficiaries also considers the arrangement appropriate, I am satisfied that it is appropriate to make the order sought.

[6] There will be an order varying the Trust Deed in accordance with the Deed of Variation of Trust dated 28 September 2009 pursuant to ss 64 and 64A of the Trustee Act 1956. The costs of and incidental to this proceeding are to be met by the Trustees from the assets of the Trust.

“A D MacKenzie J”

Solicitors: Greg Kelly Law Ltd, Barristers and Solicitors, Wellington for Applicants
Innes Dean, Solicitors, Palmerston North for First and Second Classes of Beneficiaries
Cooper Rapley, Solicitors, Palmerston North for Third and Fourth Classes of Beneficiaries