

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

CIV-2009-485-2012

IN THE MATTER OF Section 52 Trustee Act 1956

AND

IN THE MATTER OF **LANDCORP FARMING LIMITED** a
duly incorporated company having its
registered office at 15 Allen Street,
Wellington

Applicant

On the papers

Counsel: S Barker for applicant

Judgment: 18 December 2009 at 4 pm

JUDGMENT OF MALLON J

[1] The applicant applied by originating application without notice for an order vesting specified land in the applicant. The application is made pursuant to s 52(1)(b)(iv) of the Trustee Act 1956.

[2] The background is an agreement dated 11 October 1994 between the applicant (as vendor), Kupe Group Limited (as purchaser) and Paramoor Ten Limited (as parent company) under which the applicant sold the shares of its then subsidiary, Landcorp Property Limited (LPL). LPL was at that time a major landholding company. Before the sale of its shares it had transferred most of its properties to various purchasers. In some instances, although the purchasers had paid the full purchase price, the transfers to the purchasers were not effected and the properties remained in LPL's name.

[3] Clause 21 of the agreement provided:

21.2 If following the Date of Settlement any certificates of title (other than the certificate of title for the Hokitika land which is properly, or will be, properly vested in LPL) are found to be or subsequently

issue in the name of LPL such certificates of title will be held on trust for Landcorp Investments Limited (“LIL”).

- 21.3 The Purchaser acknowledges that prior to the Date of Settlement, and notwithstanding anything else in this Agreement, that LPL will have executed a power of attorney in favour of the Vendor to enable the Vendor as duly authorised attorney for LPL to execute memoranda of transfer of that land to Landcorp Investments Limited and to execute the necessary documentation in terms of the Land Settlement Promotion and Land Acquisition Act 1952 or otherwise to enable the transfers to be executed.

[4] In accordance with clause 21 a power of attorney was signed between LPL and the applicant. Landcorp Investments Limited amalgamated into the applicant in 2004. On 15 January 2005 LPL was removed from the register following a voluntary liquidation. The final liquidator’s report noted that the only asset of LPL was cash at hand which was distributed to shareholders. However, in fact, there were properties in the name of LPL or in the name of Landcorp Management Services Limited (which was the former name of LPL).

[5] The applicant cannot now transfer the properties to the purchasers who had purchased them before 1994 because it is not the registered proprietor. It also cannot rely on the power of attorney because LPL has been removed from the Companies Office Register.

[6] The applicant considers it has an obligation to transfer the titles to the purchasers under equity. The share sale agreement enabled it to take beneficial ownership of the land so it could complete the transfers that had not taken place. It seeks a vesting order under s 52(1)(b)(iv) to enable it to effect the transfers.

[7] Kupe Group Limited is now called CDL Investments Limited. Paramoor Ten Limited is no longer on the Companies Office Register. Kupe has advised the Court that it supports the application. No other interested parties have been identified (except the purchasers who are intended to benefit from the vesting order that is sought).

[8] On the material presented to me I consider that this is a matter appropriately brought as an originating application. I also consider that the order should be made under s 52 of the Trustee Act. The land set out in the schedule to the application is

to vest in the applicant as trustee for the sole purpose of enabling the transfers to the purchasers of the properties to take place.

Mallon J

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