

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

**I TE KŌTI MATUA O AOTEAROA
TE WHANGANUI-A-TARA ROHE**

CIV-2022-485-650

UNDER	the Judicial Review Procedure Act 2016 and the Declaratory Judgments Act 1908
BETWEEN	TE RŪNANGA O NGĀI TAHU Plaintiff
AND	TE OHU KAI MOANA TRUSTEE LTD First Defendant
AND	MINISTER FOR OCEANS AND FISHERIES Second Defendant

Teleconference: 3 February 2023

Appearances: J D Every-Palmer KC and K Grant for the Plaintiff
V Casey KC for the First Defendant
N C Anderson and J B Watson for the Second Defendant
J W S Baigent for Te Whakakitenga o Waikato
Inc, Interested Party

Minute: 7 February 2023

**MINUTE OF GWYN J
(Application to rescind stay)**

Introduction

[1] On 27 January 2023 I issued a minute in which I granted the plaintiff's application of 23 December 2022, and made the following directions:¹

- (a) Vacating the fixture scheduled for 6-8 March 2023.

¹ Minute of Gwyn J, 27 January 2023 (Minute).

- (b) Revoking the timetable for evidence and submissions.
- (c) Staying the proceedings until 28 July 2023, at which time the plaintiff is to file and serve a memorandum updating the progress of the Māori Fisheries Amendment Bill and the plaintiff's intentions in relation to these proceedings.
- (d) Granting leave to the plaintiff to bring on the proceedings, including its application for urgency, on 48 hours' notice.
- (e) Reserving leave for any party to make application to the Court for directions in the intervening period.

(the directions)

This application

[2] The first defendant has now applied under rule 7.49 of the High Court Rules 2016 (the Rules) for orders:

- (a) rescinding the directions;
- (b) convening a teleconference for all parties to be heard on the plaintiff's application and/or on the terms of any stay of the proceedings;
- (c) any other orders required.

[3] The first defendant's application submits that:

- (a) the parties had reasonably anticipated being heard by way of oral argument prior to determination of the plaintiff's application for stay;
- (b) the parties had not addressed the Court on the correct approach under r 10.2 of the Rules to an application to vacate a fixture and the Court did not assess the application on the basis of whether an adjournment

was necessary in order to do justice between the parties and was in the interests of justice overall.

- (c) the Court erred in assessing the level of prejudice to the first defendant.
- (d) the Court erred in the implied suggestion that the first defendant should have, in practical terms, treated the plaintiff's application for stay as effective to vacate the fixture and revoke the timetable.

[4] At today's telephone conference I heard from counsel for all parties and the interested party.

Proper hearing

[5] As I advised counsel, when the matter came before me as Duty Judge on 27 January 2023 I was not aware that counsel for the first defendant had, on 24 January 2023, requested that any decision regarding the plaintiff's application be deferred until the Court was able to hear from the parties. In the absence of that knowledge, and given the relatively comprehensive memoranda filed by the parties and the interested party, I concluded it was appropriate to deal with the plaintiff's outstanding application of 23 December 2022. I viewed the application as being inextricably linked with the first defendant and second defendants' request for a direction that the plaintiff within 24 hours advise the parties and the Court whether it proposed to continue the proceeding or discontinue its claim.

Next steps

[6] After discussion with counsel, the situation is as follows. Mr Every-Palmer KC for the plaintiff confirmed his client's previously stated position that if the Court does not agree to maintain the direction that the proceeding is stayed, the plaintiff will discontinue. On that basis a further fixture date is not required.

[7] Given my indication at [5] above, the Court will hear oral submissions from the parties on whether the stay of proceedings is appropriate and, if so, the conditions of such a stay.

[8] For completeness, I record that:

- (a) the direction that the 6-8 March 2023 fixture is vacated is confirmed. No further fixture is to allocated;
- (b) the consequential direction that the timetable for evidence and submission is revoked is confirmed; and
- (c) the direction that the proceedings are stayed until 28 July 2023 and the procedural directions that follow² remain on foot, but subject to possible revocation after the Court has heard from the parties.

[9] The Court is to allocate a two hour hearing after 13 February 2023 to consider whether the stay of the proceeding should remain in place and, if so, on what terms. That hearing will in effect consider the substance of both the plaintiff's 23 December 2022 application and the first defendant's 1 February 2023 application in so far as they concern the question at [7] above.

Gwyn J

Counsel/solicitors
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² Directions at [34(c)-(e)] inclusive of the Minute.