

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

CIV-2021-470-000049

**I TE KŌTI MATUA O AOTEAROA
TAURANGA MOANA ROHE**

UNDER the Trusts Act 2019 and Part 18 of the High
Court Rules 2016

IN THE MATTER of an application under Sections 130 and 133
of the Trusts Act 2019

BETWEEN WILLIAM BEAU HOLLAND, NATALIE
ANNE BRIDGES, PETER JOHN
BLACKWELL, PETER JOHN FARMER,
MARK EDMOND ARUNDEL and TINA
LYNN JENNEN as trustees of the Tauranga
Energy Consumer Trust
First Plaintiffs

AND WILLIAM BEAU HOLLAND, NATALIE
ANNE BRIDGES, PETER JOHN
BLACKWELL, PETER JOHN FARMER,
MARK EDMOND ARUNDEL and TINA
LYNN JENNEN as trustees of the TECT
Charitable Trust
Second Plaintiffs

On the papers: 19 May 2021

Appearances: J Smith QC and M D Arthur for the
First and Second Plaintiffs

Date of Minute: 19 May 2021

MINUTE OF ASSOCIATE JUDGE GARDINER

Solicitors / Counsel:

Chapman Tripp, Auckland

michael.arthur@chapmantripp.com

J Smith QC, Auckland

Case officer: Stephen Hewlett

[1] The first and second plaintiffs have filed an application under the Trusts Act 2019 seeking Court approval of their decisions to give effect to a restructure of the Tauranga Electricity Consumer Trust (**TECT**) and the TECT Charitable Trust (the **2002 Charitable Trust**). The application is appropriately brought under Part 18 of the High Court Rules 2016.

[2] They have also filed an interlocutory application seeking directions as to service and representation, as required by r 18.7, and for timetable directions.

[3] Having read the interlocutory application for directions as to service and representation dated 13 May 2021; the memorandum of counsel accompanying that interlocutory application; the statement of claim dated 13 May 2021; the affidavit of William Beau Holland sworn 13 May 2021; and consent memorandum from Jane Anderson QC; I am satisfied that the orders sought in the interlocutory application are appropriate. Specifically, the directions as to service will ensure that the persons interested in the proceeding are made aware of the proceeding, have information to access the Court documents, and understand how to take formal steps. The appointment of an independent counsel by the Court is an appropriate way to ensure that the Court is properly presented with any information and argument that may contradict the plaintiffs' case. Further, the timetable directions sought will help to secure the just, speedy and inexpensive determination of the proceeding.

Directions

[4] I direct that:

(a) service of this proceeding, including the orders made in this application, will be effected by:

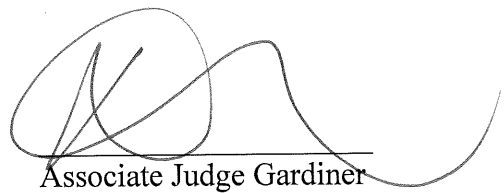
(i) sending a notice (in essentially the same form as the notice attached to the affidavit of TECT Chairman, William Holland) to anyone who was a Consumer (as defined in the TECT Trust Deed) as at 28 January 2021, or who has since become a

Consumer, explaining that the Trustees have filed an application to the Court for orders under section 133 of the Trusts Act 2019, with information on how Consumers can access online, download or request a copy of the documents filed in this proceeding, by way of:

- (1) mail to those whom TECT has a current postal address;
and
 - (2) email to those whom TECT has a current email address.
- (ii) advertising a notice of the proceedings (in essentially the same form as the advertisement attached to the Holland affidavit) in the Bay of Plenty Times and the Weekend Sun;
 - (iii) serving the Attorney-General (in respect of charitable beneficiaries);
 - (iv) serving the counsel appointed as Independent Counsel by the Court; and
 - (v) publishing all documents filed to date in this proceeding and a copy of the above notice and advertisement to Consumers on TECT's website.
- (b) no notice of proceeding is required in this proceeding;
 - (c) pursuant to r 4.27, Jane Anderson QC is appointed as Independent Counsel to assist the Court by ensuring that a complete and balanced view is before the Court when determining the proceeding, including any relevant information and arguments in opposition to the orders sought by the first and second plaintiffs;

- (d) the reasonable fees and disbursements of the Independent Counsel shall be met out of the assets of TECT;
- (e) the Independent Counsel:
 - (i) is permitted, but not obliged, in her sole discretion, to seek information from TECT, seek and/or receive comments and information from beneficiaries and otherwise consult with any of them, take expert advice, call evidence and cross-examine any witness; and
 - (ii) in carrying out her role, including the steps she may take in her discretion as set out in paragraph [4](e)(i) above, the Independent Counsel is not acting for beneficiaries as a whole or any of them.
- (f) initial disclosure is not required;
- (g) evidence is to be given by affidavit;
- (h) any Consumer or the Attorney-General, should they wish to be heard, and any other person who seeks leave to appear, must file, and serve on the first and second plaintiffs, a notice of appearance or a statement of defence and, any affidavits on which they intend to rely by **2 July 2021**;
- (i) by **9 August 2021** the Independent Counsel must file and serve any evidence on which the Independent Counsel intends to rely at the hearing;
- (j) by **23 August 2021** the first and second plaintiffs must file and serve any further evidence on which they intend to rely at the hearing;
- (k) the plaintiffs must file and serve their submissions no later than **two weeks** before the hearing;

- (l) any other party, and Independent Counsel, must file and serve their submissions no later than **one week** before the hearing;
- (m) the matter be set down for a full day hearing on the first available date after **20 September 2021** in order to hear the first and second plaintiffs' application for orders under section 133 of the Trusts Act 2019;
- (n) leave is reserved for any party to seek a telephone conference if it appears necessary to adjust the timetable.



Associate Judge Gardiner