

BETWEEN NEIL WELLS

Plaintiff

AND GRACE HADEN

Defendant

Hearing Commenced: 13 March 2008
Appearances: N Wright for the Plaintiff
 Defendant in person

NOTES OF EVIDENCE TAKEN BEFORE JUDGE RODERICK JOYCE QC

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**MR WRIGHT OPENS AND CALLS
NEIL EDWARD WELLS (SWORN)**

Q. Mr Wells you've sworn two affidavits that have been filed in relation to these proceedings, is that correct?

10 A. That's correct.

Q. Can you confirm for the Court –

This document is marked with the letter
"C "And is attached to the affidavit of
Grace Haden

THE COURT:

Dated this day 8th of July 2013
Affirmed before me at Auckland
Solicitor, Registrar O.P.

Well first of all to get it on the record Mr Wright, could we do the usual and get Mr Wells full name and occupation and so on.

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MR WRIGHT:

Yes Sir. I didn't think that was necessary as the full name's on the affidavits themselves.

Q. Are you able to explain on the basis of your understandings as to whether a Trust had been formed orally between the named trustees. Was there a common intention on the part of the named trustees in your view to form this Trust at that point?

5 A. Yes, yes. The four original trustees came together late in 1998 and early in 1999 once the wording of the Bill was becoming quite apparent, and that to progress the project there was going to be a need to establish an intermediary organisation which will ultimately become an approved organisation. The Bills were not passed until October 1999 and the Act itself did not come into force until the 1st of January 2000, so MAF could not receive an application as an approved organisation until such time as the Act itself had commenced. So there was a lot of paper work and preparation done in 1999 but none of it could have any affect until we could lodge a formal application. Any correspondence with MAF in 1999 was simply on the basis of intention, there could not be a formal application at that time. - criteria: they should be an animal welfare organisation

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Q. But given the common intention stated the fact that the Deed of Trust had not been at that stage signed, does not derogate in any way from your statements in the application "A Charitable Trust has been formed";

A. That's correct. We had formed a common intention to create a Trust and various drafts of that Trust were considered in 1999. When the Act was passed and we submitted a formal application, that was at the point that it was required by the trustees that we sign that Trust Deed in a I believe March of 2000.

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Q. Two more minor points. Can you explain for the Court the role of AWINZ in terms of prosecutions under the Animal Welfare Act and why its name appears on informations?

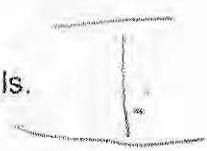
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A. Yes. Under the Animal Welfare Act approved organisations are recognised as a prosecuting authority in that District Courts may at their discretion award the fine, or part of any fine awarded on a prosecution to the approved organisation. There is another provision which enables a District Court to forfeit animals to an approved organisation. The memorandum of understanding with MAF clearly set out that any prosecutions undertaken under this arrangement would be the responsibility of AWINZ, not a territorial authority. For a number of reasons MAF had the direct relationship with the approved organisation, but

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THE COURT:

I'll ask you to answer it nevertheless Mr Wells.



CROSS-EXAMINATION CONTINUES: MRS HADEN

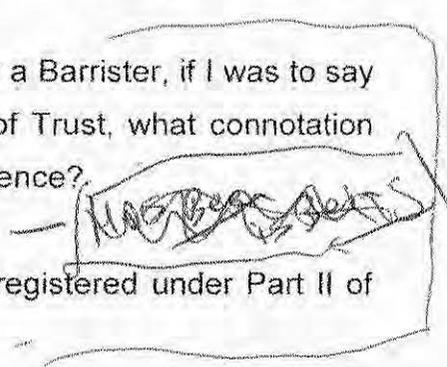
5 A. In the formation of any Body Corporate or non Body Corporate there is a series of processes which ultimately create the existence of an organisation, and in the case of the Animal Welfare Institute, the various drafts of the Deed of Trust which were formulated in 1999 led up to the final Deed, but it was not necessary in our view to actually have the signed copy until we were ready to proceed in the year 2000 because we couldn't formalise our application until

10 then.

Q. That was not my question. My question was, that as a Barrister, if I was to say that I had formed a Trust by Trust Deed, a Deed of Trust, what connotation would you take, what would you expect to be in existence?

A. I would expect there to be a written Deed of Trust.

15 Q. Now reading onto that next part, it says it is being registered under Part II of the Charitable Trust Act –



THE COURT:

I'm sorry I've lost my place. Which Exhibit again is it that we are looking at?

20 MRS HADEN:

Exhibit L Your Honour and it's under point two, and it's that top three line paragraph and it's the bottom part of it. That's L, very first page and we're at the bottom under number two.

CROSS-EXAMINATION CONTINUES: MRS HADEN

25 Q. It says it is being registered under Part II of the Charitable Trusts Act 1957. Can you tell me what that statement means?

A. Yes, it was under consideration and you need to put that in the context that MAF policy were indicating that they would require registration and a Certificate of Incorporation, but as I said earlier in my evidence, as things

30 finally progressed through the year 2000 MAF then determined it was not necessary for a Trust Deed to be registered and a Certificate of Incorporation