

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

**I TE KŌTI MATUA O AOTEAROA
ŌTAUHAHI ROHE**

**CIV-2024-409-286
[2024] NZHC 3374**

IN THE MATTER	of s 133 Trusts Act 2019 and pt 19 High Court Rules 2016
BETWEEN	RON AND JOAN GILLATT CHARITABLE TRUST BOARD Applicant

Hearing:	On the papers
Appearances:	S D Campbell and J W Murison for Applicant K E E Whiting and O Kiel for Attorney-General A V Foote for Canterbury Charity Hospital Trust
Judgment:	13 November 2024

JUDGMENT OF DUNNINGHAM J

*This judgment was delivered by me on 13 November 2024 at 11 am, pursuant to
r 11.5 of the High Court Rules*

*Registrar/Deputy Registrar
Date:*

Introduction

[1] The Ron and Joan Gillatt Charitable Trust Board (the Trustees) applies, under s 133 of the Trusts Act 2019, for orders making certain directions and declarations relating to the Ron and Joan Gillatt Charitable Trust (the Trust). In summary, these are to:

- (a) confirm that the Trust is a valid charitable trust;
- (b) identify that certain provisions in the Trust are for non-charitable purposes and that property governed by those provisions can be dealt with as the trustees seek fit; or, alternatively,
- (c) if the identified provisions are construed as having a charitable purpose, identifying what property they extend to in order to overcome difficulties the trustees have come up against given the quantity, condition, and relative lack of value that some of the property gifted to the Trust has; and
- (d) approve amendments to the Trust Deed to ensure that some of the organisations which are beneficiaries of the Trust are correctly identified in the Trust Deed.

Service

[2] The proceeding has been served in accordance with directions made by the Court on all the organisations which are beneficiaries of the Trust, as well as on the Attorney-General as the Crown's officer, in her role as the protector of charities.

[3] While there were some minor errors in the descriptions of some of the organisations or uncertainties in identifying them, these have been resolved sufficiently to effect service. It is those issues which have prompted the Trustees to seek the Court's approval to amend the Trust Deed as described at [1(d)] above.

[4] None of the beneficiaries of the Trust which have been served have chosen to take an active part in the application.¹

The Attorney-General's report

[5] The Attorney-General, as is conventional, has filed a report to assist the Court by outlining her views on the proposed application. The Attorney-General's report is detailed and helpful. It concludes as follows:

... the Attorney-General has no objection to the declarations and directions sought by the trustees. [The Attorney-General] is satisfied that the gifting clauses that are the subject of this application are clauses for non-charitable purposes. In the circumstances, s 61B of the [Charitable Trusts Act 1967] may operate to sever those clauses and save the Trust. Accordingly, the Trust property affected by those clauses may be disposed of at the discretion of the trustees, with any proceeds to fall into residue and be applied for the charitable purposes of the Trust.

I accept that conclusion and set out in more detail below why that is the case and what orders should be made to reflect it.

Background

[6] The background to the application is set out in detail in the affidavit of Annabel Kate Sheppard, a partner at the law firm Wynn Williams and a member of the Trust Board.

[7] She explains that on 1 February 2001, Mr Gillatt and his wife established the Trust by deed (the 2001 Deed). They sought to establish a charitable trust that would continue in perpetuity to benefit charitable causes in the South Island, particularly Christchurch. The Trust's principal function is to provide annual distributions to specified organisations using the income from investments.

[8] The 2001 Deed has been varied twice:

(a) First, the 2001 Deed was varied on 17 April 2012 (the 2012 Variation);

¹ The Canterbury Charity Hospital was the only one to formally file a memorandum with the Court recording it did not oppose the application and would abide the decision of the Court.

- (b) Second, the 2001 Deed was varied again on 13 April 2021 (the 2021 Variation).

I refer to the deed, in its current form, as the Trust Deed.

[9] In accordance with the 2001 Deed, the trustees were to invest funds, use a third of any income for charitable distributions and re-invest the balance. By the 2012 Variation, clauses were inserted to reflect the gift of the chattels in Mr Gillatt's will, requiring in general terms that:

- (a) the Trustees ensure there is enough income to fulfil Mr Gillatt's request in respect of the chattels specified in his will, before making any income distributions in any particular tax year;
- (b) should a grant be made to the Christchurch Art Gallery or similar New Zealand publicly owned gallery (if such a grant is necessary) to facilitate the gallery's acceptance and retention of Mr Gillatt's art collection, income shall be applied towards that grant before calculating the distributable income; and
- (c) the Trustees ensure the conditions of the gift be perpetually met.

[10] As the Attorney-General explains in her report, the combined effect of these provisions is to constrain the distribution of income in accordance with the wider provisions of the Trust Deed, by ensuring Mr Gillatt's wishes in respect of the chattels are met first.

[11] Additionally, the 2012 Variation introduced:

- (a) a clause contemplating that the chattels (with the exception of the paintings) must not be disposed of, except to "recognized well administered collections of similar items"; and
- (b) a clause contemplating that Mr Gillatt's paintings may at some future date become of cultural and heritage value such that the trustee could

gift them, as a whole collection only, to the Christchurch Art Gallery (as first preference), or a similar New Zealand publicly owned gallery.

[12] The 2021 Variation provided, among other things, that:

Before the Trustees make any distribution of income in any particular tax year the Trustees must ensure there is sufficient income to cover the costs in fulfilling the provisions of Ronald Joseph Gillatt's bequests in respect of chattels specified in Ronald Joseph Gillatt's will. If a grant is made to the Christchurch Art Gallery or similar New Zealand publicly owned art gallery as part of the distribution of paintings from the estate of Ronald Joseph Gillatt then income shall be applied towards that grant before calculation of the distributable income each year.

[13] Mr Gillatt passed away on 21 February 2024, his wife having pre-deceased him.

[14] In his will, Mr Gillatt provided for certain assets of his estate to be transferred to the Trust. The relevant gifting clause of his will reads as follows:

3.1 My Trustee must make provision out of the Residue of my estate for the **RON AND JOAN GILLATT CHARITABLE TRUST** (being a trust created pursuant to Trust Deed dated 1 February 2001) (**Charitable Trust**) to take possession of and store all books, magazines, papers, paintings, video tapes, philatelic items and DVDs owned by myself at the date of my death (**Chattels**), in which case my Trustee must arrange for the Charitable Trust to provide for any necessary storage, cataloguing and maintenance of the Chattels, and to meet the costs thereof from the Residue of my estate.

[15] Shortly after Mr Gillatt died, the Trustees resolved to apply for incorporation as a charitable trust board. That application was successful and the Trust was incorporated as a Charitable Trust Board on 10 April 2024.

[16] As Ms Sheppard sets out in her memorandum, when drafting the clause gifting the chattels to the Trust, she did not know the specific property to which it related but had assumed it was a collection of some importance and significance. The reality transpired to be something quite different.

[17] Following Mr Gillatt's death in 2024, she visited his home on more than one occasion to inspect his property, including the chattels. She was shocked at the

sheer amount of property stored there. Furthermore, it was haphazardly stored, some of it was infested with silverfish and insects, and much of it was valueless paperwork.

[18] The Trustees engaged valuation services to consider the value of his collections.

[19] In respect of the books, DVDs, videotapes, magazines and papers, Phillippa Marie Smith, who is the director of Estate Matters Ltd and who is involved in providing estate and property services in the Christchurch and Canterbury area, was of the view that most of the items were of no value. Furthermore, if “not stored in an appropriate facility, the items would deteriorate over time”. She was unaware of any appropriate facility that could be used for such storage.

[20] In respect of the stamp collection, the Trustees obtained a valuation from Steven McLachlan of Shades Stamp Shop. He estimates the collection in its entirety to be worth between \$2,860 and \$3,000 but notes the collection is “not readily marketable”.

[21] Finally, in respect of the artworks (comprising paintings and prints), Neil Roberts of the Robert McDougall Art Gallery provided a value of Mr Gillatt’s art collection comprising 73 artworks. The estimated value of the individual artworks ranged from \$10 to \$1,600 with the total estimated value of the collection being a little over \$20,000. He did not consider that any of the works were of a sufficient standard to be appropriate for inclusion in any New Zealand public collection.

[22] In summary, the effect of the gifting clause in the will and the clauses added to the Trust Deed by the 2012 and 2021 Variations is that the income and capital of the Trust are constrained by the requirement of that clause. In particular:

- (a) the Trustees have to make provision out of the income and capital of the Trust to take possession of and store the chattels;
- (b) the Trustees must provide for any necessary storage, catalogue and maintenance of the chattels;

- (c) the Trustees must not dispose of the chattels except to “recognized well administered collections of similar items, preferably collections that provide for retention of such collections in perpetuity”;
- (d) while the Trustees may gift the total collection of paintings to an appropriate publicly owned gallery, until that point, the requirement to store, catalogue and maintain the items applies to the relevant artworks.

[23] In the circumstances, Ms Sheppard deposes that “... complying with Mr Gillatt’s request will be onerous, expensive, and challenging to the point of approaching practical impossibility.” She does not know what utility would be served by storing almost any of it. She also notes that much of the property is really no more than “rub[ish]” with no enduring importance”, and complying with the gifting clauses in the Trust Deed simply would not be charitable. In her view:

It would best enhance the Trust’s charitable purposes for that property to fall into the residue of the estate or for the Trustee to otherwise be able to deal with it at its discretion, including selling any items which may be saleable, donating items to charities, or having the discretion to discard appropriate items.

[24] To overcome the difficulties outlined above, the trustees now apply, pursuant to s 133 of the Trusts Act, for declarations or directions that:

- (a) A declaration that the Trust is a valid charitable trust.
- (b) A declaration that the following provisions of the Trust:
 - (i) clause 7.1(c) of the Deed of Variation of Trust and Deed of Retirement and Appointment of Trustee of the Ron and Joan Gillatt Charitable Trust dated 17 April 2012 **(2012 Variation)**;
 - (ii) clause 7.2 of the 2012 Variation;
 - (iii) clause 1.2 of the Deed of Variation dated 13 April 2021 **(2021 Variation)**; and

(iv) any other elements of the Trust as the Court deems appropriate;

are non-charitable purposes.

(c) That insofar as there are non-charitable purposes within the Trust, the Trust be construed and given effect to in accordance with s 61B of the Charitable Trusts Act 1957.

(d) That property governed by the provisions referred to at (b) above be disposed of as the Trustees deem fit, or as otherwise directed by the Court, with any resulting proceeds to form part of the corpus of the Trust fund.

(e) In the alternative (if the provisions referred to at (1)(b) are construed as having a charitable purpose), that the property those provisions relate to be interpreted (consistently with charitable purpose) as property which:

(i) is all books, magazines, papers, video tapes, DVDs, philatelic items and paintings;

(ii) was owned by Ronald Joseph Gillatt at the time of his death; and

(iii) is of sufficient artistic or collectible merit, or is otherwise of a character, such that the property may be disposed of to well administered collections of similar items at the Trustees discretion.

(f) That the draft resolution of the Trustee be approved.

(g) That the Trustee's costs in bringing this application be payable on an indemnity basis out of the funds of the Trust.

[25] The Trustees also seek orders approving the following administrative amendments to the Trust Deed:

- (a) that the reference to “the Order of St John, Christchurch” be deleted and replaced with “the Order of St John South Island Region Trust Board (CC46726)”, as there is no entity named “Order of St John, Christchurch”;
- (b) that the reference to “Garden City Model Railway Club” be deleted and replaced with “Garden City Model Railroad Club Incorporated (CC27672)”, as there is no entity named “Garden City Model Railway Club”;
- (c) that the reference to “Christchurch City Mission” be deleted and replaced with “Social Service Council of the Diocese of Christchurch (CC27132)”; and
- (d) that the reference to “Christchurch Branch of the Cats’ Protection League” be deleted and replaced with “Cats Protection League Canterbury Incorporated (CC10882)”.

[26] I now consider each of these directions in turn.

Status of the Trust

[27] The declaration as to the status of the Trust is sought, as I apprehend it, as a necessary preliminary step to establish jurisdiction to make the application under s 61B of the Charitable Trusts Act 1957 (the Act).

[28] I have no difficulty in making a declaration that the Trust is a charitable trust. The Trust Deed provides for distribution of trust income to various named organisations, most of which are registered charities and all of which are organisations with purposes that fall within the recognised charitable categories.

[29] The name of the Trust, cl 2.1 of the 2001 Deed pertaining to the Trust's purpose, and the preamble to the 2001 Deed, all indicate a general charitable intent. Furthermore, the Trust's registration as a charitable trust board further supports and confirms that the Trust is a valid charitable trust. Accordingly, I am satisfied it is appropriate to declare that the Trust is a charitable trust.

Are there non-charitable provisions?

[30] The next declaration sought is that various provisions of the Trust, being cls 7.1(c) and 7.2 of the 2012 Variation and cl 1.2 of the 2021 variation, all of which relate to the administration of the gift of chattels, are non-charitable purposes.

[31] I concur with the Attorney-General that, insofar as those clauses apply to the storage, cataloguing, and maintenance of household items such as books, magazines, DVDs and videos and papers, which are of no value, those clauses cannot benefit the public. Similarly, the storage, cataloguing and maintaining of the philatelic items does not fall within the definition of charity as there is no public benefit in doing so. While cl 7.2(c) provides for the disposition of those items to "recognized well administered collections of similar items", that clause does not preclude disposition to a private collection which would not be for any public benefit. Furthermore, it is unlikely that the Trustees would be able to dispose of the items in accordance with that clause, noting Mr McLachlan's view that the collection is "not readily marketable".

[32] Insofar as the clauses relate to the bequest of the collection of the artworks to the Christchurch Art Gallery or similar publicly owned art gallery, it would, prima facie, fall under the advancement of education head of charity. However, as the Attorney-General points out, this Court in *Re Collier*, required artworks to meet a minimum standard of value in order to advance education.² In this case, it is appropriate for the Trustees to rely on expert evidence about the value of an artwork to determine whether it meets the relevant threshold.

[33] Given the evidence of Mr Roberts about the standard of the artworks and the fact they are not appropriate for any public collection, I am satisfied that the gifting

² *Re Collier* [1998] 1 NZLR 81 (HC) at 91–92.

clauses as they relate to the artworks cannot be capable advancing education, therefore cannot be for any charitable purpose.

[34] In summary, I am in agreement with the Attorney-General that the gifting clauses specified are non-charitable. In the circumstances, s 61B can operate to sever those purposes and save the Trust for the charitable purposes of the Trust only.

[35] I am satisfied it is appropriate to make the orders sought under this head ensuring no holding or application of Trust property or any point thereof for any non-charitable purpose. Accordingly, whatever money would have been applied to fulfil those provisions, should instead fall into the residue and be used exclusively for the charitable purposes of the Trust.

Disposition of property

[36] If, as is the case, this Court accepts the applicability of s 61B of the Act, the Trustees also seek orders in respect of the property falling within the ambit of the gift contained in Mr Gillatt's will. The Trustees propose that the Court direct that the Trustees can, at their discretion, dispose of the property, provided any such disposition is consistent with the remaining terms of the Trust.

[37] Given the preceding order relieves the Trustees of the obligation to maintain the chattels, they would inevitably degrade. It is appropriate, therefore, to make orders directing or allowing the Trustees to dispose of this property as they deem fit, with the proceeds (if any) to be treated as Trust income.

[38] I accept that this is a pragmatic resolution, a view shared by the Attorney-General and I make the orders on the terms sought. In the circumstances, I do not need to consider the alternative orders sought should I determine that the provisions sought to be declared as non-charitable are in fact charitable purposes.

Approval of Administrative Amendments

[39] The next order sought is to approve the various administrative amendments to the Trust Deed, referred to in the draft resolution and the memoranda of counsel dated 18 July 2024, as listed at [25] above.

[40] For the reasons set out at paragraphs [69] and [70] of the memorandum of counsel dated 31 May 2024 and the affidavit of Annabel Kate Sheppard dated 1 August 2024, I am satisfied that the entities, as now identified, are the appropriate beneficiaries, as intended by Mr Gillatt. Amending the Trust Deed to reflect the accurate description of those entities would facilitate the management and administration of the Trust and is accordingly approved.

Costs

[41] Finally, the Trustees seek that their costs in bringing this application be payable on an indemnity basis out of the funds of the Trust.

[42] The application was properly brought by the trustees for the purpose of clarifying the administration of the Trust and accordingly, I approve the trustee's costs being met out of the funds of the Trust.

Result

[43] I make the following declarations and directions:

- (a) A declaration that the Trust is a valid charitable trust.
- (b) A declaration that the following provisions of the Trust:
 - (i) clause 7.1(c) of the Deed of Variation of Trust and Deed of Retirement and Appointment of Trustee of the Ron and Joan Gillatt Charitable Trust dated 17 April 2012 (**2012 Variation**);
 - (ii) clause 7.2 of the 2012 Variation;
 - (iii) clause 1.2 of the Deed of Variation dated 13 April 2021 (**2021 Variation**); and

(iv) any other elements of the Trust as the Court deems appropriate;

are non-charitable purposes.

(c) That insofar as there are non-charitable purposes within the Trust, the Trust be construed and given effect to in accordance with s 61B of the Charitable Trusts Act 1957.

(d) That property governed by the provisions referred to at (b) above be disposed of as the Trustees deem fit, with any resulting proceeds to form part of the corpus of the Trust fund.

(e) That the draft resolution of the Trustee amending the name of four beneficiaries of the Trust to remove administrative uncertainties is approved.

(f) That the Trustees' costs in bringing this application are payable on an indemnity basis out of the funds of the Trust.

Solicitors:
Wynn Williams, Christchurch