

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

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

**CIV-2025-441-069
[2026] NZHC 198**

UNDER section 112 and 114 of the Trusts Act 2019
IN THE MATTER OF the Kia Manaaki Trust
BETWEEN MARITA LEE MATCHITT
Applicant
AND VERNON LEWIS MATCHITT, MAIA
MATCHITT and JOANNE MARAMA
MATCHITT
First Respondents
ANDREW MARK GALLIE
Second Respondent

Hearing: 2 February 2026
Appearances: E R Anderson and A T Davis for Applicant
J L Bates and M Inwood for First Respondents
Second Respondent in person
Judgment: 12 February 2026

JUDGMENT OF CHURCHMAN J

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Introduction

[1] Paratene Matchitt (Para) was a renowned Māori artist, who passed away in July 2021. His archive of works and his property in Napier (known as the Shed) are the principal assets of his estate.

[2] Not long before his death, on 8 December 2020, Para settled the Kia Manaaki Trust (Trust). The trustees of the Trust are Para's living children (Marita Matchitt, Vernon Matchitt, Maia Matchitt and Joanne Matchitt), and his solicitor, Andrew Gallie. Marita, Vernon, Maia and Joanne are also the beneficiaries of the Trust.

[3] Unfortunately, the purpose clause in the Trust Deed is very vague. As I discuss below, difficulties arise because of the lack of detail in it.

[4] Marita has applied for orders removing the trustees (including herself) and appointing John McCormack, Jacob Scott and Megan Tamati-Quennell as replacement trustees under ss 112 and 114 of the Trusts Act 2019 (Act).

The applicant's position

[5] Marita's understanding of the purpose of the Trust is that Para wanted a papakāinga built on whānau land to house and exhibit a collection of his works and preserve his legacy. He also wanted a place for whānau, current and future, as well as a space that could be used for workshops and art exhibitions. Marita understood that Para wanted the Trust to be in place for future generations, and to benefit the wider community.

[6] Unfortunately, difficulties and frustrations arose between Marita and the other trustees. They were unable to agree on important matters essential for the Trust's operation. This created a significant problem as the Trust Deed provides that all Trust decisions are to be unanimous between its trustees. Marita and the other trustees were unable to agree on what to do with the Shed, which is in a state of disrepair. Artworks are stored there, risking damage to them. Meeting times were another source of dispute. The time that suited the other trustees for meetings to be held did not suit Marita. Marita considered that the other trustees did not provide her with information and made a majority decision, contrary to the Trust Deed, to remove her as a trustee. I note that the Trust Deed vests the power of appointment and removal in the settlor rather than the trustees.

[7] Marita contends that, even after her exclusion, the trustees have not produced a sensible plan for the Shed, organised insurance or a preservation and care plan for the art, nor made a business plan for the Trust more generally. She says that the Trust has possession of assets that are irreplaceable, but they are uninsured, and at risk of deterioration and damage. The Trust cannot meet its expenses and outgoings, nor can it undertake the work necessary to safeguard these assets for the beneficiaries. The assets have not yet been formally distributed to the Trust.

[8] Marita considers that the Trust is dysfunctional, and it is currently incapable of fulfilling its purpose and Para's wishes without removing the current trustees and replacing them with independent and suitably qualified trustees.

The respondent's position

[9] The first respondents (Vernon, Maia and Joanne) oppose the application. They say that it is neither necessary nor desirable for them to be removed as trustees, or for new non-whānau trustees to be appointed. They claim that the Trust was only prevented from taking substantial action since Para passed due to Marita's conduct. They say that, since Marita was effectively removed as a trustee, the Trust has been working efficiently and has made considerable progress towards the Trust's purposes.

[10] The second respondent, Mr Gallie, does not oppose the application, and abides the decision of the Court.

Background and evidence

Affidavits

[11] Marita, Mr McCormack, Mr Scott, Toni Mackinnon and Louise Pether have filed affidavits in support of the application. Maia and Ben Eagle have filed affidavits opposing the application. Mr Gallie has provided a narrative affidavit, in which he does not oppose the application but responds to certain points made in other affidavits.

[12] Before turning to consider what each of the deponents say about the conduct of the Trust since Para's passing, I will summarise the relevant terms of the Trust Deed and, to the extent that it can be discerned, the evidence of Para's intentions for the Trust.

The Trust Deed and Para's intentions

[13] Para settled the Trust on 8 December 2020. Para initially only appointed Marita and Mr Gallie as trustees. On 12 January 2021, Para appointed his other children as additional trustees. Mr Gallie's affidavit evidence is that Para changed his mind as to the constitution of the trustees, in the hopes that this would help unify his children.

[14] The trustees' powers under the Deed are wide-ranging. For example, at any time the Trustees may, by deed, resettle any capital or income of the trust fund, vary

the distribution day, or sell any asset of the trust to anyone on any terms as they think fit. However, their decisions must be unanimous.

[15] The “Background” section of the Deed records the purpose of the Trust as follows:

- A. The Settlor wishes to establish a trust for the benefit of the beneficiaries specified in this deed.
- B. The objective and purpose of this trust is to provide for the defined beneficiaries at the trustee’s discretion.

[16] As noted above, the beneficiaries are listed as Para’s children (including Emma Davies, who passed away in 2024). The beneficiaries are also, as well as Mr Gallie, the trustees.

[17] The text of the Trust Deed as a whole would appear to support a conclusion that Para’s intentions for the trust were for the Trust to be used for the benefit of his children, as they saw fit.

[18] Some of the evidence suggests that Para’s intentions for the Trust were wider than this. Mr McCormack’s affidavit evidence is that Para’s vision for many years was to build an art house on Māori land in Te Kaha. However, due to the protracted nature of a dispute in the Maori Land Court in respect of the land at Te Kaha, Para shifted his focus to refurbishing the Shed to store and exhibit his art. Ms Mackinnon gives similar evidence.

[19] Marita acknowledges that the Deed is silent on the purpose of the Trust beyond saying that it is to provide for the defined beneficiaries. Her evidence is that, despite this, Para had clear intentions for what she wanted the Trust to achieve. Para is said to have wanted a papakāinga built on whānau land to house and exhibit a representative collection of his works and to preserve his artistic legacy. This space would be for whānau and community to connect; it would be used to host workshops and art exhibitions and inspire others. Marita has produced in evidence a copy of Para’s sketch for the papakāinga.

[20] Marita's evidence is that Para did not wish the Trust to end with his children, and that it is "commonly understood by those closest to Para" that he wanted the Trust to be in place for future generations. She has provided a copy of minutes of a meeting held between Para and his children during his lifetime, recording his wishes in relation to the operation of the Trust. Marita says that these minutes express a shared understanding that Para's purpose of the Trust was for it to provide for future generations. The minutes appear to refer to, among other things:

- (a) the beneficiaries having a connection to the land, family and art,
- (b) future initiatives and developments potentially including the publishing of histories, language and whakapapa, research, and the provision of grants and scholarships for education,
- (c) to work with Bruce Qin as the sole agent dealing with Para's work, and
- (d) building a public awareness of the Trust and Para's work.

[21] Maia does not appear to dispute much of this in his evidence. Indeed he annexes the same minutes to his evidence. But both Maia and Mr Eagle say that Para was adamant that he wanted his children and descendants to be the trustees, not anyone outside of the family other than Mr Gallie. Maia says that "Dad wanted his family to be the Kaitiaki of his Taonga and for us to pass on this privilege of Kaitiaki to our next generations".

[22] Mr Gallie's evidence is that over the final 15 years of Para's life, he had differing and sometimes contradictory views on what he wanted to achieve. It was only when he was diagnosed with terminal cancer that he began to firm up his plans. Mr Gallie says that Para's thought process was either to retain the artwork as a collection for the benefit of his children collectively, or alternatively to gift the collection through his will and leave his children to decide who should take any particular work. Mr Gallie's evidence was that there, at that time, was little discussion around the idea of his securing his "legacy".

[23] Mr Gallie explains that Para was unable to decide on the purpose of the Trust, which is why the Deed is silent on that point. Para was inclined to leave this to the discretion of the Trustees. However, Mr Gallie notes that following the settlement of the Trust, Para did have more detailed discussions with his children about his wishes and aspirations for the Trust, and the preservation of his legacy was featured in those discussions.

[24] I turn now to summarise what the evidence filed in this proceeding says about the events that have transpired since the Trust was established and Para has passed.

Marita's evidence

[25] Marita has filed two affidavits in this proceeding, dated 30 May 2025 and 25 September 2025. She says that the Shed was not going to be able to be fixed in an economic way, due to its weathertightness issues. As a result, she favoured selling the property and establishing the papakāinga with a core collection of Para's artwork to be exhibited and displayed. She says that the other trustees did not share her vision and instead proposed to repair and renovate the Shed, selling original and/or reproductions of artwork to raise money. She explains that she has a fundamental issue with reproducing or commercialising art without expert guidance, as this could devalue or disrespect Para's works.

[26] Marita says that she was unable to attend the weekend Trust meetings as she had to care for her grandchildren on Saturdays, but that her requests for weekday meetings were denied. She says that she was criticised for this lack of attendance and that the other trustees refused to provide her with information or explain their actions and decisions. She alleges that the other trustees resolved to give themselves the power to make majority decisions.

[27] Marita details and has provided minutes from a number of Trust meetings. While it is not necessary to recite the details of each of those meetings, it is clear that the rift between Marita and her siblings deepened in the period after Para's death. She particularly notes that the other trustees wished to renovate the Shed. On 30 April 2022, she raised the need for a professional feasibility study on the Shed on the basis that the roof was leaking and its condition was deteriorating. The view of

the other trustees was that this was unnecessary, and Marita would have to pay for any study herself. She also notes that she wished for the Trust to continue engaging with Mr Qin, but this was opposed, so a memorandum of understanding with him that had been in place lapsed.

[28] Marita records that in October 2023, the other trustees sought to agree to a representation of the City to Sea Bridge, designed by Para, to be reproduced on a chocolate bar wrapper. Marita opposed and blocked this decision, as she believed this commercialisation would go against Para's wishes during his life and be an insult to his legacy.

[29] On 3 November 2023, Maia and Marita (the two executor's of Para's estate) met with their probate lawyer, Bridget Chrystall, and the Estate's manager, Kyla Grant. The Estate's assets and liabilities were discussed. Ms Chrystall's view was that the Estate should sell the Shed so that the Estate could use the proceeds to settle its debts. Marita agreed with this plan but Maia opposed it. They also discussed the need for an inventory of the Estate's assets and the need for insurance. Maia wished to have Estate's assets transferred to the Trust in accordance with the terms of Para's will, but Marita refused to allow this to happen.

[30] On 15 November 2023, Marita attended her third and final Trust meeting. Marita proposed either:

- (a) Selling the Shed with the sale proceeds to be held by the Trust, allocating and/or gifting some of Para's art work and items among the whānau, and bringing in auctioneers to sell the balance of his personal belongings (if any), or
- (b) Dissolving the Trust and distributing all of its assets (including the Shed and artworks) equally between the beneficiaries to do with as they wanted.

[31] The other trustees opposed this plan but did not advance an alternative plan of their own. On 13 July 2024, the first respondents purported to remove Marita as a trustee.

[32] Since Marita's removal, she has engaged in a series of exchanges via letter with the Trust, seeking information. On 21 October 2024, Mr Gallie advised Marita that:

- (a) The Trust had a "Business plan for the Trust setting out plans to generate income for the Trust, with the net proceeds to be utilised to repair [the Shed]". He provided a copy of those to Marita. However, Marita says that this business plan is aspirational and lacks substance.
- (b) Mr McCormack had undertaken a preliminary inventory of all of Para's artworks, which were "safely stored within the Shed" despite any weathertightness issues. Mr Scott was said to have inspected the arrangements and indicated they were satisfactory. However, none of the artworks nor the Shed were insured.
- (c) On 19 December 2020, the Trust were provided a quote to repair the roof of the Shed for \$59,777 excluding GST. Marita expresses concern that nothing had been actioned since receiving that quote.

[33] Marita's view is now that the Trust is dysfunctional, and the trustees are incapable of managing the Trust's affairs. She is concerned that the longer Para's artworks are left in the Shed they risk deteriorating and are not securely stored, preserved, and displayed in exhibitions and public spaces as Para is said to have wanted, the less relevant his works would become. She also explains that she will not transfer the estate assets to the Trust until the trustees are removed and replaced.

Other supporting affidavits

[34] Mr McCormack is a publisher and trustee who has held many diverse positions in the art world. Mr McCormack had a professional relationship and friendship with Para from the 1980s until his death in 2021. He acknowledges that he completed a

draft inventory of Para's artworks, but says that it is unfinished and he was displeased to learn that the Trust was using his working document without his permission.

[35] Mr McCormack's view is that the Trust's business plan is incomplete and it is not possible to determine whether it is feasible. He says it is "just a list of things the trustees would like". He also criticises the Trust's plan to produce Para's artworks, saying that artworks produced after the death of an artist are almost always viewed with a high degree of scepticism. Mr McCormack believes that a range of other options should be explored, such as revisiting the Te Kaha proposal, entering into partnerships with public art galleries, and selling of assets to set up a trust fund. Mr McCormack also expresses concern about the Trust's risk management, saying that "Para's legacy, his artworks and archive are at risk in the Shed in its leaky condition."

[36] Mr McCormack's view is that it would be beneficial for there to be a family representative trustee, and has proposed Marita. However, he says that he would accept appointment if Ms Tamati-Quennell is also appointed as a trustee, and also expresses high regard for Mr Scott.

[37] Ms Pether was part of the executive team of the Auckland Art Gallery from 1999 to 2013 and has extensive experience in the art world. She worked closely, along with her partner, Mr McCormack, with Para over the course of three decades. Her view is that the Trust should consist of informed and experienced professionals from the art world with a strong knowledge of Māori art and kaupapa, to ensure that Para's estate of valued art works are professionally cared for. Ms Pether is concerned that Para's art is at risk of damage or destruction, and believes that the current trustees are unable to collaborate effectively.

[38] Ms Mackinnon is an art gallery director, who was a friend of Para during the final years of his life. Ms Mackinnon's view is that, since Para's death, it has become "painfully clear that... the Trust is unable to make productive decisions about Para's assets, and how they should be cared for and managed into the future." She believes that Para is one of Aotearoa's most significant artists, but that the Trust is dysfunctional and has failed to achieve what Para had wanted. She considers that Mr McCormack

and Mr Scott have the necessary understanding of both the commercial and art contexts in which decisions about Para's legacy would need to be made.

[39] Mr Scott is an artist/designer, cultural advisor, and director. Mr Scott was essentially Para's apprentice for 15 years, and is a friend of Para's children. Mr Scott's evidence is that the Trust's business plan disregards the context of the art market and Para's position in it. He also believes that the estimated costs for remedial work to the Shed seem light. Mr Scott also criticises the Trust's website.

[40] Mr Scott would accept appointment as replacement trustee and says that Mr McCormack and Ms Tamati-Quennell bring not only technical expertise but also the capacity to build capability within the Trust itself. He says that without this support, there is a real risk that the current trustees will "inadvertently make mistakes which could diminish both the mana and the market standing of Para's work and compromise their own positions as beneficiaries." If appointed, his intention would be to consult and work with Para's children.

Maia's evidence

[41] Maia's evidence records that, although the Shed had a leaky roof during Para's lifetime, Para lived and stored his artwork there. Para had not insured the Shed since 2015 and had never insured the artwork or archives stored in it.

[42] Maia says that Para had various reproductions of his art made during his lifetime. The printer used and trusted for his reproductions, Glenn Taylor, says that on 22 December 2020, Para wanted him to continue producing screenprints to contribute to the upkeep of the Shed.

[43] Maia says that he and his siblings have the necessary expertise, including cultural knowledge and experience, to operate the Trust. He worked with Para for over 40 years on art projects and installations around New Zealand. Vernon has decades of IT experience and Joanne has been a practising artist for almost 35 years. Maia's evidence is that his father wanted the children to continue to make reproductions of his work to repair and establish the Shed, and that his concept for the Te Kaha Land was part of his long-term vision, not an immediate goal for the Trust.

[44] Maia says that Marita was the reason for the Trust's dysfunction. The artwork was not insured because there was only \$220 in the Trust's bank account. Maia claims that the trustees unanimously agreed to hold meetings on Saturdays (Marita denies this). Holding weekday meetings was untenable, as these would have occurred while Joanne was at work in Western Australia due to the time difference.

[45] Maia says that Marita repeatedly disagreed with any suggestions at Trust meetings. Maia points to three examples of Marita's failure to engage constructively as a trustee:

- (a) On 19 August 2022, Emma emailed the Trustees that she would be informally meeting with Tania Eden (chair of Mana Ahuriri Trust) to discuss the possibility of that trust funding the repair of the Shed roof. On 22 August 2022, Marita emailed refusing to allow Emma to meet with Tania until the Trustees had met and given their unanimous consent, and said she did not want Tania involved in Trust business until the trustees had determined what to do with the Shed. Because Marita refused this preliminary discussion with Tania, the Trust could not explore this funding option. Mr Eagle's affidavit also expresses his frustration with this situation.
- (b) In 2023, Maia was contacted by Inject Design, who wanted to use a design of the City to Sea bridge on a chocolate wrapper. Marita refused this request without any further information or discussion, and did not respond to requests for her reasoning. Maia was surprised to learn of Marita's rejection, as he considered that Para would have been happy for his design to be used in the way proposed.
- (c) The Trust has been unable to do any major repairs to the Shed because the Shed has still not been transferred from Para's estate to the Trust. This is because Marita continues to refuse to sign the transfer documentation until certain demands are met. In the meantime, Maia has personally paid the rates on the Shed and the tax and accounting costs relating to Para's Estate, totalling over \$26,000.

[46] He says that, as the artworks were gifted to the Trust, the trustees were not aware that they were unable to use Mr McCormack's draft inventory. He also explains that he is still completing the inventory, as it is time consuming taking photographs of each page of Para's notebooks and diaries.

[47] Maia says that the artworks are securely stored in the Shed, and other works are on public display both nationally and internationally. No artwork or archives in the Shed have been damaged. He says Marita agreed with the artwork and Shed not being insured, as this would be prohibitively expensive.

[48] He says that since Marita was removed as a trustee, the Trust has made progress:

- (a) Maia is continuing to work on the inventory and archives.
- (b) The trustees have nominated two beneficiaries to attend Trust meetings (children of Marita and Emma).
- (c) The Trust has contacted Tania Eden to discuss the possibility of funding for repairs to the Shed's roof.
- (d) The Trust has created a business plan it is being are implemented, including producing a website and a run of Lino prints, and auctioned four prints for a total of approximately \$10,000.

[49] Maia says that the Trust is moving forward without Marita and there is no need for the trustees' removal and replacement.

Other opposing affidavit

[50] Ben Eagle, a builder (and the widower of Para's late daughter Emma), supports the trustees' opposition to the application. Mr Eagle was Emma's husband until her death in 2024. Mr Eagle's belief is that the respondents are sufficiently competent and capable trustees. He refers to the invitations to Emma's child and Marita's child to

attend meetings. Mr Eagle says that the appointment of non-family trustees would go strongly against Para's intentions for the Trust.

[51] Mr Eagle says that, since Marita's removal as a trustee, the Trust has gained momentum and made "lots of positive progression." He also says that there has been no water damage, mould or decay to any of Para's artwork whatsoever since Para's passing.

Mr Gallie's affidavit

[52] Mr Gallie has filed a narrative affidavit in this proceeding. He abides the decision of the Court and is willing to continue in his role as an independent trustee if the Court grants the application.

[53] Mr Gallie confirms that he was concerned as to the safety of the artwork at the Shed, due to security, weathertightness and financial issues. He agreed with Marita that the best option would be to sell the Shed and to use the proceeds to relocate the art to Te Kaha. However, this was met with strong resistance by the first respondents.

[54] Mr Gallie says that he encouraged the children to engage in mediation. Maia says that the respondents were willing to attend mediation, but that Marita refused. Marita in her reply affidavit denies this and says she was open to mediating.

[55] Mr Gallie says that steps have been taken over time by the first respondents to mitigate and/or rectify his earlier concerns with the Shed. This includes the installation of an alarm system, internal work to weatherproof the roof, and the relocation of artwork at risk from water damage in a storm event. While this has somewhat alleviated his immediate concerns, he notes it is not a permanent solution. Mr Gallie says that the business plan is a "practical and realistic proposal" to arrive at a point where full repairs and renovations can occur.

Should the trustees be removed?

Legal principles

[56] Section 112 of the Act provides that:

Whenever it is necessary or desirable to remove a trustee and it is difficult or impracticable to do so without the assistance of the court, the court may make an order removing a trustee.

[57] Sitting alongside that statutory power, the court continues to have inherent jurisdiction to remove a trustee if the welfare of the beneficiaries and of the trust property requires this.¹ Courts have generally taken a highly discretionary approach to removal of trustees under their inherent jurisdiction.²

[58] When determining whether to exercise its jurisdiction, the Court's principal consideration is the welfare of the beneficiaries, the security of trust property and the satisfactory execution of the trust.³ As noted by the Court of Appeal in *Gallagher v Gallagher-Dekker*:⁴

- (a) The starting point is the Court's duty to see estates properly administered and trusts properly executed.
- (b) This jurisdiction involves a large discretion which is heavily fact-dependent.
- (c) The wishes of the testator/settlor (evidenced by the appointment of a particular executor or trustee) are to be given consideration, but ultimately the question is as to what is expedient in the interests of the beneficiaries.
- (d) Expedience is a lower threshold than necessity, and imports considerations of suitability, practicality and efficiency. Misconduct, breach of trust, dishonesty, or unfitness need not be established.
- (e) Hostility as between administrators/trustees and beneficiaries is not of itself a reason for removal, but hostility will assume relevance if and when it risks prejudicing the interests of the beneficiaries.

Originating application

[59] Mr Bates, for the respondents, submits that the originating application procedure is inappropriate if factual issues are in dispute or a trustee's conduct is to be

¹ Chris Kelly and Greg Kelly *Garrow and Kelly Law of Trusts and Trustees* (8th ed, LexisNexis, Wellington, 2022) [*Garrow and Kelly*] at [17.75] citing *Wallace v Naknok* [2012] NZHC 382; and *Karaka v Ngai Tai Ki Tamaki Tribal Trust* [2013] NZHC 589 at [9].

² *Garrow and Kelly* at [17.82] citing *Letterstedt v Broers* (1884) 9 App Cas 371 (PC).

³ *Green v Green* [2015] NZHC 1218 at [602]; and *Triezenberg v Mason* [2019] NZHC 14 at [115].

⁴ *Gallagher v Gallagher-Dekker* [2025] NZCA 421 at [13] citing *Tod v Tod* [2015] NZCA 501, [2017] 2 NZLR 145 at [22]; and *Farquhar v Nunns* [2013] NZHC 1670, at [13].

criticised.⁵ But, as Grau J held when considering Marita’s application to commence the proceeding by way of originating application, “there may be strong disagreement among the whanau members, [but] the actual factual and legal issues to be determined are confined.”⁶ The originating application procedure is commonly used for the removal of trustees.⁷ Given that the appropriateness of using the originating application procedure in these proceedings has already been the subject of a decision by Grau J, and that decision was not appealed, I am not in a position to interfere with it.

Applicant submissions

[60] Ms Anderson, for the applicant, submits that it is necessary and/or desirable to remove the trustees of the Trust as:

- (a) The trustees are either unable or unwilling to cooperate and act unanimously on Trust matters,
- (b) Since Para’s passing, the Trust has been dysfunctional and is not being properly administered,
- (c) The trustees have failed to act in the best interests of the beneficiaries of the Trust,
- (d) The trustees’ actions, or lack of, are to the detriment of the beneficiaries and risk degrading the Trust’s limited assets, and
- (e) If the trustees are not removed, the Trust will remain in a state of impasse.

[61] Ms Anderson notes that the Trust Deed expressly requires all Trust decisions to be unanimous. It is not disputed that Marita and the respondents have been unable to cooperate and act unanimously as trustees. Marita does not accept the respondents’

⁵ *Re McKinstry* [2025] NZHC 966 at n 2 citing *Jones v O’Keeffe* [2019] NZCA 222, (2019) 24 PRNZ 529 at [51].

⁶ *Matchitt v Matchitt* [2025] NZHC 1991 at [14].

⁷ At [13].

position that the dysfunction was caused by her, nor does she accept she was validly removed as trustee. She does, however, accept that she and the respondents are collectively incapable of working together.

[62] Ms Anderson submits that, despite the respondents' assertion to the contrary, the Trust has made no substantive progress towards achieving its purpose since Marita's purported removal. Although the Trust has continued to work on an inventory and archive of Para's artworks, counsel says it is "concerning" that this is incomplete after four and a half years. Ms Anderson also expresses concern with the trustees' reluctance to relocate the artworks from the Shed despite its weathertightness issues. She also relies on the evidence of Mr Scott and Mr McCormack that the Trust's business plan is undeveloped and submits that it lacks substance and is little more than a concept. Ms Anderson submits that, given Mr Scott and Mr McCormack's standing in the art world and relationship with whānau, their views should be given considerable weight.

[63] In Ms Anderson's submission, the Trust's website is another example of its continued dysfunction. Despite its apparent purpose being to "introduce the Trust, showcase Para's artwork and legacy, showcase art reproduction for sale, and offer spaces for upcoming artists to show their work", the website is not polished, contains errors, and as at 25 September 2025, only advertised one piece of art. Ms Anderson submits that the website leaves "much to be desired" and cannot be relied on to generate the requisite funds in the foreseeable future.

[64] Ms Anderson submits that the named beneficiaries (the trustees and their descendants, with the exception of Mr Gallie) were not in fact intended to be final beneficiaries, and the Trust's purpose is to protect and preserve Para's legacy for the benefit of future generations. The Trust is constrained by financial realities in achieving that purpose. This is why Marita advocated for the trustees to consider alternative options to renovating the Shed and raising funds but was met with "strong resistance". Ms Anderson submits that the Trust needs objective and impartial trustees to serve the beneficiaries' interests and give effect to the purpose of the Trust.

[65] For those reasons, Ms Anderson says there is a need for change. This need for change is heightened by the fact that the Trust's primary assets, the artworks, are irreplaceable, uninsured, and stored in a property with known weathertightness issues, while the current trustees appear content with that arrangement. Despite the intentions and goodwill of the current trustees, they are unable to serve the interests of the beneficiaries and the Trust.

[66] Finally, Ms Anderson submits that the Court's assistance is needed to remove the trustees. The respondents have refused to resign and appoint suitable replacements on several occasions, including on this one (where they oppose the application).

Respondent's submissions

[67] Mr Bates submits that any allegations that the respondents have failed to comply with their "core duty to act in the best interests of the beneficiaries" are "untested and contested". Counsel says that Marita's criticism of the actions of the respondents' conduct are "baseless", and that the Trust is now operating effectively and in accordance with Para's intent.

[68] Mr Bates says that any dysfunction previously experienced by the Trust has been substantially resolved by Marita's removal as trustee, and there is no ongoing deadlock or dysfunction among the remaining trustees. The Trust is functioning, the assets are secure, and Para's intent as settlor is being honoured.

[69] Mr Bates also submits that many of the issues with the Trust are as a result of Marita's actions; for example, while she criticises the respondents for not "actioning anything" in respect of the repair of the Shed's roof (estimated to cost \$59,000 plus GST), she has blocked every effort to generate income for the Trust to fund such repairs. Mr Bates says that, on Maia's evidence, it has been Marita's actions that previously put any of the Trust assets at risk.

[70] Mr Bates argues that Para's intentions were for his Trust to be a whānau trust, and that removal of the respondents (Para's children) as trustees and replacing them with alternative trustees goes against both the core kaupapa of the Trust and the plain

intentions of the settlor. In counsel's view, the respondents bring the required skills and experience to the Trust.

Analysis

[71] There are a number of issues to consider. The first is to identify what Para's intentions were for the Trust. As noted above, the Trust Deed lists his children as the beneficiaries, and there is no purpose clause suggesting it is designed to protect his legacy. Despite this, the notes from discussions with Marita and Maia tend to suggest that this is what he wanted, at least, to a degree. If the purpose of the Trust is only to provide for the interests of the beneficiaries, issues as to whether the surviving trustees have adequately managed the Trust are of less concern. If its purpose is to protect Para's legacy and to improve his standing in the art world, then his works sitting uninsured in the Shed which has weathertightness issues is of greater concern. Identifying what the purpose of the Trust actually is, will influence whether it is necessary to grant the application in the terms sought. My conclusion is that part of Para's purpose in establishing the Trust was to protect his legacy and to ensure that it endured for this future descendants.

[72] Another issue is what progress has been made since the various affidavits have been filed mid-last year. It does appear that a lot of the lack of progress and dysfunction was because of the disagreement between Marita and her siblings on a wide variety of issues. Also of major relevance is the fact that the Trust has no cash and little immediate prospect of generating any significant amount of cash.

[73] Ms Anderson criticizes the slow progress of the Trust in finishing the business plan. It is not clear why the inventory has not been completed. The lengthy delay in completing an inventory is a matter of concern. The finalisation of a complete and accurate inventory would seem to be a pre-requisite to formulating an effective business plan.

[74] The lack of progress on remedying the weathertightness issues with the Shed cannot be blamed solely on the first respondents as Marita has attempted to do. This is because there is no funding available to undertake that, and Marita herself is refusing to effect the transfer of the Shed to the Trust. There is also an element of unfairness

in Marita criticising the lack of progress by the trustees when Marita herself has blocked the few potentially available fundraising opportunities such as obtaining financial assistance from the Mana Ahuriri Trust or exploring the opportunity to reproduce the image of the City to Sea Bridge on the chocolate wrappers.

[75] It is also unfair for Marita to criticise the trustees for not insuring the artworks when they are not yet legally the Trust's property because Marita, in her capacity as executor, has refused to transfer them to the Trust. The executors have not insured the art works either, presumably for the same reasons as the trustees, namely that insurance would be prohibitively expensive, and the estate has no cash.

[76] While the website developed by the remaining trustees may be unprofessional, that would not necessarily require the removal of the trustees. It is just one factor to consider what is necessary and desirable in the interests of the beneficiaries.

[77] Just as Marita cannot blame the trustees for the discord and dysfunction that clearly exists, the trustees themselves are not blameless either. Although the question of the legality of the removal by the trustees of Marita by a majority vote is not something for the Court to decide in these proceedings, there must be considerable doubt as to its lawfulness. It would have been preferable for Marita's siblings to have applied to the Court for an order removing Marita rather than attempting to act unilaterally.

[78] As I indicated during the hearing, I do not intend to apportion blame for the current dysfunctional relationship between the parties. The important conclusion that I have reached is that the working relationship between Marita and her siblings has broken down and there is no realistic prospect of that breakdown being remedied.

[79] The practical effect of that breakdown is no significant progress has been made on critical matters such as ensuring the artworks are stored in a weathertight, secure space, establishing a venue for display of the artwork, completing a comprehensive catalogue of the art works, or enhancing/maintaining Para's legacy as a significant New Zealand artist.

[80] In this situation, for the reasons I discuss more fully below, removal of the trustees may be said to be necessary and desirable in the interests of the beneficiaries.

Should the replacement trustees be appointed?

Legal principles

[81] Under its inherent jurisdiction to intervene in the administration of trusts, the Court retains the power to appoint trustees.⁸ However, s 114(1) of the Act also provides that “[w]henever it is necessary or desirable to appoint a new trustee and it is difficult or impracticable to do so without the assistance of the court, the court may make an order appointing a new trustee.” The power exists irrespective of whether someone has been granted the power to appoint by the trust’s terms.⁹

[82] Under s 114’s predecessor, s 51 of the former Trustee Act 1956, the Court was required to find that it was “expedient to appoint a new trustee or new trustees, and it is found inexpedient, difficult, or impracticable so to do without the assistance of the Court”. As the differences between the current provision and s 51 of the Trustee Act 1956 are minimal, the authorities dealing with s 51 remain relevant.¹⁰ However, s 144 of the Act creates a lower threshold as trustee appointment must be only “necessary and desirable” rather than “expedient.”¹¹

[83] In *Mendelssohn v Centrepont Community Growth Trust*, Tipping J summarised the principles relating to the appointment of replacement trustees by the Court:¹²

In short they are: consideration of settlors’ intentions; neutrality between beneficiaries; and promotion of the purposes of the trust. As to the first, Turner LJ was considering cases in which either expressly or implicitly the Court could discern that the intention of the author of the trust was that a person or persons of a certain description should not be appointed trustees. If, conversely, it can be seen that either expressly or implicitly the author intends the trustees to be of a certain description, the Court will give considerable weight to that expression of the author’s wishes. But, as stated earlier, the

⁸ Trusts Act 2019, s 8.

⁹ *Garrow and Kelly*, above n 1, at [16.71].

¹⁰ Jason Anson-Holland *Law of Trusts* (online ed, Lexis Nexis) at [TRU114.02].

¹¹ *Garrow and Kelly*, above n 1, at [16.70].

¹² *Mendelssohn v Centrepont Community Growth Trust* [1999] 2 NZLR 88 (CA) at 97 citing *Re Tempest* (1866) LR 1 Ch App 485.

Court is not bound by those wishes and is entitled to depart from them if good cause is shown.

[84] In *Mendelssohn*, Tipping J summarised the Court’s task as “to appoint the person or persons best suited to administer the trust in the circumstances prevailing.”¹³ In *McLaughlin v McLaughlin*, Gendall J observed “there are no hard and fast principles regarding the selection of a replacement trustee. It is essentially a matter for this Court’s discretion which requires a practical judgment call.”¹⁴ This may require the Court to be guided by the settlor’s intention, to be ascertained from the Trust Deed and the context of the Trust’s creation.¹⁵

Applicant’s submissions

[85] Ms Anderson notes that the Trust Deed requires a minimum of two trustees, so removing the current trustees would necessitate the appointment of at least two replacement trustees. She also notes Mr Gallie’s position that the inclusion of suitably qualified trustees would be of benefit to the Trust, even if the current trustees are not removed.

[86] Ms Anderson notes that Marita has revisited her initial position and confirmed that she does not seek to remove Mr Gallie as trustee if that is the preference of the current trustees. Mr Gallie understands that is their preference and has confirmed he is happy to maintain his role, subject to the view of the Court.

[87] Ms Anderson submits that Mr McCormack, Mr Scott and Ms Tamati-Quennell have the requisite knowledge, experience and standing in the art community for the Trust to find its direction and better serve the beneficiaries and wider community. She notes that all three trustees have confirmed that they would accept appointment. Mr Scott agrees that any payment he might receive be “deferred and limited to what the Trust could reasonably afford”, and Mr McCormack and Ms Tamati-Quennell would accept appointment without payment.

¹³ *Mendelssohn* at 97.

¹⁴ *McLaughlin v McLaughlin* [2021] NZHC 3015 at [135].

¹⁵ At [137].

[88] Ms Anderson says that the Trust is “incredibly fortunate” to have proposed trustees of such “high calibre” agree to be appointed. She also notes that the proposed trustees all hold a connection to Para, either as a personal friend or through cultural and creative circles. In her submission, it would be “hard, if not impossible, for the Trust to have better qualified and suited trustees.”

Respondent submissions

[89] Mr Bates submits that the proposed trustees should be disqualified from appointment as the Court is uninformed of the “nature and quantum of their intended charges, and the terms of their suggested deferral.” He submits that Para would have understood that the Trust could not afford a suite of professionals acting as trustees when settling it.

[90] Mr Bates also alleges that the proposed trustees are “aligned to the applicant’s position”. Mr McCormack is said to “variously advocate for the Applicant’s preferences” and offer opinions on a broad range of matters without establishing his expertise or agreeing to be bound by the High Court’s Code for Expert Witnesses. Mr Bates claims that by “engaging in such advocacy” Mr McCormack is neither impartial nor truly independent. Nor is his partner, Ms Pether.

[91] Mr Bates shares a similar view of Mr Scott and his evidence, saying it offers “unqualified opinions and advocacy for the Applicant’s preferences.” He also notes that despite Mr Scott describing himself as having “experience as an architect”, he is not registered as an architect and there is no evidence he has ever been registered. Accordingly, Mr Bates says that Mr Scott's opinions on the state of the Shed are inadmissible.

[92] Mr Bates submits that the proposed trustees are not impartial, and the Court can have no confidence that their appointment is in the best interests of the beneficiaries.

Analysis

[93] I am satisfied that the relationship between Marita and the remaining trustees has deteriorated to the point where it could be said to have broken down irretrievably. This has resulted in an ongoing inability for the trustees to make unanimous decisions on critical matters. Those matters include:

- (a) Providing a weather tight, secure, storage facility in which to keep Para's artwork.
- (b) Being unable to generate the necessary income to ensure that Para's legacy as an artist is enhanced or even maintained.

[94] While there would appear to be no immediate physical danger to the artworks as Andrew Gallie said in his affidavit the present arrangements provide only temporary relief. A long term solution is required.

Interests of beneficiaries

[95] In considering whether to replace the trustees the starting point is the interests of the beneficiaries. In this case, ascertaining what the interests of the beneficiaries actually are, is difficult because of the absence of any substantive purpose provision in the Trust Deed. It is therefore necessary for the Court to attempt to discern what those interests are by looking at the background material.

[96] It is perhaps easiest to start with identifying what would not be in the beneficiaries' interests. It is not in their interests for Para's surviving artwork to be stored in a building which has significant weathertightness issues with the prospect of the artworks being damaged or even destroyed as a result of water ingress.

[97] It is not in the beneficiaries' interests for the value of the artworks to dissipate because Para's standing in the art world gradually declines because of a failure to adequately promote his reputation and legacy among the artistic community and public generally.

[98] It is not in the beneficiaries' interests for there to continue to be a significant level of personal disharmony and animosity between the trustees, resulting in the Trust being unable to meet its running expenses and pay its debts, and to have to rely on financial contributions from people like Maia to pay accounting, tax and other trust/estate costs.

[99] It is not in the beneficiaries' interests to spend money on lawyers to engage in litigation such as in this case.

[100] Any solution has to be practically achievable. I have not overlooked Para's wish that the trustees should be his children and his aspiration that the Trust would endure for the benefit for his descendants into the future. The reality is that these goals are not realistically going to be achieved without the removal of the present trustees.

[101] I also have regard to Para's desire that a pāpakainga be established on family land to display his artwork. There are fundamental obstacles to the achievement of that objective. The first of those being whether the current Māori Land Court proceedings are realistically capable of achieving partitioning the family land in a way that provides a distinct title that is capable of being utilised by the Trust. The second is the cost of such a project. Given the present state of the Trust's finances it is wholly unrealistic. Whether that changes in the future is not a matter that can be accurately predicted. My conclusion is that it is not presently in the interests of the beneficiaries to expend the Trust's assets in pursuing such an objective.

[102] Having considered what is not in the beneficiaries' interests, it is easier to identify what is in their interests. It is in their interests for all of the family trustees to be removed and replaced with trustees who are able to preserve the integrity and value of Para's artwork and to maintain and enhance Para's reputation and accordingly the ongoing value of that body of work.

[103] It is not for me to instruct new trustees as to how to go about their role. They will have to undertake the exercise themselves of considering the interests of all the beneficiaries. They may determine that some of the artworks need to be sold in the overall interests of the beneficiaries. They may determine that it is in the interest of

the beneficiaries that reproductions be made of some artworks or for artworks to be loaned for exhibitions on a fee paying basis. It seems to me that the interests of the beneficiaries are likely to be maximised if the trustees have expertise in these areas.

[104] Accordingly, I have reached the conclusion that it is in the interests of the beneficiaries for all of the trustees (including Marita) to be removed and I do so.

Who should be appointed?

[105] I now have to consider who should be appointed as replacement trustees. I accept that there is some force in the argument raised by Mr Bates that if paid professional trustees were appointed, the Trust would rapidly run into debt as it does not immediately have any funds to pay them. However, a significant feature of what is proposed is that all but one of the proposed trustees will not be paid. That meets Mr Bates' concern. Mr McCormack and Ms Tamati-Quennell have confirmed that they are willing to accept appointment on that basis. I am satisfied that they have the necessary skills to facilitate the Trust being able to maximise the benefit of the Trust to the beneficiaries. I appoint them as replacement trustees.

[106] While Mr Scott is prepared initially to accept appointment on a voluntary basis, he anticipates some form of remuneration in the future. There would appear to be no doubt that he would add value as a trustee, however I see some merit in avoiding the risk of disagreements in the future about remuneration. It is no reflection on Mr Scott that I therefore do not appoint him as a replacement trustee.

[107] That leaves the position of Mr Gallie. I understand that he is prepared to accept a continuing role as a trustee. There is undoubtedly real value in there being continuity of at least one trustee. I do not understand any of the original trustees oppose him continuing as a trustee. I am unclear about whether he would be prepared to act as a trustee on a voluntary basis. Given that the Trust has had no funds to pay him, I assume that he has been acting in a voluntary capacity since 2021. On the assumption that Mr Gallie is prepared to continue to act on a voluntary basis, I confirm his continuing appointment. He is, of course, at liberty to resign as a trustee should he wish to do so.

Outcome

[108] The application is granted, albeit in different terms to what were originally sought. My preliminary view is that costs should lie where they fall given that all the trustees have contributed to the situation which is required the intervention of the Court. However, should any party wish to apply for costs they are to file and serve an application of no greater than three pages in length within 14 days of the date of this decision with any reply being filed and served within 14 days of receipt of such an application. Costs will then be dealt with on the papers.

Churchman J

Solicitors:

Braun Bond and Lomas, Hamilton for Applicant

Brown & Bates, Napier for First Respondents