

Case Notes March 2014

Tarasiewicz v Titford [2013] NZHC 3466

Section 64(1) of the Trustee Act 1956

The trustees sought an order under s 64(1) of the Trustee Act 1956 giving them the power to sell the property in question.

Lang J confirmed that the Trust Deed would permit such a sale but the Court had to be satisfied that the sale would be expedient for the trust as a whole, and not merely in the interests of one beneficiary. A key factor underpinning the Trust's original decision to acquire property had been removed and significant capital expenditure was required to improve the property. The only realistic way of resolving the problems was to sell the property, thus it would be expedient in the management and administration of Trust to sell the property as well as being in the interests of all the beneficiaries.

Was it inexpedient, difficult or impracticable for the property to be sold without the assistance of a Court? It was acknowledged that the circumstances of the case were unusual and it was possible that one of the beneficiaries may derail the process therefore that question was answered in the affirmative.

The requirement of *Banicevich v Gunson*¹ to apply s 64 cautiously was approved but Lang J distinguished it on the facts and noted that the sale would not alter the Trust in any way.

Perpetual Trust Ltd v Lombard Finance & Investments Ltd (in receivership) [2013]
NZHC 3521

Section 51 of the Trustee Act 1956

Perpetual was the trustee of the respondents, which are insolvent and unable to repay the large amounts of money owed to investors. Perpetual applied for Court approval to retire as trustee and for Corporate Trust to be appointed as a trustee in its place under s 51 of the Trustee Act 1956. The applicants also referred to the Court's inherent jurisdiction, but Mallon J stated that it was not necessary to consider this jurisdiction further in light of the statutory power.

Court approval was sought because the process for a change of trustee in the trust deeds was said to be inexpedient, difficult and impracticable. The process required a new trustee to be approved at an extraordinary resolution of investors, which have been numbered up to 13,000 and who are geographically widespread. The required resolution may not be productive due to disgruntled investors boycotting any

¹ *Banicevich v Gunson* [2006] 2 NZLR 11 (CA).

resolution. Mallon J approved the retirement of Perpetual and the appointment of the new trustee on the grounds submitted.