

IN THE HIGH COURT OF NEW ZEALAND
ROTORUA REGISTRY
I TE KŌTI MATUA O AOTEAROA
TE ROTORUA-NUI-A-KAHUMATAMOMOE ROHE

CIV-2025-463-_____

Between **TAMATI KRUGER** as trustee of **TŪHOE – TE URU
TAUMATUA TRUST**
First Applicant

And **TŪHOE TRUST CUSTODIAN TRUSTEE COMPANY LTD**
Second Applicant

And **DONNA MASON**
First Respondent

And **RITCHIE CONTRACTING LTD**
Second Respondent

And **ALAN MAURICE RITCHIE**
Third Respondent

And **PERSONS UNKNOWN**
Fourth Respondents

**APPLICATION WITHOUT NOTICE FOR INTERLOCUTORY INJUNCTION AND
ORDERS FOR SUBSTITUTED SERVICE**

Dated: 19 February 2025

Solicitor acting:

BUDDLE FINDLAY

Barristers and Solicitors, Wellington

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To The Registrar of the High Court at Rotorua

THIS DOCUMENT NOTIFIES YOU THAT—

1. The applicants, Tūhoe – Te Uru Taumatua Trust and Tūhoe Trust Custodian Trustee Company Ltd, Taneatua, apply for orders:
 - (a) The fourth defendants are those persons currently unknown who are occupying and/or interfering with, or intending to occupy or interfere with, Matahi Forest (or part thereof) without the permission of the plaintiffs.
 - (b) Pending the determination of this proceeding or until further order of the Court, the first to fourth defendants, their directors, servants, related bodies corporate, subcontractors, officers, employees, personnel, agents or other persons authorised to act on their behalf, are to cease occupying Matahi Forest, cease all forestry operations within Matahi Forest, and remove all personnel and equipment from Matahi Forest within three days of this order.
 - (c) Pending the determination of this proceeding or until further order of the Court, the first to fourth defendants, whether by their directors, servants, related bodies corporate, subcontractors, officers, employees, personnel, agents, other persons authorised to act on their behalf or by any other means at all, are prohibited from entering onto Matahi Forest or part thereof, or directing, encouraging or inducing others to enter onto Matahi Forest or part thereof.
 - (d) Dispensing with personal service of the proceeding (and interlocutory injunction order) on the fourth defendants.
 - (e) Directing that the proceeding may be treated as served on the fourth defendants on the day on which the relevant document(s) have been:
 - (i) emailed to Te Waimana Kaaku Tribal and Ōmuriwaka Marae;
 - (ii) affixed to the entrance to Matahi Forest at Parau Road; and
 - (iii) published on the first applicant's website.
 - (f) Directing that any interlocutory injunction order may be treated as served on the fourth defendants by the method for substituted service described at paragraph 1.5.

- (g) Reserving leave to apply for further directions for service of documents should that become necessary.

2. The grounds on which each order is sought are as follows:

In respect of orders for an interlocutory injunction:

2.1 There is a serious question to be tried, and the applicants' claim in trespass is not frivolous or vexatious:

- (a) The applicants are the legal and beneficial owners and occupiers of Matahi Forest.
- (b) The defendants have, or have caused their servants, agents, employees, contractors or subcontractors to:
 - (i) enter on Matahi Forest;
 - (ii) undertake forestry operations within the Forest, including earthworks and felling trees; and
 - (iii) remove logs from the Forest.
- (c) The defendants have no authority or justification for doing so.
- (d) The applicants have suffered, or are likely to suffer, loss as a result of the defendants' trespass, including from:
 - (i) interference with the applicants' rights to possession of Matahi Forest;
 - (ii) damage caused to the land from unauthorised forestry operations, including earthworks and felling trees;
 - (iii) interference with the applicants' rights to harvest the forest and sell the logs; and
 - (iv) NZU implications, whether paying for NZUs or replanting the felled trees.

2.2 The balance of convenience favours the granting of the injunction in that:

- (a) The applicants' case for trespass is strong, and the defendants have little prospect of successfully defending the proceeding.

- (b) Absent restraint, the defendants are likely to continue trespassing, undertaking unauthorised forestry operations, and harvesting the applicants' trees:
 - (i) The applicants have made repeated requests to the second and third defendants to cease trespassing and cease forestry operations at Matahi Forest, but the second and third defendants have continued to trespass and to undertake forestry operations.
 - (ii) The first defendant insists that an entity called "Omuriwaka Māori Inc" has legal and beneficial ownership of Matahi Forest (which is denied), which has "registered" the third defendant under the "Ahu Whenua" (which, insofar as it purports to authorise activity on Matahi Forest, is also denied).
 - (iii) No resource consents or other regulatory approvals have been granted for the forestry operations undertaken by any of the defendants on Matahi Forest.
- (c) Damages are not an adequate remedy:
 - (i) Damages are difficult to assess as a remedy such that any assessment would be speculative and risk an injustice to the applicants.
 - (ii) The defendants are, in the applicants' view, unlikely to be able to be pay the damages sought.

2.3 The overall justice of the case favours the granting of an injunction:

- (a) If no injunction is granted, there is a strong likelihood that the defendants will continue to conduct forestry operations, which will continue to cause damage to Matahi Forest and to the applicants, and such damage will be difficult to remedy.
- (b) Conversely, if an injunction is granted, any alleged losses that might be incurred by the defendants will be adequately met by damages.
- (c) Granting an injunction is therefore likely to cause the least irremediable prejudice.

2.4 The applicants are able to meet a reasonable undertaking as to damages.

In respect of orders for substituted service:

2.5 The identities of the fourth defendants are currently unknown and personal service is not possible at this time.

2.6 The proceedings and any interlocutory injunction order cannot be promptly served on the fourth defendants.

2.7 The proposed substituted service is:

- (a) likely to bring the proceedings and any interlocutory injunction order to the attention of the persons to be served; and
- (b) proportionate to the matters at issue in the proceeding.

3. The application is made in reliance on:

- (a) High Court Rules 2016, rr 6.8, 7.23, and 7.53.
- (b) *Kennedy Point Boatharbour Ltd v Barton* [2022] NZHC 257, [2022] 2 NZLR 696; *Commerce Commission v Unknown Defendant(s)* [2019] NZHC 2609; and *Tasman Pulp and Paper Co Ltd v Greenpeace New Zealand Inc* HC Auckland CP135/98, 22 April 1998.
- (c) The memorandum of counsel and the affidavit of Umesh Naik filed together with this application.

4. The application is made without notice to any other party on the following grounds:

- (a) that requiring the applicants to proceed on notice would cause undue delay or prejudice to the applicants: and
- (b) that the interests of justice require the application to be determined without serving notice of the application.

5. I certify that—

- (a) the grounds set out in paragraph 4 on which the application relies are made out; and
- (b) all reasonable inquiries and all reasonable steps have been made or taken to ensure that the application contains all relevant information,

including any opposition or defence that might be relied on by any other party, or any facts that would support the position of any other party.

19 February 2025



MRG van Alphen Fyfe

Counsel for applicants

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