

Bridgecorp Finance Ltd v Proprietors of Matauri X Inc

Introduction

In *Bridgecorp Finance Ltd v Proprietors of Matauri X Inc*, the issue was whether the management committee of Matauri X had the power to enter into a loan agreement using a mortgage over its land as a security. The Court of Appeal was therefore required to address the extent of the borrowing powers of Maori incorporations.

At first instance in the High Court,¹ Justice Fisher held that the proprietors of Matauri X had the power to grant a valid and enforceable mortgage registered over the land of the incorporation. On appeal,² McGrath, Hammond, and Chambers JJ found that Matauri X's proposed investment would have been unlawful, being beyond the objects and powers of Matauri X. In addressing these issues, it was necessary for the Court to look at legislation governing Maori incorporations and their powers: Part XXII of the Maori Affairs Act 1953; as well as Part IV of the Maori Affairs Amendment Act 1967; the Te Ture Whenua Maori Act 1993; and Te Ture Whenua Maori Amendment Act (No 2) 1993. The case was ultimately remitted to the High Court, and leave to appeal to the Supreme Court has recently been granted.³ What follows is a survey of the principals that have emerged in the case thus far.

Facts

Matauri X was incorporated by an order of the Maori Land Court in 1967, pursuant to section 271 of the Maori Affairs Act 1953. Matauri X became responsible for multiple Maori interests in coastal land surrounding Matauri Bay, north of the Bay of Islands in Northland. The Matauri Bay land was worth some \$9 million. Matauri X, however, was not well off. The incorporation was asset rich but cash poor, and there was little income to pay rates and expenses.

Matauri X's management structure is governed by Te Ture Whenua Maori Act 1993 and the constitution prescribed in the First Schedule to the Maori Incorporations Constitution Regulations 1994. In 2001, the proprietors elected Hemi-Rua Rapata and six others to form the Matauri X management committee. Mr Rapata was keen to raise funds for investment in off-site business ventures, and planned to use the Matauri Bay land as security for the loans. The Maori Land Court order gave the owners of the land "power to do and suffer all that bodies corporate may do and suffer, and with all the powers expressly conferred upon it by this Act" (section 273, Maori Affairs Act 1953).

Mr Rapata and the committee members decided to use the Matauri Bay land as security for investments, in order to generate income for Matauri X. Matauri X subsequently entered into an investment agreement with a company called "MTech" for the "Eternal Springs" water-bottling plant at Whakatane. The investment was risky, but indicated that for an initial investment of \$2 million, Matauri X would gain \$11.5 million in two years. MTech arranged a loan, and subsequently Matauri X took out a \$3.2 million mortgage from Bridgecorp Finance Ltd, secured against the Matauri Bay Land. Mr Rapata signed this agreement as Chairman "for and on behalf of Matauri X Incorporated". The loan was then arranged through the solicitors for

¹ *Bridgecorp Finance Ltd v Proprietors of Matauri X Inc* [2004] 2 NZLR 792 (HC).

² *Bridgecorp Finance Ltd v Proprietors of Matauri X Inc* [2005] 3 NZLR 193 (CA).

³ *Bridgecorp Finance Ltd v Proprietors of Matauri X Inc* [2005] NZSC 31.

Matauri X and Bridgecorp. Matauri X's solicitors sent Bridgecorp copies of the objects of Matauri X, and informed them that the management committee had resolved to endorse the loan and investment. The loan was advanced by Bridgecorp, noted at the Maori Land Court (pursuant to section 225 Te Ture Whenua Maori Act 1993), and registered at the Land Transfer Office on 6 August 2001. At both the Management Committee and the Annual General Meetings of Matauri X, vote was carried in support of the decision to invest in Eternal Waters.

Unfortunately the Eternal Waters project did not prosper, and before long the joint venture company was put into receivership. Matauri X was unable to repay the money or interest it had borrowed, and Bridgecorp subsequently attempted to advance the mortgage held over the Matauri Bay land. When the investment first failed, Matauri X refused to recognise and repay the mortgage for two reasons outlined in the High Court. These were that Matauri X did not have the power to enter into off-site investments in the first place, and that although Bridgecorp had no way of knowing this, proper authorising procedures had not been followed within the ranks of Matauri X.

High Court

Justice Fisher in the High Court concluded that Matauri X held the power to borrow money for the Eternal Springs investment, and that the effect of section 253 of Te Ture Whenua Maori Act 1993 was to allow existing incorporations to act in ways which went beyond their empowering objects. He reasoned that even though a major object of Te Ture Whenua Maori Act 1993 is to halt the dispossession, alienation, and fragmentation of Maori land, Matauri X had the full powers and capacity to borrow on mortgage and subsequently could not escape the consequences. On a traditional interpretation of the Act, he found that Parliament recognised Maori to be adults capable of coming together to determine the way in which their land will be dealt with in a modern world. This meant that if the land was mortgaged, it was done so on their prerogative. It was not possible to "have it both ways", as when a mortgage is not repaid, the mortgagee is subsequently entitled to claim their security. This reasoning is in line with the need for certainty concerning property and land interests. He further held that in dealing with Maori incorporations, people must be able to rely upon the normal assumption that a corporate body will carry out its own necessary internal procedures. In the absence of an exhaustive inquiry into the incorporation's internal procedures, an entity dealing with a Maori incorporation could not afford to run the risk that someone within the incorporation had overlooked an internal step. Reflective of the "progressive emancipation" of Maori incorporations, section 253 of Te Ture Whenua allows existing corporations to go beyond their empowering objects.

Court of Appeal

The Court of Appeal explored the powers of Maori incorporations under the three relevant Acts that define the powers held by a Maori incorporation to borrow money and to mortgage its land. They found the effect of section 358A of Te Ture Whenua Maori Amendment Act – a transitional provision – was to restrict the powers of Matauri X to the objects of the incorporation under the 1953 Act. The provision allowed an incorporation to apply for an order extending its objects but stated that until such an order, the objects of the incorporation continued to be those stated in its order of incorporation. Justice Fisher did not refer to section 358A in his High Court judgment, and it appears that counsel had not referred him to this provision.

The Court held that their interpretation of the legislation determined that the investment entered into by Matauri X, the borrowing of money for that investment, and the grant of a mortgage as security would have been beyond the objects and powers of the incorporation under both the 1953 Act and the 1967 Amendment Act, if those Acts had still been in force. Section 358A came into force less than three months after Te Ture Whenua Maori Act 1993 Act through the 1993 Amendment Act, and restricted the general power of competency conferred on Maori incorporations. The Court found that the effect of section 358A was to restrict the powers of Matauri X to the objects of the incorporation under the 1953 Act. Since the borrowing did not fit within any of the objects of the incorporation, and those objects did not include alienation in the sense of mortgaging, Matauri X lacked the power to enter into the borrowing transaction. Although the powers argument was decided in favour of Matauri X, the Court noted that it would be premature to declare the mortgage to be valid and enforceable, having not fully explored the overall position of the parties. The Court allowed the appeal and remitted the outstanding matters to the High Court.

Appraisal

The effect of section 358A was found by the Court of Appeal to restrict Matauri X's powers to its objects. The problem in the case was that the borrowing was not for any of its objects, being for the extraneous purpose of investing in shares in an off-site company. Those objects, preserved as they were by section 358A, trumped the general power of competency, not because they were express limitations or restrictions imposed by the Court (section 253), but rather because section 253 of the Act was subject to section 358A.

Justice Fisher in the High Court had observed that section 271 of the 1993 Act was a statutory codification of the common law principle of "the indoor management rule", under which a person dealing with a company was entitled to assume that the company's internal requirements had been complied with and that its officers had acted lawfully. His Honour believed that the application of the indoor management rule meant that in absence of actual notice of invalidity, a person dealing with a Maori incorporation is entitled to assume that the incorporation has complied with all appropriate internal procedures required by legislation and court orders. The person dealing with the Maori incorporation does not need to go further and conduct an audit of the incorporations internal procedures. The Court of Appeal, however, found that it was premature to make a declaration on whether or not that principle would have provided Bridgecorp with an answer, even if section 271 of Te Ture Whenua Maori Act 1993 was a statutory codification of the common law principle of the indoor management rule, and referred the matter back to the High Court for further submissions. The Court of Appeal therefore avoided making a decision on the indoor management argument.

Justice Fisher in the High Court made clear that, overall, the 1993 Act was intended by Parliament to represent a step towards proprietary independence. Such powers are not to be given a special treatment in the modern world, unless express limitation is given. An ultra vires doctrine limiting a corporate entity's powers by reference to its objects stated in its constitution no longer holds a place in the modern legal world. On the other hand, however, parties must take responsibility for actions made subject to limitations imposed on powers given by statute, and as Matauri X was a creature of statute, they were restricted by such limitations in the 1993 Amendment Act. We await the Supreme Court's determination.

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