

**IN THE DISTRICT COURT
AT WELLINGTON**

**CIV-2014-085-000938
[2016] NZDC 7685**

BETWEEN	DARYN TURVEY Plaintiff
AND	REEVES LAWYERS LIMITED First Defendant
AND	CORNWALLIS TRUSTEES LIMITED Second Defendant

Hearing: 4 May 2016

Appearances: Mr Turvey in person for the Plaintiff
Ms Couldwell for the Defendants

Judgment: 5 May 2016

RESERVED JUDGMENT OF JUDGE S M HARROP

Introduction

[1] Mr Turvey is a trustee of three trusts: the Orana Trust, the FB Turvey Family Trust and the P Turvey Family Trust. At the time he issued this proceeding he was also a director of Vey Group Limited of which the Orana Trust is the shareholder. Subsequently Mr Turvey has been removed as director and his mother Patricia is now the sole director of that company.

[2] The other trustees of the three trusts are Mr Turvey's mother Patricia and Cornwallis Trustees Limited ("Cornwallis") which is a non-trading entity that operates as a professional trust company for Reeves Lawyers Limited ("Reeves Lawyers"). That is a limited liability company that operates as a legal practice. Graeme Reeves is the sole director and shareholder of both Reeves Lawyers and Cornwallis.

[3] Reeves Lawyers acts for the three trusts and for Vey Group Limited. As I have noted Cornwallis acts as professional trustee for each of the three trusts. Reeves Lawyers acts as legal advisors to all four entities.

[4] Neither Mr Reeves nor Reeves Lawyers acts or has ever acted for Mr Turvey in his personal capacity.

[5] Under each of the relevant trust deeds no single trustee has the ability to act unilaterally on its behalf.

[6] On 15 October 2011³ Reeves Lawyers issued a client care package and its terms of service to Mr Turvey, Cornwallis and Patricia in their capacities as trustees of the trusts. This retainer was signed by all three of them on 31 October 2013 at a trustee meeting at which it was unanimously agreed that the retainer be agreed and that Reeves Lawyers be engaged to act for the trusts. The trusts expressly authorised Reeves Lawyers to deduct sums owed for its fees from sums held in trust on their behalves.

[7] On 22 February 2014 Reeves Lawyers issued a further retainer in respect of certain conveyancing work to the trustees of the Orana Trust and all three of its trustees signed that further retainer and expressly authorised Reeves Lawyers to deduct fees for the relevant work from sums held in trust on its behalf.

[8] Mr Turvey has made various complaints to the Law Society against both Mr Reeves and Reeves Lawyers concerning operational and payment arrangements between Reeves Lawyers, Cornwallis, Vey Group Limited and the trusts. The Law Society has dismissed these complaints and elected to take no further action. It is relevant to note though that the second of these decisions dated 24 April 2015 was in part based on the fact that Mr Turvey had by then filed this proceeding which related to a number of the issues raised in his complaints and that the Law Society was therefore satisfied there was an adequate remedy available to Mr Turvey.

[9] Mr Turvey's original claim filed in December 2014 was challenged by the defendants in their defence as lacking any intelligible cause of action. On

29 April 2015 Judge Tompkins directed that Mr Turvey, who was and is representing himself, needed to crystallise and replead his claim and to specify the relief sought. It was noted that he did not seek any mandatory relief at that stage but rather sought reworking and proper trust accounting.

[10] On 20 May 2015 Mr Turvey filed a revised claim which the defendants have applied to strike out under District Court Rule 15.1. They contend that no reasonably arguable cause of action is disclosed. In particular they say the claim has not been pleaded in any intelligible manner and that they are unable to discern what cause of action Mr Turvey relies on. They say that the claim wrongly treats the defendants and Mr Reeves, who is not sued, as if they are interchangeable both as to responsibilities and any relief. The claim is said to lack any basis of authority from either Vey Group Limited or the trusts to represent them in this proceeding. The defendants complain that there is no identified duty owed to Mr Turvey, no breach of it and no relief sought to which he has any legal entitlement.

[11] In particular the defendants say that Mr Turvey has sought orders that invoices be credited by Reeves Lawyers to the Orana Trust, that the retainers from the trusts and Vey Group Limited be terminated, that Orana Trust funds held in trust for it by Reeves Lawyers be distributed to an unidentified third party, that the Court dictate how Reeves Lawyers provides information to the trusts and their trustees and that Cornwallis provides invoices to the trusts and/or Vey Group Limited.

[12] The defendants say all of the remedies sought are issues and matters that are to be governed by the terms of Reeves Lawyers contractual relationships with their clients, namely the trusts and Vey Group Limited and/or within its operational set up with Cornwallis as its professional trustee company. Accordingly, they contend, Mr Turvey is quite simply not entitled in any capacity whether personally or as trustee or beneficiary to the remedies he seeks and no repleading of the claim will change that.

[13] The defendants note that in respect of Vey Group Limited Patricia Turvey is the sole director and the sole shareholder is the Orana Trust. Accordingly while Mr Turvey is a shareholder in his capacity as trustee he has no personal standing to direct the company's activities and he has not brought the claim on behalf of the

Orana Trust nor could he do so in circumstances where the trust has not resolved to pursue the claim and a trustee has no power to act unilaterally. Further, Reeves Lawyers submits that Mr Turvey in his capacity as trustee/shareholder has no cause of action for any claim against Reeves Lawyers because it is retained by Vey Group Limited as its professional advisor and is bound to act in accordance with the company's instructions as it says it has done. Mr Turvey, it submits, has no entitlement to an order subverting the solicitor/client relationship or to override and/or direct Reeves Lawyers to act contrary to the company's instructions.

[14] With respect to Cornwallis, Mr Turvey seeks orders that it issue tax invoices. Cornwallis submits that it does not trade being Reeves Lawyers professional trustee company and as such Mr Turvey is not entitled to orders from the Court requiring the issue of such invoices.

[15] With respect to the trusts, the defendants submit that Mr Turvey is not the sole beneficiary of any of the trusts and of all distributions must be made unanimously by the trustees. He accordingly has no absolute entitlement to the trust assets nor any right or ability to deal with those assets unilaterally. Further, he has no right to unilaterally direct any of the trust actions including entering into and remaining in contractual relationships. It further submits that the trusts are not plaintiffs in this case and that Mr Turvey is not able to represent them without the trusts' authority as confirmed by an appropriate resolution. Finally the defendants submit that as a beneficiary Mr Turvey has no cause of action against Reeves Lawyers directly; any such cause of action would be for the trusts themselves to pursue at their election.

[16] There are additional points made by the defendants and in the alternative they also seek summary judgment but it is not necessary to detail these aspects.

[17] Mr Turvey's claim is in summary a criticism of Mr Reeves (who is not sued), Reeves Lawyers Limited and Cornwallis Trustees Limited for a failure to provide information legitimately requested by Mr Turvey in his capacity as a trustee, for improper invoicing and a failure to respond to questions or arrange trustee meetings. It is alleged there is clear friction between Mr Reeves and Mr Turvey and that

because of this Mr Reeves has not, as he is required to do, separate himself personally from the issues before him and accordingly is not acting independently through Cornwallis Trustees Limited as a trustee to the trusts nor is he acting in a proper professional manner as lawyer through Reeves Lawyers in connection with its work for the trusts and the company.

[18] The relief sought by Mr Turvey is that Reeves Lawyers be instructed to provide credits for three invoices and to refund the trust fund for the Orana Trust. He seeks an order that Reeves Lawyers be terminated as the legal entity providing professional services to the trusts and the company and that independent lawyer be agreed on. He asks that all trust funds held by Reeves Lawyers be transferred to a trust account held by that independent lawyer. He asks for an order that Reeves Lawyers respond to the questions he has asked, in a professional and helpful manner and to provide him with copies of certain meeting minutes including copies of all resolutions produced for approval at a meeting on 1 April 2015 whether they were passed or not. He also asks Reeves Lawyers to provide copies of the transactions in and out of the trust accounts for the Orana Trust on a monthly basis to all trustees.

Discussion

[19] As is well understood on a strike out application I must proceed on the assumption that the facts pleaded in the statement of claim are true even though they are not and may never be admitted. I may only strike out proceedings where the causes of action are so clearly untenable that they cannot possibly succeed. The jurisdiction is to be exercised sparingly and only in a clear case where the Court is satisfied it has the requisite material safely to make a decision.

[20] In my view this claim must be struck out for the various reasons advanced by the defendants. Leaving aside the technical but fundamental problems of failure to identify duties, breaches and resultant losses, and to seek relief this court is able to order, it seems to me that Mr Turvey's essential complaint is that the other two trustees, his mother and Cornwallis, have been operating the trusts in a way that he considers improper. As a minority trustee he is concerned that he is liable for the inappropriate actions of the (other) trustees (about which of course I assume for

present purposes that he validly complains). He is clearly frustrated by what he sees as a form of conspiracy by Mr Reeves and his mother to shut him out of trust decision-making and from access to even basic information about the trusts' activities so far as their engagement with Reeves Lawyers is concerned. He sees Mr Reeves as having a conflict of interests arising from the roles he has, from the "number of hats he is wearing"; he describes the situation as "murky". He feels his reasonable requests are fobbed off without any possibility of redress. He is also concerned as a beneficiary that the trust's assets may be diminished by the improper conduct of the other trustees. Further, Mr Turvey is concerned that as a result of these matters he simply cannot carry out his obligations as a trustee.

[21] In my view the current proceeding as drafted against the current defendants is not the appropriate vehicle for airing these concerns and that cannot be remedied. In principle, one way in which Mr Turvey's concerns as a minority trustee and a beneficiary (albeit discretionary) about the way the trusts are being administered might be addressed is through some sort of application under the Trustee Act to the High Court. But whatever avenue Mr Turvey might choose, and as other judges have done I urge him to obtain experienced legal advice about this, he will if issuing a fresh proceeding need to clearly identify the capacity in which he is suing i.e. his standing to do so, the duty he alleges a particular defendant owes him, the way in which that duty has been breached and the losses suffered or the remedies sought as a result.

[22] Most of the remedies sought in this proceeding are against the law firm, Reeves Lawyers, but Mr Turvey has no contract with that firm and is owed no duty by it. He is not in a position as merely one of the three trustees to sue for breach of contract when the trust has not passed a resolution to do so. It is the trusts and Vey Group Limited as clients of Reeves Lawyers who have the contractual right to take action against Reeves Lawyers if they consider it has breached its contract of retainer or any supervening professional obligation. Mr Turvey has no standing unilaterally to do this when the trusts and the company have not done so.

[23] Mr Turvey points out in his submissions that under s 119 of the Lawyers and Conveyances Act 2006 any person that may complain about the amount of any bill

of costs rendered by a practitioner. That may be so but any such complaint should be made to the Law Society, not to the District Court. A claim for breach of contract by the client of a lawyer may be made to the Court but there is no jurisdiction of which I am aware for a person other than a client to seek relief of the kind Mr Turvey seeks from a District Court. The Lawyers and Conveyances Act 2006 does not provide a statutory cause of action in this regard.

[24] As I mentioned above, towards the end of its decision of 24 April 2015 the Law Society's Wellington Standards Committee No. 1 noted that Mr Turvey had filed proceedings in the District Court in relation to a number of the issues raised in the complaints he had made against Mr Reeves. The committee said that it was "therefore satisfied that there was an adequate remedy available to Mr Turvey". In the circumstances it was satisfied that no further action was necessary in relation to the complaint.

[25] As this decision makes clear, there is no alternative remedy available to Mr Turvey through the District Court as far as I am aware and certainly as far as currently pleaded. Accordingly, I suggest it would in light of this judgment, be appropriate for the Standards Committee to reconsider its decision to take no further action in relation to the complaint. If ultimately it decides not to reopen it, or having done so again decides to dismiss it, then I have explained to Mr Turvey that he would then have a fresh decision and a fresh right of review to the Legal Complaints Review Officer.

[26] While I do not consider there is a basis on which this court can make the orders sought by Mr Turvey, which is one of the reasons why I am striking out his claim, I observe (as apparently Judge Tuohy previously did at a conference) that while Mr Turvey may be in the minority, he remains a trustee. In principle he must be entitled as one of the trustees of each of Reeves Lawyers' three trust clients to essential information from the firm about its handling of the trust's affairs and its funds. A trustee must surely also be entitled to copies of minutes of any trust meetings. While I appreciate that, without ascribing responsibility for it, there appears to be a dysfunctional relationship between Mr Turvey and Mr Reeves, it would appear to be a matter of commonsense that, perhaps with the assistance of an

intermediary acceptable to both gentlemen, the essential concerns which Mr Turvey has raised are addressed in meaningful way. The Wellington branch of the Law Society may well be able to assist in this regard. It may well be in Mr Reeves' and Reeves Lawyers' interests to make further efforts to satisfy Mr Turvey's requests for information because that might avert further litigation and/or complaints to the Law Society. If Mr Turvey continues to be stonewalled, he will likely take matters further one way or another and that would inevitably involve Mr Reeves in time and money even if the further steps are in his view vexatious.

Conclusion

[27] For the reasons contained in the defendant's submissions and as set out above, the defendants' application to strike out the plaintiffs claim dated 20 May 2015 is granted. I award costs in favour of the defendants jointly against the plaintiff on a 2B basis.

[28] For completeness, I note that Mr Turvey himself applied for summary judgment against the defendants in an application dated 18 September 2015. Self-evidently with his claim having been struck out that application must be and is dismissed. There is no additional award of costs to the defendants in that regard; they did not file a notice of opposition to it or take any other step, because the primary focus was, understandably, on their strikeout application.

S M Harrop
District Court Judge