

ACPNS LEGAL CASE REPORTS SERIES

This series compiles short summaries of significant cases involving charitable, philanthropic, nonprofit and social enterprise organisations in Australia and overseas.



Spillane v Cornwall Park Trust Board [2022] NZHC 1527

High Court of New Zealand, Peters J, 29 June 2022

Application to challenge trustee's power to lease a showground.

Key words: Charitable Trust, New Zealand, Park, Showground, Power To Lease

1. The Cornwall Park Trust Board Inc (Trust Board) was incorporated under the [Charitable Trusts Act 1957](#) in 1963. The Trust Board's principal function is to ensure the provision, upkeep, and operation of a park. The initial trust was established in 1901.
2. The park derives from philanthropic gifts of large parcels of land made by Sir John Logan Campbell in 1901, 1907, and 1908 to trustees to hold on trust for the public. The park also includes the land on which the Auckland Showgrounds are situated (showgrounds land), which was leased to the Agricultural Pastoral and Industrial Shows Board (Shows Board).
3. The Trust Board derives an income from leasing the showgrounds and other lands. It applies that income in the fulfilment of its functions.
4. The 1901 trust deed was varied in 1908 to give the trustees power to lease the lands. [The Cornwall Park Endowment and Recreation Land Act 1982](#) (1982 Act) was a compromise with local authorities to preserve part of the park, which the Trust had intended to subdivide for residential housing. The 1982 Act included preservation of the Trust's power to lease the showground part of the park.
5. Due to the interruptions of COVID 19, the Shows Board went into liquidation in mid-2021, and its liquidator disclaimed its lease of the showgrounds land.
6. The Trust Board moved to lease the showgrounds land to a film studio, Xytech Studio Management Co Ltd (Xytech), considering this its best prospect of a reliable rental return in the short to medium term. The Trust Board has entered into an agreement to lease (ATL) with Xytech. The proposed lease to Xytech would be for four years, with a two right of renewal.

7. The plaintiff, a resident of Auckland, is the managing director of XPO Exhibitions Ltd (XPO). XPO had used the Showgrounds to conduct trade shows and large-scale exhibitions attended by the public.
8. Spillane sought orders from the Court that the Trust Board was in breach of trust by virtue of the terms of the ATL, and an injunction to stop the transaction and any future new lease, with relief in respect of an anticipatory breach of trust.
9. The Court stated that the issues to be determined were:
 - (a) Whether the plaintiff had standing to bring this proceeding; and
 - (b) If so, whether the Trust Board had power to grant the proposed lease of the Showgrounds.

Standing

10. The Trust Board argued that the plaintiff had no standing to bring the matter before the Court, and that it was a matter solely for the Attorney General unless there was a broad public interest in the matter, an effect on the community, and the likely absence of any other challenger.
11. Further, it argued that the plaintiff was not acting in good faith, in that he sought only to advance his commercial interests and those of his fellow shareholders.
12. The plaintiff acknowledged that he had a personal, commercial interest in the outcome of the litigation, but also was a resident of Auckland and motivated to ensure the showgrounds remain available for events and exhibitions which all can enjoy, and which benefit the economy.
13. The Court relied on *O'Neill v The Otago Area Health Board* CP50/91, 10 April 1992 to find that (at [41]):

If the Plaintiff would otherwise succeed it will be an unusual case in which either as a matter of standing or as a matter of discretion the Plaintiff will fail. It is my view that the only circumstance in which a Plaintiff should be shut out in limine for want of standing is where the Defendant can show that the Plaintiff lacks good faith or that the complaint is clearly frivolous, vexatious or otherwise untenable.

14. The Court was satisfied that the plaintiff had sufficient interest to have standing.

Power to Lease

15. There was no dispute that the Trust Board had the power to lease under the 1908 Deed of Variation. The issue was whether its proposed lease to Xytech was within the terms of the power conferred by s 3(2) of the 1982 Act.
16. Section 3(2) of the 1982 Act requires the Trust Board to preserve the eastern portion of the park, to continue to be used principally as a venue for exhibitions, trade shows, and entertainment.

17. The critical issue was whether the lease to Xytech preserved the character of the eastern portion as it was in 1982, and ensured its continued use in essentially the same manner as it was in 1980 (as required by the 1982 Act).
18. Nothing in the permitted use provision in the ATL required that the principal manner and purpose of use of the eastern portion be as a venue for exhibitions, trade fairs, and events. However, this did not mean that filming activities, or other activities, could not take place as long as they were secondary.

Decision

19. The Court found that the Trust Board could lease the showgrounds land on terms that preserved its character and continued its essential purpose of being a site for the conduct of exhibitions, trade fairs, and events. Any filming or other activities on the eastern portion had to be secondary to that use.

IMPLICATIONS



In Australia, unless there is a relevant state or territory statutory provision, the Attorney General would be required to be involved in relation to a charitable trust. It is possible to bring a relator action (where the Attorney General approves of an individual bringing the suit): see [Scurr v Brisbane City Council](#) [1973] HCA 39 and [Brisbane City Council and Myer Shopping Centres Pty. Ltd v Her Majesty's Attorney General for the State of Queensland \(at the relation of Arthur Thomas Scurr and William Percival Boon\) \(Queensland\) \[1978\] UKPC 11 \(23 May 1978\)](#)

VIEW THE CASE



This case may be viewed at

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