

Trust-Busting following the end of a relationship – a case law update

The Supreme Court has clarified the boundaries of its landmark decision in *Clayton v Clayton* by issuing its decision in *Cooper v Pinney*, which relates to the classification of rights and powers in relation to a family trust on the break down of a relationship

Introduction

The Courts of New Zealand have long had to make decisions on claims against trust property at the end of a relationship. In particular when a spouse is not able to bring a claim for division of trust assets under the Property (Relationship) Act 1976 (**PRA**) due to the assets being owned by the trust, not the individual.

There has been a recent spate of "trust-busting" cases following the significant decision issued by the Supreme Court in *Clayton v Clayton*¹ in 2016 under which the Court found Mr Clayton had effectively unrestricted rights and powers in relation to a trust he had settled assets on during his marriage. As a result, the Court found that Mr Clayton had such a degree of control over the assets of the trust that it classified the powers as 'right or interests' in relation to the PRA. This meant the trust assets were brought into the pool for division under the PRA.

Since the decision in *Clayton* practitioners have been waiting for a less extreme trust deed to be analysed by the Court in light of *Clayton*. This was until the Court issued its decision in *Cooper v Pinney*².

The decision in *Clayton*

Mr and Mrs Clayton were married in 1989 and separated in 2006 after a 17-year marriage. Following their separation, Mr Clayton claimed Mrs Clayton was only entitled to share in the family home, and was not entitled to any property or interest in any trusts or business. In particular, a trust which was settled during the parties' marriage in 1999 which held significant assets.

The Supreme Court considered whether Mr Clayton had such a degree of control over the assets of the trust that certain rights and powers in relation to his family trust gave him powers that were tantamount to ownership. These powers included unconstrained discretion to be the sole trustee, distribute the trust fund to himself, and make himself the sole beneficiary without breaching any fiduciary duties which had been excluded by the terms of the Trust Deed.

The Court found these powers were considered "property" under the PRA. The Court also found that as the trust was established during the relationship and the powers acquired at that point, the property was relationship property, and therefore divisible between Mr and Mrs Clayton. The value of the property was calculated by reference to the value of the net assets of the trust.

The Court commented they leave open for another case to determine what would be the position under *Clayton* if the powers were less extensive, both as to whether they would amount to property and if so, how they would value them.

Facts of *Cooper v Pinney*

Mr Pinney and Ms Cooper had been in a de facto relationship for ten years from 2004 to 2014. After the breakdown in the relationship, Ms Cooper made a claim

¹ *Clayton v Clayton* [2016] NZSC 29

² *Cooper v Pinney* [2024] NZSC 181

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in relation to Mr Pinney's interest in a family trust he had settled and whether this should be treated as 'property' to be divided between the parties in accordance with the PRA.

Mr Pinney settled a trust in 2005 to receive assets from a trust established by his father, including a farm.

The trust had a number of beneficiaries including Mr Pinney who was also an original trustee (however he was not a trustee at the time of the hearing). Mr Pinney also held the power to appoint and remove trustees.

The claim from Ms Pinney

Ms Pinney relied on *Clayton* to argue that Mr Pinney's rights and powers under the Trust Deed gave him effective control over trust assets. They should therefore be treated as relationship property for the purposes of the PRA. If the Supreme Court agreed with Ms Pinney, the trust assets may be available for division.

Supreme Court decision – emphasis on fiduciary duties

The Court examined the powers held by Mr Clayton, and Mr Pinney. The Court distinguished the case from *Clayton* by noting two key differences:

- *Trustee structure*: the Trust Deed required a minimum of two trustees who must act unanimously, preventing sole control by any single trustee;
- *Fiduciary duties*: The Court emphasised that the trustees, including any appointed by Mr Pinney, were bound by fiduciary obligations to act in the best interests of all beneficiaries.

These key differences meant the Court found that unlike in *Clayton*, where Mr Clayton had near unrestricted control over the trust assets, the constraints in the Trust

Deed and the fiduciary duties imposed on the trustees meant that Mr Pinney did not hold rights or powers amounting to ownership of trust assets.

Therefore, the powers did not constitute property under the PRA and were not subject to division as relationship property.

Key take away

While the powers in Mr Cooper's situation were not analogous to ownership (and therefore not trust property available to Ms Pinney), the case illustrates the importance of obtaining legal advice early in any relationship, and the importance of carrying out an analysis of the powers and rights held by someone under a trust.

In this case an agreement contracting out of the PRA under which the parties set out their expectations and rights, may have avoided this lengthy and costly dispute.

Whether you are looking to protect your assets or understand potential claims at the start of a relationship, expert advice is essential to navigate potential issues.

It is important to review the terms of your trust deed, review and update any relationship property agreement in place, and discuss any concerns you have regarding farm ownership structures with a legal advisor.

Want to know more?

If you have any questions or concerns about family trusts or relationship property, please contact our specialist [private client and trusts team](#).