

Body Corporate 68792 v Memelink

High Court Wellington CIV-2015-485-202; [2018] NZHC 1735
7 August; 21 September 2017
Clark J

Unit titles — Administrator — Extension of appointment — Enduring state of dysfunction — Costs incurred by administrator directly attributable to particular owners — Costs recoverable from particular owners as debt — Unit Titles Act 2010, ss 127 and 141.

The first applicant was the body corporate (the Body Corporate) in respect of a unit title development, which was a commercial property. The Body Corporate had been managed by an administrator due to a long and troubled history of conflict between its members. The administrator was appointed on an interim basis, but was thereafter appointed administrator for a fixed period, which was once extended. The administrator was later replaced, and leave was reserved to apply to extend that time once more. The applicants applied, pursuant to that leave, to extend the administration on the basis that its continuation was desirable. The respondents had, variously, refused to comply with the body corporate operational rules. At issue was whether the appointment of the administrator should, once more, be extended.

Held: (refusing application)

(1) The High Court may, pursuant to s 141 of the Unit Titles Act 2010 (the Act) and in its discretion on cause shown, appoint an administrator for an indefinite period on such terms as to remuneration or otherwise as it thinks fit, such as where there is dysfunctionality or deadlock (see [16]).

(2) It was necessary to extend the term of the appointment of the administrator because the state of dysfunction continued (see [21]).

(3) It is necessary and appropriate for the Court to make subsidiary directions to ensure the court-appointed administrator is effective, and to assist the administrator in the interests of the community of owners (see [26]).

(4) The costs of the administrator directly attributable to actions against the Body Corporate by particular owners do not reflect the reasonable expectations of a reasonable community and should not be borne by the Body Corporate proportionately or at all, such that those

costs fall within s 127 of the Act and may be recovered from those particular owners as a debt (see [33], [34], [35], [36], [37], [38], [39], [40]).

Cases mentioned in judgment

Body Corporate 68792 v Memelink [2015] NZHC 519.

Body Corporate 68792 v Memelink (No 5) [2015] NZHC 1731.

Body Corporate 68792 v Memelink [2016] NZHC 2146.

Body Corporate 68792 v Memelink [2017] NZHC 2296.

Gibson v Body Corporate 384911 [2012] 1 NZLR 84 (HC).

Luxe One Ltd v Body Corporate 68792 [2017] NZHC 2672.

Application

This was an application by a body corporate to extend the appointment of an administrator.

DG Dewar for the applicants.

QS Haines for the respondents.

CLARK J.

Introduction

[1] On 21 September 2017, I issued judgment granting an application by Body Corporate 68792 (the Body Corporate) to extend the appointment of the administrator and for related orders.¹ I made the following orders in relation to the application to extend administration:

- (a) The appointment of the Administrator is extended until further order of this Court.
- (b) The respondents may apply to end the administration on four weeks notice.
- (c) Interchange Properties Ltd is joined as an applicant.
- (d) Luxe One Ltd and Spider Properties Ltd are joined as respondents.

[2] The following orders and directions were also made in respect of the respondents:

- (a) All items stored in the part of the common area known as Unit 4 are to be removed within seven days.
- (b) All residential occupancies of units within the development are to cease within seven days of the date of this judgment.
- (c) All assorted debris, furniture items, pallets, building components, timber and rubbish that is currently stored in the auxiliary units and on the auxiliary units, including the unwarranted and unregistered yellow truck used for storage of timber is to be removed within seven days. Failing compliance the Administrator is permitted to appoint an agent to remove the items.
- (d) Subject to having 24 hours notice, the respondents are to permit the applicants' appointed agents and contractors access, at all reasonable times during working hours, to the respondents' units for the purpose of

1 *Body Corporate 68792 v Memelink* [2017] NZHC 2296.

undertaking all inspections, report and work associated with the issue of a Building Act 2004 warrant of fitness in respect of the complex.

- (e) The administrator is not required to respond to any communications from the respondents other than those from the respondents' solicitor.

[3] With one exception the orders made reflected the orders sought. I declined to direct that the Body Corporate may issue a special levy in respect of administration costs.

[4] This judgment contains my reasons.

Background

[5] The first applicant, the Body Corporate, is the body corporate in respect of a unit title development in Lower Hutt. The Body Corporate has been managed by an administrator since 18 March 2015 due to a "long and troubled history of conflict" between its members.² On that date, John Greenwood was appointed administrator on an interim basis.³ On 28 July 2015 Mr Greenwood was appointed administrator until 30 June 2016.⁴

[6] On 9 September 2016, I extended the term of the administration from 1 July 2016 to 30 June 2017. Mr Greenwood's resources had been exhausted by the demands of the assignment.⁵ Robert Naylor was appointed administrator. Leave was reserved for the applicants to apply by 31 May 2017 to extend the term of the administrator beyond 30 June 2017.⁶

[7] On 29 May 2017, the applicants sought extension of the administration beyond 30 June 2017 on the basis continuation of the administration was desirable. The respondents persistently refused to comply with the reasonable directions of the administrator to comply with their obligations under the Body Corporate's Operational Rules.

[8] Mr Naylor's affidavit summarises the situation as he sees it and explains why he regards ongoing administration as both inevitable and essential. Mr Naylor seeks the Court's assistance with directions to enable him to do his job.

- (a) Collection of levies continues to be a major issue. The respondents are constantly in arrears. The Body Corporate has joined bankruptcy proceedings initiated by the Inland Revenue Department in respect of Mr Memelink.
- (b) Mr Memelink first threatened to sue Mr Naylor in August 2016, one month after Mr Naylor was appointed administrator. Mr Naylor exhibited to his affidavit a list of the threats and abusive emails from Mr Memelink between February and April 2017. Mr Naylor has been engaged in property management for nearly thirty years. He is not unaccustomed to encountering conflict. Yet Mr Naylor deposed to never having experienced

2 *Body Corporate 68792 v Memelink* [2015] NZHC 519 at [1].

3 At [9].

4 *Body Corporate 68792 v Memelink (No 5)* [2015] NZHC 1731 at [37].

5 *Body Corporate 68792 v Memelink* [2016] NZHC 2146 at [5].

6 At [27(g)].

encounters such as those he has had with Mr Memelink. Mr Naylor suffered disturbed sleep and distress as a result of Mr Memelink's outbursts and attacks.

- (c) Because it is a commercial property with interconnected services, the Body Corporate is required to obtain a building warrant of fitness. This necessitates compliance with the Building Act 2004 and the provision of various fire alarm and related services in individual units. Contractors retained by Mr Greenwood and Mr Naylor, however, are resistant to continuing with work required to obtain the warrant of fitness because of their encounters with Mr Memelink. Mr Memelink "trespassed" Mr Naylor and the contractors from the premises. Mr Naylor says contractors will only go to the site if he provides a security guard to protect them and to provide independent witness to their confrontations with Mr Memelink. The situation is "simply untenable".
- (d) A residue of Unit 4 is "common property" but occupied by Mr Memelink without authority or agreement from the Body Corporate. When Mr Memelink refused to provide keys for fire safety inspection purposes Mr Naylor employed a locksmith to enter Unit 4. Mr Memelink sent an abusive email accusing Mr Naylor of breaking and entering and using bullying tactics.
- (e) Two of Mr Memelink's units appeared to have been converted for residential use without consent. Two other units appeared to Mr Naylor to be in a "significantly dangerous state" with no compliance at all with basic fire safety requirements.
- (f) Following disputes as to work undertaken on the property (including lawn mowing) Mr Naylor concluded it was reasonable to direct all work be done by independent contractors. Mr Memelink incessantly disputes Mr Naylor's decisions.
- (g) When asked to accept appointment as administrator Mr Naylor allowed an operating budget of \$13,000 in respect of Body Corporate management. That has proved to be "completely unrealistic". Mr Naylor exhibited a schedule of his attendances over 10 months from 1 July 2016. Total administrator fees are \$76,944.83 almost 60 per cent of which is directly attributable to the disruptive and antagonistic behaviours of Mr Memelink and Mr Kooiman. Mr Naylor proposed a special levy apportioned on the basis of ownership interests in respect of 50 per cent of that figure and the balance as between Mr Kooiman and Mr Memelink at a ratio of 30:70.
- (h) Mr Naylor shares the view of his predecessor, Mr Greenwood. The property is "hopelessly stigmatised by the conflict that has existed for many years and its general unsightly state". Although a possible avenue of resolution is sale of the property, the real estate agents do not wish to deal with Mr Memelink or expose their clients to the risk that contact presents.

Adding parties

[9] The application sought the addition of Interchange Properties Ltd as applicant and Luxe One Ltd and Spider Properties Ltd as respondents.

[10] Under r 4.56 of the High Court Rules 2016, a Judge may order at any stage of a proceeding that a person be added as a plaintiff or defendant because the person ought to have been joined or the person's presence before the court may be necessary to settle all questions in the proceeding.

[11] Elizabeth Middleton and her husband are shareholders and directors of Interchange Properties Ltd. Interchange Properties Ltd has an interest in Unit 10. Ms Middleton filed an affidavit in support of the application to extend administration. Ms Middleton confirms she, her husband and Interchange Properties Ltd wish to be added as applicants. Ms Middleton deposes to confrontations with Mr Memelink, consequent stress and the inevitability of ongoing administration. It is proper that Interchange Properties Ltd be added as an applicant.

[12] The Body Corporate has issued statutory demands against Luxe One Ltd and Spider Properties Ltd in respect of unpaid levies.⁷ It is appropriate that Luxe One Ltd and Spider Properties Ltd are added as respondents.

*Assessment of application to extend administration and orders sought against respondents**Mr Memelink's position*

[13] Mr Memelink's notice of opposition and accompanying affidavit were egregiously late. They were required to be filed and served by 13 June 2017. On 25 July 2017 Mr Dewar, counsel for the applicants, advised respondents' counsel, Mr Haines, that notwithstanding the failure to comply with the timetable directions, providing the notice of opposition and affidavit were filed and served by 28 July 2017 no point would be taken. There was no communication whatsoever on the point until an affidavit and notice of opposition were emailed to Mr Dewar two days before the hearing when Mr Dewar was engaged in a mediation. I ruled the affidavit would not be read. It was not only inexcusably late but contained unnecessarily argumentative material.⁸

[14] For Mr Memelink, Mr Haines opposed the application on a number of bases including:

- (a) The unique situation and conflict that gave rise to the initial appointment of the administrator no longer exists.
- (b) Mr Naylor has failed to comply with the Unit Titles Act 2010 and has acted beyond his jurisdiction. He has failed to call statutory meetings, has passed resolutions as if he has the powers of the unit owners, approved

7 Luxe One Ltd's and Spider Properties Ltd's applications to set aside the statutory demands were dismissed by Associate Judge Smith on 31 October 2017: *Luxe One Ltd v Body Corporate 68792* [2017] NZHC 2672.

8 High Court Rules 2016, 9.76(2).

annual accounts erroneously or failed to complete them and has failed in other respects.

- (c) The administration is adding considerable additional cost to the Body Corporate which is being met by all unit holders.
- (d) Ending the administration will end all peripheral legal and court proceedings.

[15] Mr Haines submitted the approach of the administrator was akin to a “court sanctioned dictatorship”. Mr Naylor has gone further than is permissible in the role of a court appointed administrator and passed resolutions in which the Body Corporate members had no say. Alleged illegalities (for example, breaches of bylaws) should be referred to and pursued by the proper authorities. Mr Naylor is not the “police, judge and jury”.

Applicable principles

[16] Pursuant to s 141 of the Unit Titles Act 2010, the High Court may, in its discretion on cause shown, appoint an administrator for an indefinite period on such terms and conditions as to remuneration or otherwise as it thinks fit.⁹ An administrator may be appointed where there is dysfunctionality or deadlock.¹⁰

[17] The administrator, to the exclusion of the body corporate and the body corporate committee, has and may exercise the powers of the body corporate and the committee, and is subject to the duties of the body corporate and the committee, or such of those powers and duties as the High Court orders.¹¹

[18] Schedule 1 to the Unit Titles Regulations 2011 sets out the body corporate operational rules:

- 1 An owner or occupier of a unit must not—
 - (a) damage or deface the common property;
 - (b) leave rubbish or recycling material on the common property;
 - (c) create noise likely to interfere with the use or enjoyment of the unit title development by other owners or occupiers;
 - (d) park on the common property unless the body corporate has designated it for car parking, or the body corporate consents;
 - (e) interfere with the reasonable use or enjoyment of the common property by other owners or occupiers.
- 2 An owner or occupier of a unit must dispose of rubbish hygienically and tidily.

[19] Body Corporate 68792 Operational Rules require all owners to observe and comply with all relevant statutes, regulations and bylaws including in particular s 80 of the Unit Titles Act.

[20] Section 80 of the Unit Titles Act provides:

80 Responsibilities of owners of principal units

- (1) An owner of a principal unit—

⁹ Section 141(3) of the Unit Titles Act.

¹⁰ *Gibson v Body Corporate 384911* [2012] 1 NZLR 84 (HC) at [71].

¹¹ Section 141(5) of the Unit Titles Act.

- (a) must permit the body corporate (or its agents) to enter the unit at any time in an emergency and at all reasonable hours, and after giving reasonable notice, for any of the following purposes:
 - (i) to view the condition of the unit for the purpose of ascertaining compliance with the principal unit owners' or occupiers' obligations under this Act:
 - (ii) to maintain, repair, or renew any infrastructure for services and utilities that serve more than 1 unit and any building elements that affect more than 1 unit or the common property, or both:
 - (iii) to maintain, repair, or renew any common property:
 - (iv) to ensure the body corporate operational rules are being complied with:
- (b) must do all things necessary to give effect to decisions of the body corporate:
- (c) must consult with his or her mortgagee, if required to do so, before exercising a vote under section 97 or 98:
- (d) must comply with all laws and legal requirements relating to the use, occupation, or enjoyment of the unit:
- (e) must carry out, without delay, all work that may be ordered by a territorial authority or public body in respect of the unit to the satisfaction of that authority or body:
- (f) must pay all rates, taxes, charges, body corporate levies, and other outgoings that are from time to time payable in respect of the unit:
- (g) must repair and maintain the unit and keep it in good order to ensure that no damage or harm, whether physical, economic, or otherwise, is, or has the potential to be, caused to the common property, any building element, any infrastructure, or any other unit in the building:
- (h) must notify the body corporate of his or her intention to carry out any additions or structural alterations before the commencement of any work:
- (i) must not make any additions or structural alterations to the unit that materially affect any other unit or the common property without the written consent of the body corporate:
- (j) must comply with the body corporate operational rules:
- (k) must not do anything that breaches or in any way undermines any policy of insurance in the name of the body corporate.

...

Assessment

[21] I am in no doubt the term of appointment of the administrator must be extended. A state of dysfunction continues.

[22] As at September 2016, when administration was extended so, now, the “underlying animosity and polarisation remain constant”.¹²

[19] It is apparent to me that fundamental points of difference between the members of BC68792 continue and the depth of feeling concerning those grievances which was readily apparent to Brown J in the course of the five hearings before him between March 2015 and July 2015 has not dissipated in the 14 months since.

12 *Body Corporate 68792*, above n 1, at [12] and [19]–[21].

[20] The holistic approach to the management of unit title developments, which is one of the features of the Unit Titles Act, requires a degree of goodwill and cooperation. This is manifestly unachievable for BC68792 without the assistance of an external administrator.

[23] Alongside the evidence of Mr Naylor and Ms Middleton there is the evidence of Caroline McKernan and her husband James McKernan, who own Unit 11. They support continued administration. Ms McKernan and her husband run a business from their unit. Ms McKernan's evidence is that there is "no way we will be able to manage without an administrator".

[Mr Memelink] constantly tells us that he is going to sue us and that he is going to bankrupt Jim. We are constantly upset by this. We cannot see any way of living peacefully with Mr Memelink. We know that our property has been substantially devalued by all of these events. We have nowhere else that we can run our business from. We feel trapped.

[24] Ms McKernan and her husband would support an ultimate wind-up of the Body Corporate and sale of the property "because it is the only alternative".

[25] Evidently, the paralysing conflict in the Body Corporate persists. Levies continue to be outstanding. The Body Corporate's ability to attain a building warrant of fitness is impacted by disputation. Proceedings against the Body Corporate remain to be heard. Mr Naylor's view is that the only realistic option for the property is its sale as a redevelopment site. It is necessary to continue the administration and to extend Mr Naylor's term of appointment.

[26] The Court has an interest in ensuring the court-appointed administration is effective. Mr Naylor has asked the Court to assist him by making subsidiary directions. I have no hesitation in doing so. It is unacceptable that one who accepts a court-appointed role should have to endure the personal stress Mr Naylor has endured in the discharge of his role. The orders and directions, in my view, are essential to assist the administrator in the interests of the community of owners. But for the last they are uncontroversial.

[27] Orders [2](a) and (c) require the respondents to remove all items stored in the part of the common area known as Unit 4, and from other auxiliary units, in compliance with Body Corporate Operational Rule 1(b). In Unit 4 and the auxiliary units there are stored "dilapidated vehicles, "assorted building materials", "miscellaneous items" and "assorted materials". Ms Middleton described "large quantities of junk, derelict vehicles, used timber, assorted derelict equipment, rusty iron, boxes and crates full of materials that had the appearance of being scavenged from other locations". Ms McKernan annexed a picture to her affidavit showing rubbish and debris on Mr Memelink's Unit 12. Orders [2](a) and (c) are manifestly necessary.

[28] Likewise, order [2](b) requiring cessation of all residential occupancy of the property, is necessary. The building is not a residential property and to live in it contravenes the District Plan for that area of town. The Body Corporate is entitled to require its members to comply

with statute. That is made clear in cl 28 of the Body Corporate Operational Rules, which requires owners to observe and comply with all relevant statutes, regulations and bylaws. And s 80(d) of the Unit Titles Act requires owners to comply with all laws and legal requirements relating to the use, occupation, or enjoyment of the unit.

[29] Order [2](d) requires the respondents to permit the Body Corporate's appointed agents and contractors access to the respondents' units for the purpose of undertaking work associated with the issue of a Building Act warrant of fitness in respect of the complex. Under s 80(1)(a) of the Unit Titles Act an owner must permit the body corporate (or its agents) to enter the unit at reasonable times after giving reasonable notice for the purpose of maintenance or repair. The proper functioning of fire safety equipment and compliance with the requirements of the Building Act fall within this provision. Mr Memelink says he would be happy to have tradespeople attend to his units but his units are tenanted and the tenant requires four days notice. Mr Memelink also has a sign-in book. No evidence was supplied in support of a requirement for four days notice or the necessity of a sign-in book. Twenty-four hours notice is reasonable.

[30] By order [2](e), Mr Naylor is not required to respond to any communications from the respondents other than those from the respondents' solicitor. I regard the direction as necessary to protect Mr Naylor from having to engage with Mr Memelink, at Mr Memelink's whim, on a myriad of issues some of which do not warrant the level of engagement which Mr Memelink requires, such as mowing a 27 sq m lawn at an annual cost of \$500.

[31] The final order sought in Mr Naylor's application was in the following form:

... a direction that the Body Corporate may issue a special levy in respect of administration costs, as appearing in [the Schedule to Mr Naylor's affidavit].

[32] Following an exchange with Mr Dewar during the hearing the application was amended to seek a direction that the Body Corporate may render charges in respect of the administration costs appearing in Mr Naylor's affidavit.

[33] Expenses incurred by a body corporate substantially for repairs and other work that substantially benefits only one owner, or some owners, or that is rendered necessary by the fault of an owner or lessee, is recoverable as a debt in accordance with ss 126 and 127 of the Unit Titles Act.

[34] Section 126 provides:

126 Recovery of money expended for repairs and other work

- (1) This section applies where the body corporate does any repair, work, or act that it is required or authorised to do, by or under this Act, or by or under any other Act, but the repair, work, or act—
- (a) is substantially for the benefit of 1 unit only; or
 - (b) is substantially for the benefit of some of the units only; or
 - (c) benefits 1 or more of the units substantially more than it benefits the others or other of them.

- (2) Any expense incurred by the body corporate in doing the repair, work, or act is recoverable by it as a debt in any court of competent jurisdiction (less any amount already paid) in accordance with the following:
 - (a) so far as the repair, work, or act benefits any unit by a distinct and ascertainable amount, the owner at the time when the expense was incurred and the owner at the time when the action is instituted are jointly and severally liable for the debt; or
 - (b) so far as the amount of the debt is not met in accordance with the provisions of paragraph (a), it must be apportioned among the units that derive a substantial benefit from the repair, work, or act rateably according to the utility interest of those units, and in the case of each of those units, the owner at the time when the expense was incurred and the owner at the time when the action is instituted are jointly and severally liable for the amount apportioned to that unit.
- (3) Despite subsection (2)(b), if the court considers that it would be inequitable to apportion the amount of the debt in proportion to the utility interest of the unit owners referred to in that paragraph, it may apportion that amount in relation to those units in the shares as it thinks fit, having regard to the relative benefits to those units.

[35] Section 127 provides:

127 Recovery of money expended where person at fault

- (1) This section applies if the body corporate does any repair, work, or act that it is required or authorised to do, by or under this Act, or by or under any other Act, and the repair, work, or act was rendered necessary by reason of any wilful or negligent act or omission on the part of, or any breach of the Act, the body corporate operational rules, or any regulations by, any unit owner or his or her tenant, lessee, licensee, or invitee.
- (2) Any expense incurred by the body corporate in doing the repair, work, or act, together with any reasonable costs incurred in collecting the expense, is recoverable as a debt due to the body corporate (less any amount already paid) by the person who was the unit owner at the time the expense became payable or by the person who is the unit owner at the time proceedings are instituted.

[36] In the discharge of his role as court-appointed administrator, Mr Naylor has focused on compliance by the Body Corporate with its Operational Rules and statutory obligations. In many ways, he has been impeded in the discharge of his functions by Mr Memelink and, to a lesser extent, by Mr Kooiman. Mr Memelink's obstructive approach has created avoidable cost to the Body Corporate. Mr Naylor has reached the view that particular costs which he has marked out should not have been incurred at all and that they should be charged to those who caused them. I agree.

[37] A body corporate must operate and maintain an operating account for the purpose of meeting the expenses described in s 115(2). There is a range of expenses but they tend to have in common the benefit of the owners, or development, as a whole. Collective responsibility for the financial and administrative management of common property and the building development as a whole does not encompass the cost to the administration of behaviours which obstruct the common good.

[38] The costs of the administrator directly attributable to actions against the Body Corporate by Mr Memelink and Mr Kooiman, do not reflect the reasonable expectations of a reasonable community and should not be borne by the Body Corporate proportionately, or, at all. Those costs and charges fall within s 127 and become payable by the unit owner whose fault rendered necessary, the administrator's acts.

[39] I did not make the order sought. In the absence of evidence from which the Court could conclude the percentage calculations accurately represented the time spent attending to Mr Memelink and Mr Kooiman I felt I would be engaging in a "rubberstamping" exercise.

[40] That is not to say that Mr Naylor is unable to render charges in the manner he proposes when it is clear to him the charges are not to be borne by the Body Corporate. I consider he is statutorily empowered to take that approach.

Result

[41] For the foregoing reasons, I made the orders and directions set out at [1]–[2] above.

Reported by: Justin Carter, Barrister

(34) Death, Retirement, and Removal of Trustees

- 1 *Clark v Hoskins* (1868) 37 LJ Ch 561 (CA) at 566, *Webster v Le Hunt* (1861) 9 WR 804, *Palairot v Carew* (1863) 32 Beav 564 ^{CB} at 567 and 568 per Romilly MR, and *Head v Gould* [1898] 2 Ch 250 ^{CB}. He or she will not, however, be liable for an entirely different breach of trust from that which was contemplated when he or she retired: *Clark v Hoskins* (1868) 37 LJ Ch 561 (CA) at 567. As to liability for acts of co-trustees, see [para 301](#).
- 2 *Forshaw v Higginson* (1855) 20 Beav 485 at 487 per Romilly MR.

226. Termination of retiring trustee's liabilities to third persons.

The retirement of a trustee does not terminate his or her liabilities as a holder of shares, or in any other capacity in which he or she has incurred liability to third persons, until he or she has taken the proper steps for getting rid of those liabilities by transferring the shares out of his or her name or otherwise.¹

For English law see 98 *Halsbury's Laws of England* (5th ed, 2013) para 335.

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- 1 *Re City of Glasgow Bank* (1879) 4 App Cas 547 ^{CB} at 567 ^{CB}, 572, and 576.

227. No automatic resumption of trust.

A trustee who has validly retired from the trust cannot after the lapse of several years resume his or her position as trustee without being formally reappointed, despite the fact that the appointment of his or her successor was not formally effected.¹

For English law see 98 *Halsbury's Laws of England* (5th ed, 2013) para 336.

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- 1 *Lancashire v Lancashire* (1848) 2 Ph 657.

228. Removal of trustee accompanied by appointment of new trustee.

A trustee can be removed from the trust and a new trustee appointed in his or her place in any circumstances in which the power to appoint a new trustee may be exercised.¹

For English law see 98 *Halsbury's Laws of England* (5th ed, 2013) para 338.

For Australian law see 27 *Halsbury's Laws of Australia* [430-3635].

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- 1 See [paras 138](#), [153](#), [154](#), and [160](#). The removal of trustees of charitable trusts is subject to the same provisions as apply to private trusts: see [CHARITIES para 85](#); and as to the removal of trustees of friendly societies, see [INCORPORATED SOCIETIES AND OTHER ASSOCIATIONS para 111](#).