

**Elworthy-Jones v Counties Trustee Company Ltd 14/8/02, Heath J, HC Auckland  
CP15-AS02**

Successful application for order approving sale of land - successful application to have property settled by an independent third party - E-J claimed it was appropriate to have settlement of property carried out by an independent solicitor and not by CTCL who are trustees - E-J submitted it was inappropriate for CTCL to settle the property because of the discretionary powers they had to distribute the proceeds - E-J saw litigation as a means of resolving questions of contribution as there is dispute regarding amounts payable to beneficiaries - CTCL claimed there is no reason to set aside the structure of the original arrangements instead they should apply the terms of the various documents which the parties signed when the project was undertaken - CTCL sought orders to enable the settlement of the property.

Held, the distrust between the parties makes it impracticable for CTCL to effect the sale without the assistance of the Court - it is appropriate to have an independent third party to oversee the process of the sale - where there is dispute as to amounts distributable to individual plaintiffs the amounts are to be held by Public Trust pending the outcome of substantive proceedings - application to approve sale of land granted - application to have property settled by independent third party granted.