

IN THE HIGH COURT OF THE COOK ISLANDS
HELD AT RAROTONGA
LAND DIVISION

IN THE MATTER of the land TE RUATUPA
SECTION 39C, TAKITUMU

A N D

IN THE MATTER of a Deed of Lease dated
11th day of May 1973
between the Landowners
and LEONARD JAMES STAPLES
and TEMUANA STAPLES

Date of Hearing: 19 March 1985

Date of Judgement: 1st April 1985

R.W. Tylor for: Lessors
T.C. Clarke for: Lessees.

JUDGEMENT OF DILLON J.

Mr Tylor has filed an application to determine the capital value of the above land held under Lease by Mr and Mrs Staples. The determination is to be at the 1st May 1983. Mr Clarke appears for the Lessees.

The present lease commenced in 1973 - provides for 10 yearly rent reviews - and for the first 10 years the rental was \$50 per annum. The area is 2250m².

Before proceeding to a consideration of the submissions made by Counsel I shall dispose of two matters raised one by Mr Tylor and one by Mr Clarke.

Mr Tylor referred to the one and a half percent Tourist Authority License rental if that is its correct name which he claims entitles the owners to a rental per occupancy of the motel on this land. He says the Staples have never paid this. I can't take that factor into consideration in assessing the value of the land. He claimed it affected the rental received by the owners. It may well do. But he should have applied to the Tourist Authority or whatever body controls those arrangements. Its not for this Court to chase lessees

who don't pay license fees unless asked to by formal application nor to take that into account when trying to assess the value of land. Valuing land is hard enough now without the added complication of how many people stay at a motel and what 1½ percent tax means in relation to that occupancy. Having said that I do trust that Mr Tylor will take the matter up with the Tourist Authority. This should have been done years ago if the owners are being penalised as suggested by Mr Tylor.

The second point was raised by Mr Clarke in the course of submissions and in particular on the question of access to this land. A plan Exhibit "A" shows an area of "Road to be closed" separating this land in question from the Main Road i.e. according to this plan this land has no access. Mr Clarke referred to an agreement to Lease over this land held by these Lessees. Mr Tylor said that was in dispute. The point is now academic only as both Counsel have agreed that I value the 2250m² as though it had access to the main road but without prejudice to whatever stand they may wish to make in the future over their respective clients positions.

Mr Tylor and Mr Clarke both referred to the Rarotongan; Beach; and Edgewater Hotel valuations - the adjoining valuation of another Lease in Mr and Mrs Staples name - and the Harnish and Worthington leases at Muri Beach and as a result of their comparisons calculations and deductions arrived at a "Tylor" valuation of \$1,800 per acre per annum - and a "Clarke" valuation of \$1,400 per acre per annum. The comparisons are as follows:-

Rarotonga Hotel	\$1000p.acre p.a.	-	1982
Beach Hotel	\$950 p.acre p.a.	-	1984
Edgewater Hotel	\$875 p.acre p.a.	-	
Worthington - Muri	\$1000 p.acre p.a.	-	1980
Harnish - Muri	\$1200 p.acre p.a.	-	1984

In addition the following properties at Muri are also relevant -

Nicholas	\$1400 p. acre p.a.	-	1.4.83
South Pacific Consultants Ltd	\$1230 p. acre p.a.	-	
Swoboda	\$430 p. acre p.a.		
Polynesian Motel	\$1000 p. acre p.a.	-	1979

This property has a frontage of 48 metres approximately - and a depth of the same. It has therefore a frontage of 50 percent more than the 30 metre frontage of the Harnish property. The Harnish property of 4720m² was valued in 1984 at \$30,000 taking into account and making an allowance for the right of way approach which was a definite disadvantage to the property.

This property has no such disadvantage and as the plan shows has the same frontage to both the lagoon and the main road and as such presents an attractive area for subdivisional or commercial development. An appropriate comparative value with this property would be those properties at Muri Beach recently valued, viz., Harnish - area 4720m² - valued at \$30,000 as at 1984 and Nicholas - area 1100m² valued at \$7000 as at 1983. These two values approximate \$30,000 per acre. Relating those values to this present section this would produce a value of \$15,000 for the half acre approximately. However, the Harnish Block only had a frontage of 30 metres to the lagoon; the present section has a 48 metre frontage. While it would not be fair to adjust frontages on a direct ratio of 50 percent to fit the relative increase nevertheless some adjustment must be made to give cognisance to the greater valuable lagoon frontage on the present section being considered.

A fair adjustment would be 15 percent which then results in the following calculations:-

- (a) Harnish and Nicholas valuations at \$30,000 per acre.
- (b) This property at value of \$30,000 per acre for $\frac{1}{2}$ acre approximately = \$15,000.
- (c) Increased lagoon frontage at 15 percent
= \$2,250.00
- (d) Total = \$17,250.00 as at 1984.
- (e) Value is to be fixed at 1 May 1983. Allowing the same discount figure of 8% as in the Harnish lease this = 8% of 17,250 = \$1,380.

(f) Value at 1.5.83 = \$17,250
- 1,380

\$15,870

Say \$15,900

(g) Rental at 5% on \$15,900 = \$795.00

The value of this property is therefore fixed at \$15,900 producing a rental of \$795.00 p.a. as from the 1st May 1983. Costs of \$100 to be paid by Lessees to Mr Tylor. The Court is authorized to pay out of rent moneys up to \$200 to Mr Tylor against a submitted Bill of Costs.



Judge.