

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

**APPLICATION NO. 184/2012**

IN THE MATTER of Section 409B of the Cook Islands  
Act 1915 (as inserted by Section 2 of  
the Cook Islands Amendment Act  
1978-79)

AND  
IN THE MATTER of the land known as **TURAMATUTI  
106D1B3, AVARUA**

AND  
IN THE MATTER of a Deed of Lease dated 31<sup>st</sup> May 1982

BETWEEN **ERNEST TARIPO** (Lessor)

AND **COOK ISLANDS DAIRY FOODS  
LIMITED** (Lessee)

Hearing date/s: 4 and 12 October 2012

Counsel: Mrs Browne for the Lessor  
Mrs Willis as a representative of the Lessee

Judgment: 22 May 2013

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**RESERVED JUDGMENT  
OF THE HONOURABLE JUSTICE PATRICK SAVAGE**

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[DS700004]

[1] On the 31<sup>st</sup> May 1982 the parties entered into a lease of Turamatuti Section 106D1B4, Avarua. The lease was for 60 years (the maximum permissible in the Cook Islands). Consideration of \$15,000 was paid with an initial rental of \$350 per annum. The lease provides for 5 yearly reviews. The last review was in 1997 and rental was then fixed at \$600 per annum. Rental is therefore due for review as at 2002, 2007, 2012.



[2] This land is commercial land situated on the Main Road, basically opposite the airport and its border on the northern side is the foreshore. It is 1520 square metres.

[3] The lease provides for arbitration with the rental to be based on current market values for comparable unimproved lands.

[4] Notwithstanding the arbitration provision in the lease, s 109B of the Cook Islands Act 1915 provides that the Court may upon application by an interested party and upon sufficient cause being shown therein, determine and fix the current market rental of the land.

[5] I determine there is sufficient cause in this case. They cannot agree and a formal arbitration is likely to be an expensive and cumbersome process.

[6] In her preliminary submissions to the Court, Mrs Browne referred to two comparable properties.

First, Cook Islands Marketing Services (Raro Glass - Aluminium). That is a lease for 60 years from 1 March 1990. The area is 1232 square metres. The initial rental was \$500 and the rental for the period 2005 to 2010 has been fixed at \$1000 plus commission.

Secondly, Air Raro (Raro Tours Limited), a lease of 60 years from 1 September 1982, commencement rental \$200 and the area is 3548 square metres. The 2003 rental was fixed at \$1000, and the 2007 rental was fixed at \$1000.

[7] In her initial submissions and drawing in a general way from those figures, Mrs Browne has suggested a rental for the 2002 period be \$850; 2007 at \$1250; 2012 at \$1625.

[8] At the initial hearing I was told that parties were not very far apart and it seemed to me that the intervention of somebody with some commercial expertise in Rarotonga would quickly bring the parties together. I fixed upon John Kenning, a senior Justice of the Peace, and asked for a brief report from him. His report dated 9



October 2012, while not calculating strictly in terms of the provisions of the lease, is helpful and he refers to two other properties. He recommends rentals for the three periods at \$750, \$950 and \$1250. An increase for the first period of 25 percent, an increase for the second period of 27 percent and an increase for the third of 32 percent.

[9] The tenant has provided a property valuation by a real estate salesman dated 5 July 2010 which values the property at \$80,000. While that is relevant, it doesn't really answer the question that is required to be answered in terms of the lease. But it is interesting to note that Mrs Willis accepts the assessments of rental contained in Mr Kenning's report.

[10] Applications such as this are bedevilled by the fact that in this small community it is very difficult to obtain the sorts of valuations that one would expect in a larger jurisdiction and the Court is driven to deal with the matters in a general sense.

[11] Having regard to all the evidence and the relevance of the initial consideration paid, I fix the rental for the three periods as follows:

- (a) for the period commencing 2002 the rental will be \$800 per annum;
- (b) for the period commencing 2007 the rental will be \$1050 per annum;
- (c) for the period commencing 2012 the rental will be \$1400 per annum.

[12] There is also an application for party and party costs be paid at the level of 75 percent. Mrs Willis for the Lessee responds in her final submission of the 30<sup>th</sup> October 2012 that she attempted to resolve the matter, provided the land valuation to her landlord's previous solicitor and has attempted to "share a solicitor to arrive at agreement on the matter as we had done previously with the original landowner".

[13] Having regard to the fact that there is no real winner in this litigation, I am not prepared to order anything like 70 percent of Mrs Browne's client's costs and disbursements which I note at \$1486. I do, however, accept that in the event of a breakdown in negotiation between the parties that it was necessary to file this

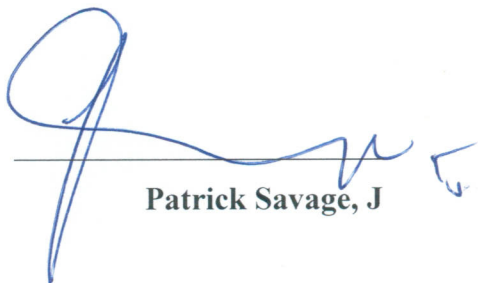
application in this Court. I award the sum of \$400 as costs payable by the Lessee to the Lessor.

[14] There is also an application for an Order that Mrs Browne's costs be paid from the rental account held by the Registrar of this Court. Her proposition is that I can do this pursuant to s 492 of the Cook Islands Act 1915. I should say immediately that I would be most reluctant to see the Court involved with the payment of creditors from monies held in land rental accounts. On a brief perusal of this section it does not seem to me to envisage that monies will be dealt with in this way, but rather that monies are to be paid out to the persons entitled thereto as determined by the Order of the Court. Prima facie the person entitled to the money in this case is the Lessor.

[15] I am aware that the Order sought by Mrs Browne has been the subject of some contention in the recent past.

[16] I am prepared to receive submissions from Mrs Browne on this particular issue within 30 days of the date of this judgment.

[17] In the event that no submissions are filed, the application for payment out by the Registrar is declined.



Patrick Savage, J