

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

APPLICATION NO. 390/2011

IN THE MATTER of Section 492 of the Cook Islands Act
1915
AND
IN THE MATTER of the land known as **PUOROMEA
49D, AVARUA**
AND
IN THE MATTER of a Deed of Lease dated 24th May
1972 and a Deed of Sublease dated 20th
August 1979 now vested in
**COOK ISLANDS
TELECOMMUNICATION ASSETS
LIMITED**

Judgment: 10 October 2013

JUDGMENT OF THE HONOURABLE JUSTICE PATRICK SAVAGE

[1] When landowners engage in litigation and retain lawyers in the Cook Islands there is often a question as to how counsel is to be paid.

[2] Logically the owners should pay for expenses such as this on a pro-rata basis and according to their shares. This can be difficult for, under s 492 of the Cook Islands Act 1915, prima facie, the Registrar simply pays out to the owners and then the legal expenses have to be collected.

[3] The logistics of this and human nature mean that some will not pay and some will have to pay more and the whole process becomes messy. Where there are questions of public importance at issue Courts might attempt to lubricate the flow of litigation with the appointment of an amicus. These owners however have a steady income. There is no reason why counsel in this matter and in this litigation should not be paid in a full and orderly manner.

[4] The application seeks, in effect, that \$25,000 be held in a fund by the Registrar and not be immediately paid out to the owners and that terms be fixed whereby the Registrar, with the appropriate consents, would pay legal bills directly.

[5] That may create problems where there are rifts in families or land owning groups but that is not the case here. The landowners are of three lines and there is a representative for each of the lines who consents to the order as is sought. In that regard this should not be taken as an indication that this decision should be regarded as a precedent.

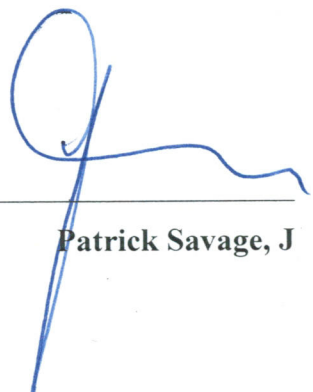
[6] The Registrar will be required to be assured at the time of payment that the consent of the three lines of owners endures.

[7] There being no objection, I now order:

- (a) Pursuant to s 492 of the Cook Islands Act 1915 the Registrar shall establish an account to be known as the “The Puoromea 49D Landowners Legal Expenses Trust Account”
- (b) That until a further order of the Court, the Registrar shall, so far as is possible, ensure that that Trust Account contains sufficient funds from rentals paid by the lessee or others to an amount of not more than \$25,000 at any one time. The Registrar for that purpose shall direct into that account monies from funds ordinarily paid directly to the landowners by the Registrar.
- (c) That the Registrar shall disburse funds from the Trust Account to meet the fair and reasonable legal costs and disbursements charged to the landowners.
- (d) That payment shall be made on original invoices signed by a registered land agent or barrister and solicitor of this Court and will require written approval for payment from the persons who hold the power to represent the three branches of the families – who are, at this

stage, Tua Pittman, Doreen Boggs and Lester Toropapera, all of Rarotonga. They will be required:

- (i) to authorise the payment out, and
 - (ii) to confirm that they hold the power to so approve
 - (iii) payment out will also be contingent upon the approval of a judge of the Land division of the High Court of the Cook Islands and such matter is to be referred in chambers for that purpose.
- (e) The Registrar shall keep and maintain proper adequate and true records of all funds paid into and out of the Trust Account and produce such records to the Court as and when required to do so.



Patrick Savage, J