

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

APPLICATION NOS. 258, 259, 260, 261,
341, 342/92

IN THE MATTER of Section 409(2) of the
Cook Islands Act 1915
and Rule (as enacted by
Section 2 of the Cook
Islands Amendments Act
1978-79)

A N D

IN THE MATTER o f t h e l a n d
NAGKAMAKURA
SECTION 101A
ATUPA

A N D

IN THE MATTER of an Application for
Determination of Capital
Value by MARCUS
JOSEPH GOW-
CAMPBELL and
W I L L I A M
CHRISTOPHER GOW-
CAMPBELL

Applicants

Mr Wichman for the Applicants
Mrs Browne for Cable & Wireless Ltd (259/92)

Date of Judgment : 5th MARCH 1993

JUDGMENT OF DILLON J.

It will be convenient to consider these six applications together. They refer to a proposed subdivision of Ngakamakura Part Section 101A but apply to existing leases over the areas included in the proposed subdivision.

The dates for the review of rentals fall at different times but it is suggested by Mr Brill a surveyor that adjustments can be made in order to make appropriate allowances. He suggests a factor of 12% to make any necessary adjustments for reviews that are required to be fixed for 1 November 1980; 1 November 1985; 1 August 1987; 1 November 1990; and 1 August 1992.

Mr Wichman relies on the valuation report prepared by Mr Brill for the Crown Law Office and dated 12 March 1991. Mrs Browne, on the other hand, referred to two valuations which she said were of relevant and comparable properties.

Two plans have been presented to the Court. A "not-to-scale" plan marked "A" describes six sections on the southern side of the Ara Metua and five sections on the northern side. The valuation by Mr Brill refers to the "... six 1,000 square metre sections to be yielded allowing about 400 square metres for road widening and access." Plan "A" has been recorded as applying to the following applications :

- * Lots 1 and 2 - Ngaei - Application 260/92 - area 2000 m²
- * Lot 3 - Cable & Wireless - Application 259/92 - area 1000 m²
- * Lots 4 and 5 - A.L. Jonassen - Applications 341/342/92 - area 2000 m²

Plan "B" has been recorded as applying to the following applications :

- * Lot 7 - Residential Homes Ltd - Application 258/92 - area 855 m²
- * Lot 8 - Residential Homes Ltd - Application 261/92 - area 2580 m²

Mr Brill's valuation therefore is limited to Lots 1 to 6 on Plan A, although Lot 6 does not require an assessment. While Mr Brill has not valued the sections on the northern side of the Ara Matua, the principles he has enunciated should nevertheless be relevant and applicable.

Mrs Browne's submissions are related to Lot 3 only but nevertheless should prove a useful cross check as we proceed to consider Mr Brill's valuation.

He describes the area as a residential locality. He considers six 1000 m² sections could be produced with a sufficient area left for road widening and access. He places a present day value of \$85,600 on the six sections as at 12 March 1991. He then relates back that valuation to a 1990 value of \$75,300; and a 1985 value of \$39,000. Mr Wichman, acting for the owners, accepts and relies on those valuations.

Those figures are of course a block value only and do not relate to the individual sections; the road frontage; the swamp land etc. Those factors must be considered since Lots 1, 2 and 3 with a frontage on to the Ara Matua must be more valuable than Lots 4, 5 and 6; and while Lot 6 has an area to the rear in swamp it nevertheless has a bigger area.

Taking those factors into account the 1985 valuation of \$39,000 should be apportioned as to 3/5 for the front three sections, i.e. Lots 1, 2 and 3; and apportioned as to 2/5 for the rear three sections, i.e. Lots 4, 5 and 6. That means a valuation of \$7,800 each for the three front sections and \$5,200 each for the three rear sections. That produces at 5% a rental of \$390 p.a. and \$260 p.a. respectively.

Applying the same criteria to the three sections on the northern side of the Ara Matua Lot 7 - valued at \$7,800 would have a rental of \$390 p.a.; while Lot 8 (which is shown as two sections) with a total area of 2580 m² (but a fairly large area in swamp) is valued at \$10,400 (i.e. as for two sections) and a rental of \$520 p.a.

Those values relate directly to Mr Brill's valuation and as at 1985.

Mrs Browne has referred the Court to two properties.

1. Section 77B Avarua on the back road; the area is 8000 m²; and the rental was fixed at \$750 p.a. as at 7 November 1983. This would equate to a rental of \$94 for a 1000 m² section.

2. The Stanley Fisher section has an area of 2 roods; with a rental of \$787 as at 1 January 1983. This would equate to a rental of \$393 for a 1000 m² section.

Mr Brill's total valuation at 1985 and the Court's apportionment of that valuation per section produces a figure of \$390 which relates directly to the 1983 Stanley Fisher rental relied on by Mrs Browne for the 1985 assessment. It does not, however, relate to the rental on Section 77B Avarua.

Mr Brill has suggested a 1990 valuation of \$75,300. Using the same methodology as for 1985 the 3/5 2/5 apportionment would produce the following :

- * Lots 1, 2, 3 - Valuation \$15,060 - Rental \$750
- * Lots 4, 5 - Valuation \$10,040 - Rental \$502
- * Lot 7 - Valuation \$15,060 - Rental \$753
- * Lot 8 - Valuation \$20,080 - Rental \$1,004

While those assessments relate to the 1985 and 1990 reviews there are still two further calculations required. Application No. 260/92 requires a review as at 1 November 1980. Mr Brill's valuation in 1990 is approximately double his 1985 valuation. It would seem reasonable to assume that his 1985 valuation would approximate double that of 1980. Accordingly for that assessment I fix the 1980 value at \$7,800 (for the 2000 m²) and a rental of \$390 p.a.

Application No. 261/92 requires a review as at 1 August 1987 and 1 August 1992. I propose to use the same assessment as I applied in Application No. 260/92 above. If it was thought that a slight adjustment was required I have not made this since the landowners have suffered by not having their rent reviewed and adjusted before this. I fix the 1987 value at \$15,400 and the rental at \$770 p.a. For the 1992 value I have added 12% to Mr Brill's valuation; applied the above adjustments to this 2580 m² back section; and arrived at a total value of \$95,800; a back section value of \$12,770; and for the area of 2580 m² - \$25,540 and a rental of \$1,275 p.a. - and adjusted to 1 August 1992 - \$22,810 and a rental of \$1,140 p.a.

The individual applications are now assessed as follows :

259/92 - Cable & Wireless - Value at 1/11/85 = \$7,800 - rental \$390
Value at 1/11/90 = \$15,060 - rental \$753

260/92 - Ngaei - Value at 1/11/80 = \$7,800 - rental \$390
Value at 1/11/85 = \$15,600 - rental \$780
Value at 1/11/90 = \$30,120 - rental \$1,506

341/92 - Jonassen - Value at 1/11/90 = \$10,040 - rental \$502

342/92 - Jonassen - Value at 1/1/90 = \$10,040 - rental \$502

258/92 - Residential Homes - Value at 1/11/85 = \$7,800 - rental \$390
Value at 1/11/90 = \$15,060 - rental \$753

261/92 - Residential Homes - Value at 1/8/87 = \$15,400 - rental \$770
Value at 1/8/92 = \$22,810 - rental \$1,140

The arrears of rental plus commission are to be paid into the Court.

By consent costs of \$150 on each application are payable by the Lessee to Counsel for the Landowners.

