

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

264/92
APPLICATION NOS. 258, 259, 260, 261,
~~341, 342/92~~

IN THE MATTER of the Cook Islands Act
1915 and its
amendments

A N D

IN THE MATTER of a Deed of Lease dated
19th day of May 1982
now assigned to SOUTH
PACIFIC CONSULT-
ANTS LIMITED at
Rarotonga as Lessee
over the land known as
PART AREMANGO
SECTION 7B1A
AREMANGO,
NGATANGIA

A N D

IN THE MATTER of an application by a
landowner to fix the
Capital Value of the land
and fix the current
market rental of the
aforementioned land
pursuant to section
409(g) and 409B Cook
Islands Act 1915

Mrs Bartlett for the Landowners
Mrs Browne for South Pacific Consultants Limited

Date of Judgment : 5th MARCH 1993

JUDGMENT OF DILLON J.

On 19 April 1982 the landowners of part of Aremango Section 7B1A agreed to lease 1299 m² of their land to one of the owners, viz Temangi Jim Moerua. The lease was described as a gift; was for 60 years from 1 July 1981; and provided that

for the first five years a rental of \$1 p.a. would be paid; and thereafter a rental calculated upon a review every five years.

By Deed of Transfer of Lease dated 17 August 1982 Mr Moerua transferred his gifted lease to South Pacific Consultants Limited. The Court was informed that the consideration for the transfer was \$16,000 paid direct to Mr Moerua; and an arrangement to increase the rental from \$1 p.a. to \$400 p.a. for the landowners.

The application before the Court is to fix the value of this section and the consequential rental as at 1 July 1986; and 1 July 1991.

Mrs Bartlett in her submissions relied on valuations already assessed by this Court viz Little Polynesian; and Ron Clift. On the other hand Mrs Browne relied on valuations assessed on the Harnish; Worthington; Island Hotels and Nicholas properties as appropriate for comparison.

Mrs Bartlett

Mrs Bartlett explained that when the property was assigned in 1982 and the rental was increased to \$400 p.a. that rental must therefore become the basic starting point. She says the section in 1982 was vacant; while it had a frontage to the beach at Muri, it did not have access to the main road - but rather by means of a somewhat tortuous road line 5 m wide to start with and then 6 m to the property. She referred to an advertisement for another section at Muri in 1992 at \$100,000. No details were given.

She suggested a 1986 valuation of \$22,500; and a rental of \$1,125 p.a. - then a 1991 valuation of \$45,000; and a rental of \$2,250 p.a.

These proposed valuations Mrs Bartlett claimed related to the valuations assessed for those properties occupied by the Little Polynesian Motel; and by Mr Ron Clift.

(a) Little Polynesian Motel - the area here was stated as 8197 m²; the rental

\$4,000 p.a. as at 1 February 1986 plus royalties at 1% equal \$3,200 p.a., i.e. a total rental of \$7,200. This, it was suggested, represented for an area of 1000 m² only, a rental of \$900 p.a. as at 1 February 1986.

(b) Ron Clift - the area for this section was stated to be 1740 m² and the rental \$1,050 as at September 1987. It was suggested that a comparative rental allowing for area and a 1986 assessment would have been \$780 p.a.

MRS BROWNE

Mrs Browne referred to the sections already noted, viz :

(a) The Nicholas property - with a 19.27 beach frontage; also a road frontage; an area of 1100 m²; and a valuation of \$7,000 as at 1/4/83 producing a rental of \$350. She referred to a second related area with a rental of \$413.

(b) The Harnish valuation for an area of 4720 m² was valued at \$22,000 in 1980 resulting in a related rental of \$225 p.a. for 1000 m², a projection the produced, so she said, a rental of \$429.

It was on this basis that Mrs Browne submitted an offer of \$450 p.a. for 1986 and \$600 p.a. for 1991.

One could observe at this point that the \$450 p.a. proposed as a rental in 1986 seems to denote a very small and insignificant increase from the \$400 p.a. agreed to in 1982, at the time the lease was assigned.

Mrs Browne also gave details and particulars of the Island Hotels property - 2 and 3/4 acres with a value of \$60,000 in 1983; and the Worthington property of 3 and 1/2 acres with a value of \$71,250 in 1980. Those valuations in 1980 and 1983 do not really assist the Court to fix a 1986 and 1991 valuation and rental.

In summary therefore Mrs Bartlett relies on valuations which she says supports

1986 and 1991 assessments for this section at \$22,500 and \$45,000 respectively. On the other hand Mrs Browne's assessments support 1986 and 1991 valuations of \$9,000 and \$12,000 respectively.

This is a very wide divergence which when related to Mrs Bartlett's submissions are not in fact supported by the Little Polynesian and Ron Clift determinations. The dates of the reviews for those two properties viz 1986 and 1987 are appropriate and relevant; I believe that the adjusted values of \$18,000 and \$15,600 are to some extent relative.

This property has a frontage onto the lagoon. It does not have a frontage onto the main road - it has a 5 m access. To that extent it is different. Taking that factor into account; relating to the comparable dates of the Little Polynesian and Ron Clift assessments; adjusting the unsupported submissions made by Mrs Bartlett to produce the 1986 and 1991 figures of \$22,500 and \$45,000 respectively; and recognising that the Little Polynesian and Ron Clift sections have advantages over Section 7B1A Aremango, I assess the valuation of this section at \$15,000 as at 1 July 1986 and a rental of \$750 p.a.

Mrs Bartlett submits that the value and rental for the next five year review period should be increased by 100%. No such increase has ever been made by this Court as far as I can recall. Nor has it ever been suggested that values anywhere in Rarotonga have doubled in any five year period over the last 15 years. Mrs Browne suggested a 30% increase in the proposal she submitted for the suggested 1991 rental. That I believe is more realistic and I adopt it. I accordingly fix the 1991 valuation at \$19,500. That would produce a rental of \$975 as at 1 July 1991. The arrears of rental plus commission are to be paid into Court and held pending further submissions by Mrs Bartlett on the following issue.

The original lease was granted to Mr Moerua by way of gift. Before the ink was dry, so to speak, the lease was assigned to South Pacific Consultants Ltd. The lease provided in Clause 4 that Mr Moerua was to give to the landowners the first option of taking any assignment in the event of his wanting to dispose of his

interests in the lease. I would have thought that the landowners by this clause would have had an interest in the \$16,000 paid to Mr Moerua solely on the assignment of the lease. The Court has been told that the landowners received nothing; and the total amount was paid to Mr Moerua who held the lease for a few months only. The submissions required to be filed should address this issue; should be presented on behalf of the landowners other than Mr Moerua; and if there is a possible conflict of interest as there may well be if Mrs Bartlett acts for Mr Moerua; then arrangements must be made for the landowners to be separately advised. Independent counsel making such submissions will have his costs secured by the Court.


