

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

IN THE MATTER of the landowners of
ARETERE SECTION 79,
AVARUA

Mr Arnold for the Landowners
Miss Percy for the Government
Mr Williams for Mr Tamataia Pera, the sole objector
Date of Hearing : 7 March 1997
Date of Judgment 7th March 1997

DECISION OF DILLON J.

Earlier today a conference hearing was held involving three Counsel referred to above. Mr Arnold, on behalf of the Landowners, was seeking confirmation of the resolution; Miss Percy, on behalf of the Government who are surrendering the lease over this property, to support; and Mr Williams acting for Mr Pera to request an adjournment to enable him to obtain further instructions in support of his client's objections to the Landowners' application.

In the course of this conference call I was advised either by Mr Arnold or Mr Williams of the following matters relevant to Mr Pera's position and his stance as objector. I was told that Mr Pera was acting for an unnamed and unknown Indonesian financier, so called; that he intended forming a company in which the Landowners would hold a 30% share and the Indonesian financier would hold the balance of 70% shareholding; that the purpose of his negotiations were for this company to acquire not only the Bond Store, the subject of this application, and the rights that went with it, but also the airport, the harbour facilities, the power station and Telecom at Rarotonga; I was told that this Indonesian financier was intending to purchase all these industries.

The Court enquired from Mr Williams whether he could assist with any information concerning this financier and the proposals which Mr Pera was promoting. Mr Williams

confirmed that he had not formed any company; that he had not met this financier; and that as a result he was not in any position to formulate proposals or to even advise the Court whether any or what sort of finance was contemplated or available.

On the other hand Miss Percy, on behalf of the Government, has filed a comprehensive and detailed Memorandum setting out the steps taken by the Government to secure the most competitive tender for the sale and purchase of the Bonds Store facilities. The advertising was done throughout the Cook Islands, New Zealand, Australia, Singapore, United States, Fiji and other South Pacific nations. As a result of the widespread advertising for competitive tenders, 51 expressions of interest were received and the application for confirmation of the owners resolution was the highest and, as a result, the successful tenderer.

Mr Pera has been fully appraised of these negotiations throughout; he is the only objector to the proposals; and he has clearly failed to disclose either to the other owners or their Counsel, or even to his own Counsel, what arrangements he hopes to achieve and what negotiations he has been having with the unnamed and undisclosed Indonesian gentleman. It is of significance to the Court that Mr Pera's eldest brother and his sister support the application before the Court for confirmation.

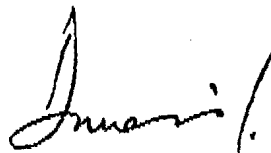
It is also significant that Mr Arnold gave Mr Pera details and documentation prior to Christmas and that at the Leases Approval Committee sitting Mr Pera had still not taken any steps to formulate proposals or adequately instruct his solicitors.

The Court is forced to the conclusion that the stalling tactics of Mr Pera will be a serious impediment to all the other owners who will materially benefit in a substantial way from the lease proposals which everybody except Mr Pera have approved and consented to. It is most unrealistic that all the owners, apart from Mr Pera, should be prejudiced with any further delay. Mr Pera's objection, therefore, which is without substance, without detail and without any support from his Solicitor, Mr Williams, who has sadly been left completely in the dark, is disallowed. The resolution is confirmed and the surrender of the Government's lease is accepted.

At the hearing today the question of replacement insurance was also discussed with Mr Arnold. Mr Arnold has negotiated with the Lessee and Clause 10(b) of the lease is amended to read as follows :

“Subject to insurance cover in respect of commercial buildings on Rarotonga being available, suitable cover etc.”

The Registrar is to make that amendment in the Confirmation Certificate. Mr Arnold should prepare a memorial for the Committee of Management of the Incorporation, once approved. This memorial should discuss the question of insurance and that the Committee of Management can, with the passage of time, subscribe to additional insurance over and above that required of the Lessee under the Lease in order to secure additional insurance by way of replacement insurance. That may not be necessary until well into the lease, say at the end of 20 or 30 years. But there should be some direction from Mr Arnold which will alert future Committees of Management to due consideration to such a requirement in future years.



Dillon J.