

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

Application No. 73/95

IN THE MATTER of Section 409B of the Cook
Islands Act 1915

AND

IN THE MATTER of a Deed of Sublease dated
18 December 1973 now vested
in the Airport Authority

AND

IN THE MATTER of an application to determine
the current market value

Mrs Browne for the Applicant
Mr Lynch for the Landowner
Date of Judgment: 16 January 1997

JUDGMENT OF DILLON J.

The transcript of the evidence taken when this matter was heard on 12 September 1996 has now been made available. This is an application to determine the current market value of the unimproved land referred to above. By a Deed of Sublease dated 18 December 1973, the section was sub-leased to Trailways Hotel (Rarotonga) Ltd. The area comprised 4,137 sq.m. The lease was for a term of 60 years less 1 day from 1 November 1973. The initial rental for the first ten years was \$200.00. The sub-leasehold interest is at present vested in the Airport Authority.

The rent is reviewed every ten years. This Court assessed a new rental of \$750.00 per annum as at 1 November 1983. Based on that rental capitalised at 5% meant an unimproved value of \$15,000.

Mrs Browne, for the present lessee, suggests that the current value of the land is \$20,000 and as a result a rental of \$1,000 per annum should be the appropriate rental for the next ten years.

Mr Lynch, for the landowners, relies on those negotiations associated with a section of approximately the same size and immediately adjoining this section, Punamaia 190E2, namely Katau 190D. The areas of these two sections are 4137 sq.m. and 4266 sq.m. respectively and so are directly comparable.

On 1 March 1994, some four months after the date the present review was due to be assessed, a rental of \$7,500 per annum was agreed to in respect of the Katau 190D section, so not only are the areas directly comparable, but also the date of the review and the date of the new lease of the adjoining land. With that relativity there should be provided an excellent opportunity for the comparison of values and rentals. That was certainly Mr Lynch's submission.

However, the new rental of \$7,500 per annum for the Katau 190D section was fixed taking into account that an adjoining hotel had its substantial Manager's residence and a tennis court on that section, and that the lease was being extended for an additional 43 years. The figure of \$150,000 relied on by Mr Lynch was estimated by capitalising the rental negotiated of \$7,500 at a figure of 5%. This figure, however, does not reflect the value of the land. That figure relates to the substantial extension to the term of the lease and to the substantial improvements already on the land, and at that point in time owned by the landowners.

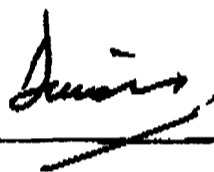
The valuation of improvements do not, I consider, provide an appropriate comparison for calculating "the unimproved value" of the land in Punamaia 190E2. It is the "current market value of the unimproved land" that the Court has been asked to determine. Consequently the consideration for a substantive extension of the lease and the right to use the substantial improvements are of no assistance in fixing the unimproved value of the Punamaia section.

The Court is therefore left with the evidence unchallenged by Mrs Browne that the house is being tenanted at \$180 per week, or \$9,360 per annum, while the Airport Authority for the past ten years has been paying the landowners a lease rent of \$750 per annum.

When this lease commenced on 1 November 1973 the rental for the first ten years was \$200 per annum; on review the rental for the next ten years was fixed at \$750 per annum. Capitalised at 5% those rentals would establish the unimproved value at \$4,000 in 1973 and \$15,000 in 1983 - a four-fold increase approximately.

It would seem appropriate that the same formula should apply for the next ten years, namely an unimproved value of \$60,000 as at 1 November 1993, resulting in an annual rental of \$3,000 per annum from that date. The arrears of rent and commission are to be paid to the Court in one month from the date hereof.

The Airport Authority is to pay the landowners costs which are fixed at \$250.00.



Dillon J.