

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

**IN THE MATTER OF** Section 3 of the Declaratory  
Judgements Act 1994

**AND**  
**IN THE MATTER OF** of the land known as TE  
AUERE SECTION 14B,  
MATAVERA

**AND**  
**IN THE MATTER OF** of a certain Deed of Lease dated  
8 July 1998 between the  
LANDOWNERS and  
FREDRIK DAMM and  
MAUREEN  
TERAIMATEATA TUA both  
of Rarotonga (“the Deed of  
Lease”)

**AND**  
**IN THE MATTER OF** AUSTRALIA AND NEW  
ZEALAND BANKING  
GROUP LIMITED a duly  
incorporated company having its  
registered office at Melbourne,  
Australia and carrying on  
banking business in Rarotonga

APPLICANT

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**DECISION**

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**Introduction**

1. This is an ex-parte application for a declaratory order pursuant to section 3 Declaratory Judgements Act 1993 dated 27 January 2015.
2. The application seeks an order from the Court declaring that certain landowners in the above block are unreasonably withholding consent to the assignment of the Deed of lease to Teremoana Damm or her nominee.
3. The application is supported by affidavits of Charles Little, Mata Ringi John and Dallas Holford.

## **Background**

4. The background to this application is set out in the application and the supporting affidavits.
5. In brief, a lease of the subject land was granted to Frederik Damm and Maureen Te Roimateata Tua on 8 July 1998.
6. The ANZ Bank acting in the exercise of its rights to enforce the Mortgage as granted by the High Court on 28 November 2013 entered into an agreement for sale and purchase with Teremoana Damm to sell its interest as mortgagee in the Deed of lease.
7. Clause 4 of the Deed of lease provides that the lease shall not be transferred, assigned or sublet without the consent of the lessors, provided that the consent shall not be arbitrarily or unreasonably withheld.
8. On 4 November 2014 notice of the proposed assignment to the original purchaser Gail Townsend was delivered to all landowners in Rarotonga and one landowner in Mangaia. Also on the 13<sup>th</sup>, 15<sup>th</sup> and 19<sup>th</sup> November 2014 public notices were published in the Cook Island News informing the intention to sell the property and informing owners of their right to exercise a first right to refuse.
9. Three landowners exercised that right and an advertised meeting was held on 18 December 2014 at which meeting the owners elected Teremoana Damm as the person entitled to purchase the property.
10. This consent represented the majority of landowners in Rarotonga but the applicant has been unable to obtain the consent of owners living overseas.

## **Decision**

11. Having considered the application and documents filed in support I am satisfied that I can grant this application.
12. In doing so I am satisfied that all owners whose consent could have been obtained, has been obtained.

13. In the course of the notice of the proposed sale the landowners have determined that in terms of the right of first refusal set out in this lease, that the lease be sold to an owner, namely, Teremoana Damm.
14. I am satisfied as to the procedure in reaching that decision.
15. As a result I now grant the application and declare that certain landowners who have not consented, have unreasonably withheld that consent.
16. Accordingly I am satisfied that the assignment of lease between the applicant and Teremoana Damm can proceed.
17. A copy of this decision is to go to all parties.

Dated at Wellington this 16<sup>th</sup> day of February 2015.

W W Isaac