

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

Application No. 208/2019

IN THE MATTER of section 646 of the Cook
Islands Act 1915

AND
IN THE MATTER of the land known as KIRI
SECTION 88E,
ARORANGI,
RAROTONGA

AND
IN THE MATTER of an ex-parte application for
order granting leave to
enforce security

BETWEEN **BANK OF COOK
ISLANDS LIMITED** a duly
incorporated company
having its registered office at
Avarua, Rarotonga

Applicant

AND **ANA UPOKO TUKAROA**
(as administrator of the estate
of Tuaine Tukaroa) of
Brisbane, Queensland,
Australia

Respondent

DECISION OF JUSTICE W W ISAAC

[1] This is an ex parte application for an order seeking leave to enforce a deed of mortgage by the Bank of Cook Islands Limited (the applicant) over the land known as Kiri Section 88E, Arorangi, Rarotonga.

[2] The applicant makes this application on the following grounds:

- (a) that payments due under loan agreements dated 8 January 2008 and 27 August 2008 (Loan Agreements) between the applicant, Tugord Limited (as Borrower), Tuaine Tukaroa (deceased), Gordon Fridge, and Pauline Gardiner (as co-covenantors), and secured by the mortgage are in arrears;
- (b) that the respondent is the administrator of the estate of the deceased;
- (c) that a demand was made on the respondent pursuant to s 92 of the Property Act 1952 for the repayment of outstanding arrears under the Loan Agreements;
- (d) that the outstanding arrears have not been repaid and the Loan Agreements are in default; and
- (e) upon the grounds contained in the affidavit of Lillian Maui.

[3] In the case, *The Bank of Cook Islands Holdings Corporation v Taira*¹ the respondent continued to default on their mortgage payments over a period of more than five years. The applicant in that case sought an order to enforce security. Savage J granted the application as the Bank had a mortgage and was entitled to be paid on a regular basis.

[4] I adopt the approach of Savage J in this application.

[5] Pursuant to section 646 of the Cook Islands Act 1915, leave is granted to the applicant to enforce a deed of mortgage dated 8 January 2008 over Tuaine Tukaroa's leasehold interest in the deed of lease dated 12 August 2004 over 1,001m² of Kiri Section 88E, Arorangi, Rarotonga.

[6] The application is granted for enforcement.

[7] A copy of this decision is to be sent to the parties.

¹ [2010] CKHC 32

Dated at Rarotonga on this 26th day of November 2019

A handwritten signature in black ink, appearing to read 'W W Isaac', with a small dot at the end.

W W Isaac
JUSTICE