

IN THE HIGH COURT OF THE COOK ISLANDS
HELD AT RAROTONGA

CA 2/92

IN THE MATTER of the
Arbitration
Act 1908

BETWEEN MAINLINE BROWN
CONSTRUCTION
(PACIFIC) LIMITED
a duly incorpo-
rated company
having its
registered office
at Auckland.
First Appellant

AND DAVID BROWN
CONSTRUCTION LTD
a duly incorpo-
rated company
having its
registered office
at Auckland.
Second Appellant

AND ISLAND HOTELS LTD
a duly incorpora-
ted company
having its
registered office
at Rarotonga.
Respondent

Mr Arnold for Appellants
Mr Manarangi for Respondent
Date: 29 June 1992

JUDGMENT OF QUILLIAM J

The Respondent has applied for an Order that the Order made by Mr Justice Dillon on the 5th of May 1992 granting leave to appeal from the decision of Mr Justice Chilwell delivered on

the 26th of March 1992 be struck out upon the grounds of failure to comply with the conditions imposed by Mr Justice Dillon. Most of the matters in issue have now been resolved. It is acknowledged that there could be no Order striking out the leave to appeal but it is necessary to confirm the conditions which should now apply. I am informed by Counsel that the sum of \$90,000 ordered to be paid into Court has now been paid and there is a receipt available for that payment.

As to the remainder of the security on appeal Counsel confirms that the amount owing to the ANZ bank on first mortgage is now reduced to less than \$63,000 and that the mortgage is still valid. Mr Manarangi has undertaken to give Mr Arnold a letter confirming the status of that mortgage.

The principal under the mortgage is immediately payable upon the decision of the High Court. Accordingly, conditions as to the financial aspects of security have been satisfactorily complied with. The case on appeal has not yet been completed but this was due to the failure of the file to arrive from Auckland. It has now arrived and I am informed by Counsel that the case on appeal will be ready by the 6th of July.

There remain the question of the hearing of the appeal and Counsel ask that this should be able to proceed as soon as possible. I have undertaken to ask the Chief Justice to do what he can to achieve that. In the meantime it is agreed that there should be a stay of execution until after the delivery of judgment on appeal. In case there should be any damage to the boat which forms the subject of the mortgage, leave is reserved to apply further should there be difficulty concerning the mortgage as a result of any such damage. The costs of this matter are reserved.

