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

APPLICATION NO. 467/2013

IN THE MATTER	of Section 129A of the Property Law Act 1952
AND	
IN THE MATTER	of the land known as **TAURUTU PART SECTION 127H1, AVARUA**
BETWEEN	**AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED** a duly incorporated company having its registered office at Rarotonga Applicant
AND	**DANIEL NGAMETUA MATAROA** of Rarotonga, Entertainer First Respondent
AND	**OROPAI MATAROA** of Rarotonga, Occupation Unknown Second Respondent
AND	**TEARIKI MAUI** of Rarotonga, Assistant Manager Third Respondent

Hearing Date: 10 October 2013

Appearances: Mr C Little for the Applicant
Mr D Mataroa for himself and the Second Respondent
Mr T Moore for the Third Respondent

Judgment: 11 October 2013

JUDGMENT OF THE HONOURABLE JUSTICE PATRICK SAVAGE

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[1] This matter is the latest in a series of applications concerning Mr Little's client's attempts to enforce its security against Mr and Mrs Mataroa. The factual situation and the flavour of proceedings to this point is demonstrated in Orders made by me and by Williams J over the last twelve months.

[2] It now appears that Mr and Mrs Mataroa and their neighbour, Mr Maui, have each built on the wrong land which places them, and indeed the Bank, in a precarious situation.

[3] When the matter was called before me yesterday Mr Maui appeared and it was clear to me that he had little understanding of the proceedings and was well out of his depth. Mr Travis Moore offered to provide him with some guidance and to do so on a pro-bono basis. For this I thank him.

[4] Mr Moore today advises that he has instructions and recognises that the Orders sought by the Bank can only improve Mr Maui's situation and he consents to the Orders sought.

[5] Mr Mataroa has filed an "affidavit" which I have carefully read and he made submissions before me. In essence, apart from his usual objections as to jurisdiction and other matters, he recognises that a mistake has been made but says the mistake is not his and he should not be punished. In the end he clearly recognised that the only way forward is the "swap" contemplated by the applicant and discussed in the pleadings.

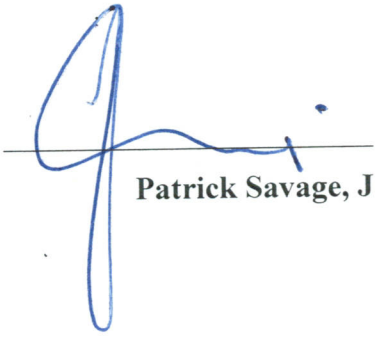
[6] Nobody sought to cross-examine or call further evidence and when I had indicated I would deal with matter on the papers there was no objection.

[7] At the end of Mr Mataroa's submissions I understood him to consent to the "swap" proposal but he then clarified his position so that he now will only consent if the Bank does not pursue the debt. At that point it became clear that a judgment was required.

[8] In my view it is clear that the situation falls squarely within the parameters of s 129A of the Property Law Act 1952. A mistake has obviously been made both as to the boundaries and the identity of land. The Bank without argument has an estate or interest in the land. It is just and equitable the Orders be made in the general terms that are sought. As a consequence of the Orders, Mr Maui, Mr and Mrs Mataroa, and the Bank will each have what they have believed for years they all really have. It is not just or equitable that any charges, encumbrances or Court

Orders fall to the ground in this transaction and for that purpose I will deal with that by the confirmation or re-issue of Orders as necessary.

[9] Mr Little is to submit a draft Order to me as soon as possible in chambers and I reserve this matter to chambers for the making of those Orders.



Patrick Savage, J