

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

APPLICATION NO. 336/91

IN THE MATTER of the land known as
TUTAKIMOA SECTION 14D1

A N D

IN THE MATTER of the Deed of Lease
dated 27 May 1980 vested
in WESTPAC BANKING
CORPORATION

Mrs Browne for the Applicant
Mr Campbell and Mr Lynch for the Lessors

INTERIM JUDGMENT OF DILLON J.

This is an application for an Order to fix the current market value of the above section comprising some 38 perches, which land is leased by the Applicant company, such determination to be as at 1 April 1984 and 1 April 1989.

This matter first came before the Court on 4 December 1991; again on 9 April 1992; and at that stage it was adjourned to enable the Applicant to file written submissions. These have been prepared and Counsel for the land owners, the Lessors, have also filed further submissions in reply.

All the papers have now been forwarded to me on the basis that there is some urgency about the application. This is surprising since really the application should have been filed in 1984 to enable the Court to determine the current market value of the land as at that date in accordance with comparative values for land in the vicinity as at 1984. Normally it is the land owners who make application but this they did not do, nor was an application lodged in April 1989 when a further review of rent was necessary in accordance with the terms of the lease. In the result the Lessee has lodged the application. I have not been advised of the necessity for urgency by either Counsel. There are other concerns however which suggest that additional information is required by the Court before any final determination is made, and since the Court is due to sit in Rarotonga in August that would seem an appropriate opportunity to then consider all aspects of valuation associated with this application.

I suggest this course for the following reasons :

1. Counsel for the landowners suggest that valuations that have been done previously, either by the Court or by agreement with Counsel acting for the parties, should not be relied upon.
2. That Mr Brill is professionally qualified in valuations and as a result his values should be more acceptable than previous decisions.

3. That the landowners have not been paid \$12,000.00 as alleged by the Applicant, but only \$5,218.50. At least that is the submission of Mr Campbell.
4. In the submissions of Mr Lynch, he accepts or appears to accept the \$12,000 figure when he refers to that figure unconditionally in Clauses 5, 11 and 13 of his submissions, which in this respect are contrary to the submissions of Mr Campbell.
5. Mr Lynch acknowledges in Paragraph 5 of his submissions that -

"realistically ... the results of the valuations submitted on behalf of both the Applicant and Respondent are not greatly different."

He then goes on to say that the critical difference are the two figures of \$12,000 and \$20,000 which, of course, have nothing whatsoever to do with the comparative valuation of the land. That, as I understand it, was the basis of the land.

It will be necessary for Counsel to clearly establish the basis of those two payments and to whether they should have an impact on the valuations which the Court has been asked to determine. Clearly that can only be done on the production of additional evidence either from witnesses or from records.

This application is adjourned to the next sitting of the Court in August with a direction to the Registrar that a special fixture be made with the allocation of time to be determined by the Registrar after consultation with both Counsel.

James J.

15/7/92