

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

App No 566/93

IN THE MATTER of a certain Deed of Lease
dated 24 March 1986

BETWEEN **K.T. OPINI** and **P.T. OPINI**
as landowners

A N D **T. PHILLIPS** as lessee

A N D

IN THE MATTER of the land known as Part
Tainu Section 2B1B3

JUDGMENT OF DILLON J.

An application has been filed to certify the Court held lease in the name now of Garnier Limited, certified as a true copy for the purpose of arranging a mortgage to the A. & N.Z. Bank.

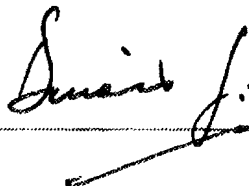
An affidavit has been filed by a director of Garnier Limited setting out the background and circumstances as to how this lease has been assumed to have been lost. That affidavit, supported by an international conference call, satisfactorily explains the need for a Court Order to certify a lease which can then properly be held as security by the A. & N.Z. Bank.

What was not disclosed in that documentation, and by Counsel at the conference call, was whether the provisions of Clause 6 of the lease dealing with assignment was complied with at the time Mrs Phillips transferred her leasehold interest to Garnier Limited. The lease provides, as a requirement of any assignment, that the original lessors are to be notified of the proposals and are to be given the first opportunity to purchase back the lease at the price and on the same conditions that the lessee is negotiating the sale.

Mr Gibson, Counsel for the Applicant, has now produced documentation which was attended to by Mrs Browne of his firm on 9 November 1987 when the assignment between Mrs Phillips and Garnier Limited was concluded.

The original lessors consented to that assignment so that compliance has been attended to and there is no bar or impediment to the Order now sought.

There will therefore be an Order directing the Registrar to certify a copy of the lease at present held in the Court records as a true and correct copy of that original lease, such copy to be endorsed as "in substitution for the lessee's copy that has been lost and which is now ordered by the Court as a substitute lease to be held by the lessee".



Dillon J.

16th day of November 1993