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

APPLICATION NO. 390A 3/2021

IN THE MATTER	of section 390A of the Cook Islands Act 1915
AND	
IN THE MATTER	of the land known as **POKOINU SECTION 107 K-M AVARUA**
AND	
IN THE MATTER	of an application by **PUREAU MANUELA AND MINORA MANUELA** both of Rarotonga Applicants
AND	**TUAPIKEPIKE TINI AND TEAROA JOHN TINI** Respondents

Counsel	Mr T Nicholas for the Applicants Mr T Arnold for the Respondents
Judgment:	4 June 2024

JUDGMENT OF KEANE, CJ

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[1] On 16 October 2014 in the Land Division of this Court Savage J made an order varying Mr and Mrs Tini's 1997 leasehold interest in their land;[1] the effect of which was that they acquired a further 200m2.

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1 Pokoinu Part Section 107K-M (L3440).

[2] The 200m2 area Mr and Mrs Tini thus acquired in some degree lies under part of the home of their neighbours, Mr and Mrs Manuela, whose own 2009 leasehold interest [2] did not include that area.

[3] On 14 July 2021 Mr and Mrs Manuela made two applications, one to annul the 2014 order; the other, under s 390A of the Cook Islands Act 1915, to vary their 2009 leasehold interest to include the 200m2 area and to cancel the 2014 order.

[4] The latter application, with which this decision is concerned, was varied on 18 May 2022 as result of Williams CJ's directions, and referred to the Land Division of this Court for inquiry and report.

[5] At the hearing before Armstrong J on 19 October 2022 important concessions were made and, though submissions were complete by late 2022, the transcript did not become available until 29 July 2023.

[6] In his careful report, dated 3 October 2023, Armstrong J concluded that the 2014 order was not vitiated by any mistake, error or omission of fact or law founding s 390A jurisdiction. Nor did it give rise to any discretionary matter.

[7] As he said, in recommending that I endorse the validity of the 2014 order and dismiss the application:

> This is an unusual case, where the person seeking to cancel this order is not an owner and has no interest in the land which is the subject to the order. There is no reason to exercise the discretion to cancel the order here.

[8] In a minute issued later in October 2023 I gave the parties the opportunity to identify succinctly, if they chose, any 'fundamental error' leading them to contest the report's recommendation.

[9] Unsurprisingly, Mr and Mrs Tini support the recommendation; and, more importantly, in Mr and Mrs Manuela's memorandum, dated February 2024, their counsel responsibly accepts the report contains no 'fundamental error'.

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[2] Pokoinu Part Section 107K-M (L3710).

[10] On my own review I agree. Armstrong J's report is closely founded on land owner decisions and court orders, which are complete, plain and compel his recommendation.

Recommendations – essential reasons

[11] Armstrong J's report speaks clearly for itself. But in accepting it, as I do, I set out in this decision his essential reasons for his recommendation.

[12] First, Mrs Tini is one of the owners of the land underlying the two leasehold interests. Mr and Mrs Manuela, by contrast, have only ever held an occupation right, and a leasehold interest, both granted by the owners.

[13] Second, to convert their then occupation right to a mortgageable leasehold interest, Mr and Mrs Manuela applied on 22 June 2009 for the owners to be summonsed to consider the three resolutions.

[14] The first two resolutions concerned the surrender of their then 1,889m2 occupation right and the grant of their 1,689m2 lease. The third concerned the 200m2 area, until then the subject of their occupation right. It was to be transferred to Mr and Mrs Tini.

[15] On 24 July 2009 the owners passed those resolutions unanimously; and on 8 December 2009 the Land Division of this Court granted Mr and Mrs Manuela their leasehold interest, less the 200m2 area in some degree underlying their home.

[16] Third, to increase their own leasehold interest by that 200m2 area, Mr and Mrs Tini applied on 16 May 2014 for the owners to be summonsed to consider their wish to vary.

[17] The owners approved that increase on 18 August 2014. The Leases Approval Tribunal approved it on 19 September 2014. On 16 October 2014 Savage J granted the order now in question without any contest.

[18] Fourth, though Mr and Mrs Manuela contended in 2018 they had not understood the Tini's leasehold interest now ran through their home, the land owners were entitled to decide on 13 November 2019, as they did, that the leasehold interests should remain as they were.

[19] In contrast to Mr and Mrs Tini's leasehold interest founded on Mrs Tini's underlying interest as a land owner, Mr and Mrs Manuela's leasehold interest was founded only on a prior occupation right, granted still earlier by the owners.

[20] Fifth, there could be no suggestion that in 2009 Mr and Mrs Manuela had parted with the 200m2 area under duress. To obtain a mortgageable leasehold interest, they, themselves, in their third resolution to which the land owners acceded, proposed exactly that.

[21] Nor could there be any suggestion that Mr and Mrs Tini were, then or later, incapable of understanding the exact location of the 200m2 area, or where it was in relation to their home. Mr Manuela was and remains a qualified surveyor.

[22] Sixth, there was no want of notice to Mr and Mrs Manuela as to the Tini's 2014 application. As they had no ownership or other interest in the leasehold land then in issue, the Tini interest, they lacked any standing and were not materially affected.

[23] Any such omission by the Leases Approval Tribunal, a separate administrative quasi-judicial body, lay outside a s 390A review. (Other points of still lesser moment, were also referred to, but this survey more than suffices.)

Conclusion

[24] Armstrong J's recommendation rests on reasons I find compelling. They are closely founded on land owner decisions and court orders, which are complete and plain.

[25] I dismiss the application.

P J Keane, CJ