

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

DP NO's 19/2016 & 25/2016

IN THE MATTER of the Sections 23 and 25 of the Matrimonial Property Act 1976 of New Zealand (as that Act applies in the Cook Islands by virtue of the Matrimonial Property Act 1991-92)

**AND
IN THE MATTER** of Applications for Custody, Access and Maintenance

BETWEEN **ROSEMARY JULIA WEBB** of Rarotonga,
Teacher Aide
Applicant

AND **PAUL WEBB** of Rarotonga, Businessman
Respondent

Date: 30 November 2016

Appearances: On the papers

**JUDGMENT OF GRICE J
(Granting ex parte interim injunction)
Review: 9.00am 2/12/16**

[1] The applicant has applied for an interim injunction restraining the applicant from mortgaging the house she occupies with the child of the marriage at Arorangi.

[2] On review of the Court file I note this matter came before Weston CJ on 15 September 2016. It appears that the Arorangi house is owned by the Arorangi Trust. Mr Webb is sole trustee of that trust.

[3] In his Minute of 15 September 2016 Weston CJ noted that the house may be susceptible to a matrimonial property application despite being held in trust. That is a matter to be determined. Weston CJ made an order for sole occupation of the home in favour of Ms Webb and Bethany.

[4] I note from Mrs Webb's affidavit that consent to Mr Webb's application for mortgage was due to be heard by the Leases Approval Tribunal (LAT) on Friday 25 November 2016. However due to Mrs Webb's intervention, that has been adjourned.

[5] The application and supporting affidavit is sparse in its detail. It merely refers to the information that has been received that Mr Webb proposed obtaining the mortgage.

[6] On reviewing the file it is apparent:

- a) There is a complicated matrimonial property issue which involves a claim on the Arorangi house;
- b) Mrs Webb has sole occupation of the Arorangi house with Bethany, a child of the marriage;
- c) The LAT has adjourned the application sine die;
- d) Mr Webb has been slow in providing information to the applicant in relation to the matrimonial property claim;
- e) Mr Webb or his counsel have not advised Mrs Webb of the proposed mortgage arrangements despite the extant matrimonial property proceedings and occupation orders;
- f) Mr Webb resisted Mrs Webb's application for sole occupation;
- g) Mrs Webb alleges and Bethany are not being provided with maintenance and are short of money.

[7] I am of the view that given the history there is a serious question to be tried concerning the ownership and interest of Mrs Webb in the Arorangi house. In addition the extent of matrimonial property is not clear. It appears discovery has yet to be completed.

[8] If the house was mortgaged the equity could be dissipated and the fruits of any successful matrimonial property claim may be gone. There is also the risk that the mortgage is not serviced and Mrs Webb and Bethany could be evicted by a mortgagee if the mortgagor defaults. That would be difficult if not impossible to remedy.

[9] A memorandum on the Court file from Mrs Webb's lawyer dated 10 November 2016 indicates Mr Webb is refusing to pay maintenance as ordered. It is not clear if it has been served on Mr Webb or his counsel, if not it should be forthwith.

[10] For the reasons set out, the balance of convenience favours the granting of an interim injunction restraining Mr Webb or the Arorangi Trust from mortgaging the Arorangi house in which the applicant and Bethany reside until further order of the Court. I am aware that Mr Webb or the Trust has not had the opportunity to present their case. However I propose that this order be reviewed on Friday 2 December 2016 to enable service to be effected.

[11] The applicant is to file an undertaking as to damages and the Applicant's counsel to file a certificate in the usual terms which should accompany an ex parte application.

[12] The application, the interim injunction order and the decision is to be served on Mr Webb and the Arorangi Trust forthwith.

[13] This matter will be placed on the Court list for review of this order at 2.00 pm on Friday, 2 December 2016.



Grice J