

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

IN THE MATTER of PUAHIKI SECTION  
84B

A N D

IN THE MATTER of a Deed of Lease  
dated 1 May 1974 to  
ISLAND HOTELS LTD

Mr Campbell for the Owners  
Mrs Browne for Island Hotels Ltd

Date of Judgment : 24<sup>th</sup> June 1992

JUDGMENT OF DILLON J.

This is an application to determine the capital market value of the unimproved land known as Puaiki Section 84B and situated at Arorangi. Mrs Browne, acting for the Company, has filed the application for determining the value of four acres comprised in this block, and for such value to be fixed as at 1 March 1989. The application was filed on 17 October 1990; was finally argued on 20 March 1992; and subsequently submissions by Counsel have been filed.

Mr Campbell, in his detailed and comprehensive submissions, has urged the Court to adopt the formula applied in various cases and sections to which he has extensively referred. It is appropriate to refer briefly to those comparative values, but before doing so to recount the values that were established either by agreement of the parties; agreement of their Counsel; or determination by this Court. The previous values for this land may be summarised as follows :

- (a) 1974 - \$ 8,000 - \$ 400 rental per annum, i.e. \$100.00 per acre.
- (b) 1979 - \$40,000 - \$2,000 rental per annum, i.e. \$500.00 per acre.
- (c) 1984 - \$70,000 - \$3,500 rental per annum, i.e. \$875.00 per acre.

In the course of making these comprehensive submissions Mr Campbell has referred to what he calls the "average rule of thumb \$10.00 per square metre". He said that based on this rule the four acres would have a value of \$160,000 and a rental of \$2,000 per acre as compared with the previous value established in 1984 of \$875 per acre.

Mr Campbell then refers in detail to eight residential blocks where rentals have been established, no doubt depending on their proximity to the lagoon or the size of the land or some other special quality which lessees assess would either diminish or increase the value of the land and consequential rental. Of the eight residential sections referred to I note that the values on a per acre basis range from \$6,000 to \$120,000. Six of the values are under \$22,000; four of the values are either \$16,000 or less - that is, per acre. I agree with Mr Campbell that cognizance must be taken of those comparative values because they are the only indication one has of assessing the demand and consequently the value of any land.

Mr Campbell, in his submissions, states that the owners were offered a rental by Island Hotels Ltd based on a value of \$22,000 per acre, or a rental of \$1,100 per annum per acre, or \$4,400 per annum for the whole of this four acre block. By way of comparison that value fits into the top level of the values of six out of the eight sections to which Mr Campbell has referred the Court.

Mr Campbell also compares this particular section with the Rarotongan Hotel property. That is a fair and reasonable comparison. He says that the Rarotongan Hotel is "paying \$1,000 per acre per annum as at 1979". If that is correct then the applicants at 1989, ten years later, should, I agree, be paying more than the \$1,100 per annum per acre now offered. However the Rarotongan Hotel is still paying \$1,000 per annum per acre because of the length of the reviews to which the lease of that area is confined. I understand that the Rarotongan Hotel rental was due for review on 1 March 1992.

While there are inherent difficulties in making comparisons, nevertheless comparisons are a very relevant consideration. The difficulties that such comparisons present can be seen by the very wide divergence of values in the references quoted by Mr Campbell. To meet this situation Mr Campbell presents the following hypothesis for calculating what he considers is an appropriate rental, namely :

"The land owner has requested an increase in rental to \$16,000 per annum for four acres, or \$4,000 per acre, as at 1 March 1989.

The basis for this valuation is a starting point of \$480,000 less \$160,000 deduction allowing for the fact that almost one third of the lease period has elapsed. This reduces the capital value figure to \$320,000 for the four acres. Annual rental at 5% of the \$320,000 is \$16,000, or \$4,000 per acre."

Thus the land owners suggest the figure of \$70,000 assessed at 1984 with a rental of \$3,500 and equated to \$875 per acre be now increased to \$320,000 as at 1989 with a rental of \$16,000 and equated to \$4,000 per acre. In other words it is suggested that this land has increased in value in five years from \$70,000 to \$320,000 and that as a consequence the rental should be increased from \$3,500 to \$16,000. That, in the Court's opinion, is a suggested increase in value which cannot be sustained. Nowhere on the Island is there this startling increase in value of a comparative and related value.

There are two further matters to which I shall briefly refer. Firstly Mr Campbell referred to \$10.00 per square metre average rule as advised by Mr Jacob, the Commissioner of Crown Land. Mr Jacob did not give evidence and I would need evidence to support such a claim. Secondly reference was made in Mr Campbell's submissions to the fact that "the land owner is no longer entitled to the percentage of gross income as previously". He claimed that this percentage was increased to 1½% in 1979. Once again I have no evidence of what that percentage represented; how much the land owners received; and how much they would lose as at 1 March 1989 if a percentage still applied. Those two factors I cannot include in the assessments which I will eventually have to make.

I turn now to the submissions presented by Mrs Browne on behalf of the Company. Mrs Browne referred to a judgment of this Court dated 10 October 1984 which dealt with the previous rental review of this property. In particular she relied on the observations in that decision relative to the inadequacy of the right of way and the Tansley valuation of \$344.36 per metre of beach frontage. This, of course, brings in a different factor in assessing value, that is relative to the beach frontage in the same way that commercial properties are valued in relation to shop frontage. Mrs Browne believed that "if this Court should adopt the formula used in that case then as at 1 March 1989 the capital value would be \$100,000, producing a rental of \$5,000 per annum for four acres, and \$1,250 per acre per annum". A new factor which Mrs Browne has introduced on this particular review which did not apply on the three previous reviews is the effect on this particular property of Cyclone Sally in 1987 and Cyclone Val in 1991. She advises the Court that as a result of the damage from those two cyclones the insurance cover in respect of wave surge has been withdrawn by the Insurers. It is suggested that this has a serious and deleterious effect on the property and on its future potential for sale.

Mrs Browne submits, in concluding the various aspects of her arguments set out in detail in her submissions, that the offer of \$1,100 per acre per annum is reasonable and that in the circumstances the cyclone damage caused in 1987 and again in 1991 are factors which must be taken account of and which must have a serious effect on the value of the property.

While I agree that the damage from the cyclones must be taken into account, and I have in fact done that in arriving at my final assessment, I must also weigh the submissions which have been made for and on behalf of the land owners to ensure an appropriate comparative level with properties in the area and of equal location and size. Taking all those factors which I have referred to in account; making an allowance for the cyclones and their damage and the loss of insurance; and recognising the values that have been established on adjoining properties, I assess the value of the property at \$100,000, thus producing a rental of \$5,000 ~~per acre~~ per annum as at 1 March 1989.

The sum of \$200.00 costs are to be paid to Mr Campbell.

*J. J. J.*

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Amended  
J.J.J.  
25/1/92