

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

APPLICATION NO. 264/92

IN THE MATTER of the Cook Islands Act 1915
and its amendments

A N D

IN THE MATTER of a Deed of Lease dated 19th
day of May 1982 now assigned
to **SOUTH PACIFIC**
CONSULTANTS LIMITED
at Rarotonga as Lessee over the
land known as **PART**
AREMANGO SECTION
7B1A, AREMANGO,
NGATANGIA

A N D

IN THE MATTER of an application by a
landowner to fix the Capital
Value of the land and fix the
current market rental of the
aforementioned land pursuant to
Section 409(g) of 409B Cook
Islands Act 1915

Mrs Bartlett for the Landowners
Mrs Browne for South Pacific Consultants Limited

MEMORANDUM FOR COUNSEL

On 5 March 1993 the Court fixed the Capital Value of the land known as Part Aremango Section 7B1A, Ngatangia as at 1 July 1986 and 1 July 1991. Consequential rentals were assessed at that time.

Originally on 19 April 1982 the landowners of this land agreed to lease it to Temangi Jim Moerua. He immediately onsold the lease to South Pacific Consultants Limited for a capital

sum of \$16,000 on 17 August 1982. At the same time the original rental of \$1 p.a. was increased to \$400 p.a.

The Court has now raised the question as to whether all the owners of this land have any proprietary rights in the \$16,000 since the terms of the Lease on its transfer were not complied with. Clause 4 of the Lease is as follows :

"4. SUBJECT to paragraph 3 hereof, the Lessee/s shall not transfer assign or sublet the demised land or any part thereof without the written consent of the Lessor/s and if more than one, the majority of Lessor/s residing on Rarotonga first had and obtained PROVIDED HOWEVER that the Lessor/s may require the Lessee/s to give the first option of taking by transfer assignment or sublease of the property in question to the Lessor/s or any of them or any of their nominees upon the same terms and conditions as the Lessee/s is able to transfer assign or sublease to any other person A N D the Lessor/s may withhold the granting of such consent until the Lessor's or any of them have exercised their rights or powers under this clause."

Mrs Bartlett has made submissions which disclose :

1. That Mr Moerua is the only landowner residing in Rarotonga;
2. That the whereabouts of some of the landowners are not known;
3. That those that are known are in Australia and New Zealand;
4. That Mr Moerua claims to have authority by means of a Power of Attorney to act for owners listed in the title register as Nos 1, 3, 10, 11 and 12.
5. That Mr Moerua is 72 years old and his main source of income is his pension.
6. That it is reasonable to assume that the consent of the other landowners was obtained

at the time of the sale of the Lease.

The Court is of the opinion that it would be most unreasonable to make the last assumption. Nevertheless the transfer was arranged in 1982 - it is now 1993. There is no good purpose in pursuing this line of investigation any further.

The Court is directed to ensure that Mr Moerua receives his share of the rental only and to ensure that any Power of Attorney he holds does not entitle him to uplift the rental of any of the other owners.

It is only proper that costs on the original application be now fixed since no further enquiries as originally directed are necessary. The company shall forthwith pay the sum of \$120 costs and \$5 filing fee to Mrs Bartlett.

J. J. J.

Judge

*6th September
1993*