

BETWEEN **RUMOURS OF ROMANCE
LIMITED**
Appellant

AND **JANINE KAUVAI**
Respondent

Coram: White P, Fisher JA, Asher JA

Hearing: On the papers.

Appearances: Mr William Akel and Mr Ben Upton for the Appellant
 Mr Brian Mason for the Respondent

Judgment: 1 July 2021

JUDGMENT OF THE COURT OF APPEAL

- A. The appeal is allowed.**
- B. The orders made by the High Court (Land Division) in proceeding 495/19 and 317/20 on Thursday 8 October 2020:**
- i. by way of declaration that the deed of lease dated 8 September 2003 insofar as it affects the Appellant's interest in the land (Lease) is at an end; and**
 - ii. that the Appellant's application for relief against forfeiture of the Lease is declined,**
- are quashed (by consent).**
- C. The Appellant is granted relief against forfeiture of the Lease pursuant to section 118(2) of the Property Law Act 1952 as that Act of the Parliament of New Zealand applies to the Cook Islands by virtue of section 637 of the Cook Islands Act 1915 in respect of a Notice to Forfeit served by the Respondent on the Appellant on 19 August 2019.**
- D. There is no order for costs.**

Introduction

[1] This is an appeal by Rumours of Romance Limited [the Appellant] against a short oral judgment of Savage J in the Land Division of the High Court delivered on 8 October 2020 declining the Appellant's application for relief against forfeiture of a lease on the ground that there was a concession that the lease was forfeit.

[2] The Appellant filed a notice of appeal dated 28 October 2020 against the judgment of Savage J setting out comprehensive grounds of appeal. In a memorandum dated 3 December 2020 Mr Mason, counsel for Janine Kauvai [the Respondent], set out other grounds for supporting the High Court judgment.

[3] By subsequent joint memoranda dated 10 February, 21 April and 27 May 2021, counsel for the parties advised the Court of Appeal that they were engaged in constructive dialogue with a view to reaching a settlement. They also indicated that they did not wish the appeal to be heard in the April 2021 session of the Court. In view of the ongoing nature of the settlement discussions, extensions of time for filing the case on appeal and applying for a hearing date were sought and granted by the Court. Directions relating to a timetable for the appeal were also made by consent.

[4] By further joint memorandum dated 17 June 2021, counsel for the parties advised the Court of Appeal that a settlement had been reached contingent on the orders set out in this judgment being made by consent.

Discussion

[5] As we are allowing this appeal by consent, it is appropriate for us to record the following matters.

[6] First, under section 118(2) of the New Zealand Property Law Act 1952, which applies in the Cook Islands by virtue of section 637 of the Cook Islands Act 1915, the question whether to grant an application for relief against forfeiture of a lease is in the discretion of the Court. In exercising the discretion, the Court will take into account a wide range of relevant matters affecting the interests of the lessor and the lessee. A recent example of the exercise of the discretion is the decision of

the New Zealand High Court in *Taste of Asia Ltd v Hillcrest Properties Ltd* [2020] NZHC 2081.

[7] Second, bearing in mind that the Appellant conceded in the High Court that the lease was forfeit, it was clearly open to Savage J to exercise the Court's discretion under section 118(2) and to decline the Appellant's application for relief against forfeiture.

[8] Third, it was equally open to the Appellant to lodge its appeal and for the parties to enter into settlement discussions as they did. They were also entitled to reach a settlement which included an agreement by the Respondent lessor that relief against forfeiture should now be granted.

[9] Fourth, bearing in mind the equitable nature of the discretionary relief sought and the change of circumstances since the decision of Savage J in the High Court, in particular the fact that the parties have now negotiated a settlement which includes the agreement of the Respondent lessor to relief against forfeiture being granted, we are satisfied that it is appropriate for the Court of Appeal to make the orders now sought by the parties by consent.

[10] Finally, as we consider the decision of Savage J was legally valid when it was made, we have decided that the orders made in the High Court should now be “quashed” rather than “annulled”. Order B as sought by counsel for the parties in their joint memorandum of 17 June 2021 has been changed to reflect this approach which recognises that it is the change of circumstances since the decision of Savage J which justifies the Court making the consent orders.

Result

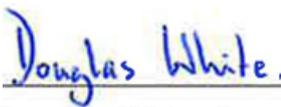
[11] For these reasons:

- (a) The appeal is allowed.
- (b) The orders made by the High Court (Land Division) in proceeding 495/19 and 317/20 on Thursday 8 October 2020:

- i. by way of declaration that the deed of lease dated 8 September 2003 insofar as it affects the Appellant's interest in the land (Lease) is at an end; and
- ii. that the Appellant's application for relief against forfeiture of the Lease is declined,

are quashed (by consent).

- (c) The Appellant is granted relief against forfeiture of the Lease pursuant to section 118(2) of the Property Law Act 1952 as that Act of the Parliament of New Zealand applies to the Cook Islands by virtue of section 637 of the Cook Islands Act 1915 in respect of a Notice to Forfeit served by the Respondent on the Appellant on 19 August 2019.
- (d) There is no order for costs.


Douglas White, P


Robert Fisher, JA


Raynor Asher, JA