

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

Application Nos 63/95 & 64/95

IN THE MATTER of **ARETUNA SECTION**
94A2A2, ARORANGI

AND

IN THE MATTER of a Deed of Sublease dated
6 June 1975 and a Deed of
Sublease dated 1 March 1976
both to **GORDON HENRY**
SAWTELL

AND

IN THE MATTER of an application by
STICKLAND TOURISM
DEVELOPMENT LIMITED
for an Order determining the
capital value of unimproved
land

DECISION OF DILLON J.

This is an application by Strickland Tourism Development Limited for whom Mrs Browne acts to review and assess the rental under two subleases for the periods commencing 1 June 1980, 1 June 1985; 1 June 1990; and 1 June 1995. Negotiations between the company as sub-lessor and Mr G.H. Sawtell as sub-lessee have been an ongoing affair since 1994. Mr Sawtell has made submissions and the Court has issued two Memoranda but still the review has not been completed. Mr Sawtell has offered a reviewed rental of \$200 for the period 1 June 1995; he has offered to surrender the lease of Lot 1 and then withdrawn that offer; he has had negotiations with some of the landowners in respect of Lot 1 which purport to affect the rental payable under that lease.

What seems to have been overlooked by Mr Sawtell is that his sub-lease is with Strickland Tourism Development Limited and not the owners of the land. That company must be involved with the owners if there is to be an amendment to the Lease of Lot 1 and the consequential sub-lease of Lot 1 to Mr Sawtell. Until such an amendment has been finalised this Court can only deal with the present existing sub-leases of Lots 1 and 2.

Mr Sawtell claims that Lot 1 is a cemetery and that such a restriction should exempt him from the normal provisions applied by this Court on rent reviews. The photographs produced by Mrs Browne do not support that claim by Mr Sawtell. He is making extensive use of Lot 1 as of course he is entitled to as sub-lessee.

This matter should not have been allowed to drag on for so long. Of course both parties are at fault for not applying to the Court to review the rent. As a result there are now four reviews to be undertaken.

However the issues are simplified by the rent for Lot 9 adjoining having been established. This section is leased by Westpac Banking Corporation; has an area of 1507m²; a frontage onto the main road of 28.59 metres; and an effective frontage clear of a grave and an EPS sub-station of 20 metres.

Mr Sawtell's comparative combined area is 1921 m²; a frontage onto the main road of 61.04 metres; and an effective frontage clear of graves of 33 metres. Mr Sawtell's sub-leases are in excess of the Westpac lease immediately adjoining both in area and main road frontage. There are on his sub-lease of Lot 1, 19 graves while on the Westpac Lot 9 there are 7 graves.

These sections are directly comparable and provide an appropriate scale to review the rental based on that fixed by the Court for the Westpac property. Accordingly the Court fixes the rental of Lots 1 and 2 as follows :

Lot 1 = 798 m², say 800 m²

Lot 9 = 1507 m²; say 1500 m²

	<u>Westmac Rental</u>	<u>Sawtell Rental</u>
As at 1 June 1980	\$100	\$53
As at 1 June 1985	\$150	\$80
As at 1 June 1990	\$200	\$107
As at 1 June 1995	\$300	\$160

Lot 2 = 1123 m², say 1120 m²

Lot 9 = 1507 m²; say 1500 m²

	<u>Westmac Rental</u>	<u>Sawtell Rental</u>
As at 1 June 1980	\$100	\$75
As at 1 June 1985	\$150	\$112
As at 1 June 1990	\$200	\$149
As at 1 June 1995	\$300	\$224

The capital value of the Lot 1 rentals are therefore as follows :

1 June 1980	\$1,060.00
1 June 1985	\$1,600.00
1 June 1990	\$2,140.00
1 June 1995	\$3,200.00

and the capital value of the Lot 2 rentals are as follows :

1 June 1980	\$1,500.00
1 June 1985	\$2,240.00
1 June 1990	\$2,980.00
1 June 1995	\$4,480.00

There is an order fixing the capital value for the 1 June 1980; 1985; 1990; 1995 respectively as set out above and the consequential rentals payable under the sub-leases of Lots 1 and 2.

Dillon J.

Dillon J.

8 June 1998