

IN THE HIGH COURT OF THE COOK ISLANDS
HELD AT RAROTONGA
(Land Division)

NO: 2/2000

IN THE MATTER OF Cook Islands Act 1915 Section 390A

AND

IN THE MATTER OF Part Pokoinu Section 107D
Avarua

BETWEEN Tekura Veiatua Hoff

Applicant

AND Emily Fallon

Respondent

Mr Mitchell for Applicant

Mrs Browne for Respondent

Judgment of the Chief Justice

Dated the 26 day of September 2001.


1. This application to revoke an Occupation Right granted to the Respondent was made to the Court as long ago as 14 March 2000. It concerns a Right granted on 25 September 1998. It arises from a difference among the members of the family who are the landowners as to whether the land in question should be occupied by the Applicant or the Respondent. The matter was recently referred again to Smith J. who has presented his report dated 7 September 2001. I accept his findings and recommendations but it is appropriate that I give my judgment with some detail based on the accepted facts and the findings of the Judge.
2. The starting point of the matter is the Applicant's proceedings to summon a meeting of owners to resolve that a lease be granted to her. That meeting was held on 20 May 1998 and the resolution was passed as recorded by the Recording Officer. Application was made to the

Leases Approval Committee on 28 May 1998 and was heard by it on 19 June 1998. Mrs Browne then appeared to oppose the application on the grounds that the meeting of owners had not complied with the provisions of section 45 of the Land (Facilitation of Dealings) Act 1970, the Act. The meeting was adjourned without decision.

3. On 5 August 1998 Mrs Browne on behalf of the Respondent filed an application for an occupation right over largely the same piece of land as the land in the lease to the Applicant. Then on 21 August 1998 the Applicant filed proceedings in the Court for a declaration that the meeting of owners was validly held and conducted.
4. The Respondent's application came before the Court on 25 September 1998. The Occupation Right was granted. There was no appearance by the Applicant but the Judge, Dillon J, was made aware of the fact that there had been an objection by the Applicant at the time the Respondent was trying to obtain the family's consent to her occupation of the land. The Respondent's application for the Occupation Right was consented to by all the landowners including that of the Applicant's father. The Judge seems not to have been made aware of the Applicant's proceedings in support of her lease.
5. Those proceedings came to a hearing on 25 March 1999 before Dillon J. He reserved his decision but before delivering it, regrettably, the Judge died. The proceedings were further delayed by the death of McHugh J. It was not until 21 October 1999 that Smith J gave his decision validating the meeting of 20 May 1998. The lease was approved by the Leases Approval Committee on 22 November 1999. The lease has not been confirmed by the Court under the Act and no steps have been taken to obtain that confirmation.
6. This present application under s.390A was begun on 14 March 2000. It was referred to Smith J for consideration and report. His first report was challenged by Mrs Browne on behalf of the Applicant. After further consideration it was referred again to the Judge. In the meantime there have been hearings in the Court about this matter on a number of occasions in which evidence has been given in a somewhat piecemeal fashion in clarification of the facts and the true intentions of the landowners. It is only now after the full consideration and inquiry by Smith J that the true position has been revealed.
7. The real difficulty in this case has arisen from two main causes. The first was the apparent contradiction in the family consent to the lease and the family consent to the Occupation Right. Both could not stand and there seemed at an earlier stage to be a change of mind by the family preferring the Respondent after accepting the lease to the Applicant. The second was the failure to inform the Court of the full extent of the objection and the parallel proceedings by the Applicant at the time the Occupation Right was granted.
8. Having read the transcript of the evidence, which has been led in the various hearings, I agree with Smith J that the likelihood is that there was confusion in the minds of the family members when they gave consent to the lease to the Applicant. It seems clear enough that the family was of the mind to allow the Respondent to occupy the land in question and that intention predated the proposal for the lease. The family has been of the mind that the Applicant have occupation of another part of the whole. It is not then a question of change of

mind and withdrawing from the resolution made at the owners' meeting but rather a matter of a misunderstanding of what was being decided.

9. I accept the conclusion of Smith J that if the full facts had been known to Dillon J as they are now known that Judge would have made the same order granting an Occupation Right to the Respondent Emily Fallon as was granted on 25 September 1998. The application to cancel that Right is refused and formally dismissed. I reserve the question of costs. Counsel may make submissions thereon if required.



L M Greig CJ