

SG:ZA

320


Waiotahi Corres.

31 August 1967

District Land Registrar,
Lands & Deeds Office,
Private Bag,
GISBORNE.

REGISTRATION OF MAORI TRUST MORTGAGE
WAIOTAHU 19A 2B

1. We have received a request from Messrs Bunkall, Clay & Company, Solicitors, Opotiki, to forward a Certificate under Section 461 of the Maori Affairs Act 1953 to enable them to register a mortgage in favour of the Maori Trustee.
2. The solicitors' client in this case, has only a leasehold interest in the block. He is not an owner.
3. The solicitors have advised that you would be prepared to register the mortgage of the lease without the lease itself being registered. Would you please confirm that the Maori Trustee's mortgage can be registered in this case.


(S. George)
for Registrar

See 373

*See folio 315 & 313
attached to the mortgage*

2/4 22/9/67.

Private Bag
XXXXXXXXXX
Telegraphic No. 4810

L. & D. 21



In reply please quote:

Dept. of Maori Affairs
RECORDS
13 SEP 1967
CLERK
ROTORUA

DEPARTMENT OF JUSTICE

The Land and Deeds Registry Office.

GISBORNE,

11 September 1967.

The District Officer,
Department of Maori Affairs,
Private Bag,
ROTORUA.

REGISTRATION OF MAORI TRUST MORTGAGE
WAIOTAHU 19A 2B.

Your Ref: Waiotahi Corres.

Our Ref: 1 - 13

Your memorandum of 31 August 1967 refers. This matter has already been the subject of much correspondence between this office, Messrs Bunkall, Clay & Company and your Department. I would like to refer you to a memorandum from the previous District Land Registrar, Mr B.C. McLay, dated 14 July 1967 and also your reply dated 20 July 1967. Ref. M.T.5/658 (Mr H.J. Graham).

I would submit that only if a Court certificate under Section 461(2) of the Maori Affairs Act 1953 is forwarded to this office can a mortgage be registered against the certificate but the mortgagors must be the persons named in the Court Order as being the owners entitled to a share(s) or interest(s) in the land.

I am of the opinion that a Court Order under Section 461 would not be available to Mr Harvey's client who is a mortgagee of an unregistered lease because of the provisions contained in sub section 6 of Section 461.

Sub section (6) provides that no instrument can be registered against the Court Order except those specified in paragraphs (A) (B) (C) and (D).

The section is mandatory and does not permit a lease to be registered against the Court Order; it must follow, therefore, that a mortgage of an unregistered lease cannot be registered against the land either.

If the lessee has had title in the land transmitted to him by Court Order pursuant to Section 461(6)(c) of the Act then I would suggest that the mortgagee could register his mortgage against the original Court Order but not otherwise. I must, therefore, decline to accept registration of the mortgage in the light of present circumstances.

I have forwarded a copy of this memorandum to Messrs Bunkall, Clay & Co. for their information.

Your further comments would be appreciated.

ms Graham

*please give me memo 2 copies
this confirms our understanding of the position
13/9/67*

*Yours faithfully,
[Signature]*

Assistant Land Registrar.

18 September 1967

Department of Justice,
Land & Deeds Registry Office,
Private Bag,
GISBORNE.

REGISTRATION OF MAORI TRUST MORTGAGE - WAIOTAHAI 19A 2B

1. Thank you for your memorandum of 11 September 1967. Your clear and precise views on this matter are appreciated, and we are in full agreement with them. Under the circumstances it would appear that survey of title is necessary in order that the mortgage of the leasehold of Waiohahi 19A2B may be registered.


(H. J. Graham)
for Maori Trustee

Messrs Bunkall, Clay & Company,
Barristers & Solicitors,
P.O. Box 21,
OPOTIKI.

Dear Sirs,

Copy for your information.

Yours faithfully,


(H. J. Graham)
for Maori Trustee

Mr. Parata

Miss Pegg

*To note - refer folios 315, 320 & 323
No action required by us*

19/9/67