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IN THE COURT OF APPEAL OF THE COOK ISLANDS

CA2/92

IN THE MATTER of the Arbitration Act 1908

BETWEEN	**MAINLINE BROWN CONSTRUCTION (PACIFIC) LIMITED** First Appellant
A N D	**DAVID BROWN CONSTRUCTION LIMITED** Second Appellant
A N D	**ISLAND HOTELS LIMITED** Respondent

Hearing: Counsels' Memoranda of 4th & 30th September, 29th October, & 17th & 24th November 1992

Counsel: Mr G. Christie for Appellants
Mr G.B. Chapman for Respondent

ORDER OF ROPER C.J. RE COSTS

On the 18th June 1991 Mr John D. Sutherland, Architect of Auckland, issued his 80 page award on a building dispute concerning additions to the Edgewater Hotel in Rarotonga which is owned by the Respondent.

In the result Mr Sutherland held that $214,922 was owing to the Respondent after allowing the appellants $109,452 in respect of claims on which they succeeded.

The Appellants then applied to the High Court for an order setting aside the award or remitting it to the Arbitrator for reconsideration. The grounds advanced were errors of law on the face of the award and misconduct by the Arbitrator because of inconsistencies in his findings. The application was heard by Chilwell J. in Auckland on the 17th, 18th & 20th February 1992. In a detailed judgment, which covered a variety of issues, some of them complex, he found against the Appellants on every issue and reserved the question of costs.

The Appellants then appealed to this Court and the Respondent cross appealed. Both appeal and cross appeal dealt with only one issue but an important one, for the sum awarded the Respondent under it was $119,700. The appeal was heard on the 16th July 1992 and in our judgment of the 6th August we dismissed the appeal and in effect allowed the cross appeal, which only had the effect of maintaining the status quo.

The question of costs on the appeal was again reserved with a direction that "memoranda be presented to the Chief Justice". It is accepted that I should fix costs both for the hearing before Chilwell J. and the appeal.

Counsel are poles apart on the issue. Mr Chapman submitted that $15,000 would be an appropriate order, being $10,000 for the High Court hearing and $5,000 for the Court of Appeal; while Mr Christie has suggested $5,000 in total on the ground that an award amounting to something like $5,000 a day in

the Cook Islands jurisdiction would be unheard of. I do not agree that $5,000 per sitting day is necessarily the scale proposed by Mr Chapman because I imagine a good deal of detailed preparation was necessary particularly for the High Court hearing. However, I do agree that those who elect to act or appear for residents of island communities cannot expect New Zealand main centre scales of costs, although in fairness none of the parties in this case is truly representative of the Cook Islands community.

Mr Christie further submitted that some guidance could be obtained from the fact that Dillon J. fixed $10,000 as security for costs, which said Mr Christie, "he must have considered to be the maximum possible that could be ordered against the Appellants in regard to the High Court and Court of Appeal hearings". It is clear from Dillon J.'s order that the $10,000 was security for the appeal only which does not help Mr Christie's submission.

This was no minor matter. There were some fairly difficult issues and a considerable sum at stake and I conclude that an award to the Respondent of $12,000 would be appropriate and I so order.

The Respondent is also to have disbursements (if any) as fixed by the Registrar.

Sir Clinton Roper C.J.
4 Dec 92

Solicitors for the Appellants - Mr C. Mitchell & Co., Rarotonga, as agent for J.G. Ross, Whangarei
Solicitors for the Respondent - Clarkes, Rarotonga