

IN THE HIGH COURT OF THE COOK ISLANDS
HELD AT RAROTONGA
(CIVIL DIVISION)

MISC NO. 28/07

BETWEEN **PENDARVES LIMITED** a duly
incorporated company in
New Zealand having its
registered office at
148 Victoria Street,
Christchurch, New Zealand.
Plaintiff

AND **MATIRA SOUTH FISHING**
LIMITED a duly incorporated
company under the laws of
the Cook Islands having its
registered office in Rarotonga
Defendant

Miss L Vakalalabure for Plaintiff

Date: 13 September 2007

ORAL JUDGMENT OF WESTON J


1. On 13 April 2007, the Plaintiff issued proceedings against the Defendant company. Judgment was sought in the sum of approximately \$17,700.00 plus interest. Various causes of action were alleged. Amongst other things, it was alleged that the Defendant company had received the fish bait which forms the basis of the amount claimed due. Reference was also made in the Statement of Claim to a letter dated 16 June 2006 and an obligation undertaken pursuant to that letter including the payment of an installment on 31 August 2006.

2. The Statement of Claim was served upon Mr Garnier as is recorded in an affidavit sworn of 11 June 2007. No steps were taken by the Defendant company. On 29 June 2007 Fisher J made orders that the Defendant file particulars within 14 days. The Defendant was given notice of this order by way of an email on the same day. Again, there was no response.
3. The Plaintiff then took steps to have the matter set down for resolution by way of formal proof. Notice of the hearing date for today was sent to Mr Garnier by way of email.
4. I direct that the Plaintiff lodge an affidavit giving formal proof of the notification to the Defendant as I have summarized above. My judgment is based on unsworn evidence before me although I am satisfied that such notice was given. My order as above is made simply to tidy up the record.
5. This morning Miss Vakalalabure appeared before me. She tendered an affidavit from Mr Hudgell who lives in Auckland, New Zealand. He formally deposed as to the matters set out in the Statement of Claim. The amount of the claim has now reduced and is \$15,559.85. In addition, a sum of \$649.53 is sought by way of interest.
6. I called for and was shown a copy of the invoice that was issued some time in 2006 and which is the invoice referred to in paragraphs 11 and 12 of Mr Hudgell's affidavit. I also called for and received a copy of the letter dated 16 June 2006 which is referred to in paragraph 14 of that affidavit. The date in that

affidavit is incorrect, but plainly, is intended to refer to the letter of 16 June 2006.

7. On the basis of what I have seen, I am satisfied that the Defendant company is liable to the Plaintiff in the amount claimed and set out in Mr Hudgell's affidavit. I believe the format of the claim as recorded in the Statement of Claim is in parts flawed, but the essence of the claim is spelt out there.
8. It seems to me that the Defendant company has had the benefit of the fish bait and, moreover, has accepted a responsibility to pay for it and has indeed paid \$2,000 towards the outstanding cost. In my view, these facts are sufficient to establish its liability. Moreover, I am conscious that the Defendant has had the opportunity of defending this claim and appearing before me and setting out any contrary position. It has chosen not to do so.
9. Consequently, there shall be judgment for the Plaintiff against the Defendant in the sum of \$15,559.85 together with interest of \$649.53. Both of these amounts are denominated in New Zealand dollars. The Plaintiff is also entitled to costs. Costs of \$500 are payable by the Defendant to the Plaintiff.
10. Miss Vakalalabure has also asked that I make an order that interest continue to run on the judgment debt until payment. As I understand the High Court Rules, interest automatically runs on the judgment sum at 10%. Therefore, it seems to me that a formal order is probably not required. However, in case it is and

for the avoidance of doubt, I make an order that there be interest on the judgment at 10%.

 Judge ✓ J