

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

PLAINT NO. 9/2007

BETWEEN **AUSTRALIA AND NEW ZEALAND**
BANKING GROUP LIMITED a
duly incorporated company
having its registered office at
Rarotonga
Plaintiff

AND **OPEURA SAMUEL T/A CAFÉ**
OMARA of Auckland, New
Zealand, Occupation
unknown.
First Defendant

AND **MAIATA SAMUEL T/AS CAFÉ**
OMARA of Auckland, New
Zealand, Occupation
unknown.
Second Defendant

Mr Little for Plaintiff
Date: 13 September 2007

ORAL JUDGMENT OF WESTON J

1. In February 2007 the Plaintiff issued proceedings against the First and Second Defendants in relation to an overdrawn cheque account they had incurred whilst running the Café Omara in Muri. At that time, the information available to the Plaintiff was that the two Defendants (who are cousins) had left Rarotonga and were living somewhere in New Zealand.
2. An order for substituted service of the proceeding was made by Hingston J on 28 February. In terms of that order, a notice was

given in the New Zealand Herald on two occasions and the details of that are set out in an affidavit on the file dated 30 April 2007. There was no response to that advertising program.

3. More recently, the matter came before Nicholson J and in a minute dated 26 June 2007, he set out the procedure to be followed by the Bank from this point onwards. He took the view, with which I agree, that the matter should now proceed by way of formal proof and that was the basis upon which the matter came before me this morning.
4. In order to assist the Court, Mr Little for the Plaintiff bank had provided an affidavit of Junior Teiotu in support of the judgment claim together with a memorandum. The various amounts that are sought were updated this morning. As at today, the outstanding amount of the cheque account is \$25,826.50. In addition, Mr Little has incurred legal professional cost totaling \$1546.90 and disbursements of \$684.65 which include the advertising costs.
5. Mr Teiotu was called to give evidence. He confirmed his affidavit. I am satisfied that the amounts set out above are properly owing by the Defendants to the Plaintiff bank.
6. Mr Teiotu gave evidence that in recent times, and subsequent to Nicholson J's minute, the bank learned of a telephone number for the Second Defendant. On 18 July Mr Teiotu rang the Second Defendant and spoke to her. He knows her personally because they previously shared a part-time job at the Pacific

Resort in Rarotonga. While she did not identify herself on the telephone, he recognized her voice, and he then had a discussion with her about the outstanding amount. He said she did not deny that amount. He told her that unless arrangements were made, the bank would be seeking judgment against the defendants. He told me that she did not appear to be alarmed by that news. Certainly she did not deny liability or make any assertion that causes me any doubt as to the propriety of entering judgment on the basis of substituted service.

7. For the reasons set out above, I now enter judgment in favour of the Plaintiff against the First and Second Defendants jointly and severally in the sum of \$25,826.50 together with costs of \$1,546.90 and disbursements of \$684.65.

Judge

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