

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

**MISC. NO 66/08**  
**PLAINT NO. 85/2008**

**BETWEEN** **BROWNE GIBSON HARVEY PC**  
a limited liability professional  
corporation of barristers and  
solicitors carrying on business at  
Rarotonga  
**Applicant**

**AND** **COOK ISLAND LODGES LIMITED**  
a duly incorporated company having  
its office at Avarua, Rarotonga  
**First Respondent**

**AND** **MR & MRS KORLENDER,**  
Directors, Ruatonga, Rarotonga  
**Second Respondent**

Mrs Browne for Applicant  
Mrs Korlender in person  
Date: 8 October 2008

**ORAL DECISION OF WESTON J**

1. This afternoon I have had before me an application brought by the company Browne Gibson Harvey PC which is still in existence for the purpose of recovering debts owed to that firm. The firm has issued two proceedings, one being a Mareva Injunction application in 66/08, and the second being a Statement of Claim in 85/08. Both of these raise the same issue and the second proceeding, that is, 85/08, effectively incorporates the Mareva Injunction application. For the record, I note that the Mareva Injunction application came before me when I was in New Zealand and I declined to address it at that time, reserving it for hearing when I was here in this sitting. As a result of that, the matter was brought before me today together with the substantive proceeding seeking judgment in the sum of \$44,554.84.

2. This matter must be dealt with in some urgency because Mr and Mrs Korlender must leave the Cook Islands in the short term. Mrs Korlender has asked the Court to accommodate this state of affairs by ensuring that all proceedings involving her and her husband are determined. As a result of this the Court has enabled a number of proceedings involving Mr and Mrs Korlender to be determined and I have already addressed several of these today. There is one downside to this urgency. That is, I have been required to deal with a number of matters more quickly than might otherwise have been desirable. Nevertheless, I am confident I have reached clear views on the matters I have addressed.
4. When the proceeding 85/08 was issued a short while ago, it cited two defendants. First of all, the company, Cook Island Lodges Limited, and, secondly, Mr and Mrs Korlender personally.
5. Following the hearing of the Mareva Injunction before me when I was in Christchurch, the Plaintiff company filed a memorandum seeking to withdraw the claim against Mr and Mrs Korlender and in paragraph [6] the reason given was that the company was the appropriate party to be sued. This is consistent with the earlier proceeding brought in this Court under number Misc. 76/06 where the company was cited as the defendant. That proceeding was discontinued in April 2007 because Browne Gibson Harvey believed there was no money available to satisfy any judgment and for that reason they discontinued. That discontinuance does not prevent this subsequent proceeding.
6. The three invoices that are the subject of this claim were presented to the Court as Collective Exhibit A. The first of these is in the amount of \$37264.13, is dated 26 April 2004. The second for \$1832.00 and is dated 20 July 2004 and the third for \$5458.75 and is dated 23 June 2005. All of them were made out to the company.

7. Mrs Korlender has given evidence that none of these was sent to her. I have heard the evidence from Mrs Browne whereby she said that these were sent to the directors of Cook Island Lodges at their usual address and were sent in the ordinary course of business. I am thus faced by a direct conflict of the evidence. On the one hand, Mrs Korlender says she never received these until a subsequent order was made by Nicholson J. On the other hand, Mrs Browne says they were posted to her on the relevant dates. I park that dispute for the moment. I do not need to resolve it as I shall explain.
8. The facts as I have set them out so far would suggest that the First Defendant company is the party liable for these fees. That is consistent with the memorandum most recently filed on behalf of the Plaintiff. However, I have heard evidence from Mrs Browne that some 20 or 25 hours were spent in relation to personal attendances. I have also heard evidence from Mrs Korlender who accepts that some attendances related to her and her husband's affairs. That suggests they are personal obligations which might be payable by them personally.
9. Because this matter has proceeded urgently, I do not believe I am in a position to resolve the claim so far as it concerns the company, Cook Island Lodges Limited. I have no doubt that that company owes some amount to the Plaintiff but I am not presently confident that I could determine exactly how much. I know that the former Chief Justice reviewed fees in a disciplinary setting and concluded that all of the fees were properly charged. That would suggest that some or all of those accounts could be recovered from the First Defendant, Cook Islands Lodges Limited.
10. As matters have developed today, the focus has come on whether Mr and Mrs Korlender owe anything personally. The commercial reality appears to be that the company does not have any assets and any judgment against that company would be barren. For that reason I put

it to the parties that I would adjourn the claim against the First Defendant sine die to allow it to be brought on with leave to the Court. The parties have no opposition to that course and in relation to the claim against the First Defendant, I adjourn it sine die. It may be brought on with five days notice but in order to protect the interest of Mr and Mrs Korlender, who will not then be in the country, I direct that any such notice be given to me so that I can ensure that their interests are taken into account.

11. I now turn to any claim against the Second Defendant. On the basis of Mrs Browne's evidence, the greatest amount of such claim can be for \$5,000.00 with a range somewhere between \$4,000-\$5,000. I need to balance that against the invoices and the other matters that I have already addressed above whereby it was said that the company was liable for these attendances.
12. I take judicial notice of the fact that it is common for invoices to be sent to one party that might reflect some minor attendances providing to another. That is often a convenience and may also reflect the instructions of the client or the tax position of the client. And in the present case, I am faced with a claim in effect that Browne Gibson Harvey rendered services to Mr and Mrs Korlender personally, but billed those attendances as part of larger accounts sent to the company.
13. I have read the narrations to those accounts and heard evidence. I am satisfied that there were some minor attendances rendered to Mr and Mrs Korlender permanently. I believe that I should err very much on the conservative side in assessing what those might be. Mrs Browne says they fall in the range of \$4,000-\$5,000. There is, however, no exact material before me. While I accept her assessment was honestly made, I would prefer to err on the side of caution. I enter judgment against Mr and Mrs Korlender jointly for the sum of \$2,000.00

representing the amount that I believe properly relates to their affairs.  
In all the circumstances, there will be no order for interest.

14. I now invite any submissions there may be in relation to the question of costs. Having heard submissions I propose making no order for costs. Of course, if the claim against Cook Island Lodges Limited is ever brought on the question of costs will still be live in relation to that claim.

**Weston J**