

IN THE HIGH COURT OF THE COOK ISLANDS

HELD AT RAROTONGA

CIVIL DIVISION

PLAINT NO. 43/98

BETWEEN COOK ISLANDS DAIRY

FOODS LIMITED a duly
incorporated company having its
registered office at Rarotonga
and carrying on business as
general merchants.

Plaintiff

AND PORTOFINO PACIFIC

LIMITED a duly incorporated
Company having its registered
office at Rarotonga, trading as
Portofino Restaurant.

Defendant

Mr McLaughlan for Plaintiff.

Mr Manarangi for Defendant.

Date: 28 May 1999

JUDGMENT OF QUILLIAM CJ

The Plaintiff claims \$28045.09 being the balance of an account between it and the Defendant to whom goods were supplied over a period in this connection from the 31st July 1994 to 31st March 1998.

The Defendant admits there is an amount owing but says it is less than the amount of the claim. The Defendant has filed a Confession of Judgment of \$15,000 which has not been accepted. Unfortunately the case is marked by a lack of proper accounting procedures on both sides. The Defendant has complained that it asked many times for statements to be supplied of the account and had never received them. But the Defendant itself seems to have been more at fault and has simply not kept proper records at all.

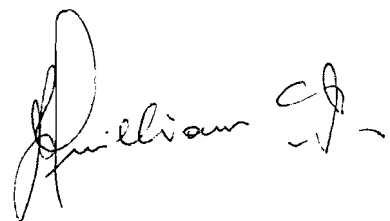
For the purposes of this evidence the Plaintiff had its accountant, who has quite impressive accountancy qualifications, prepare a statement. This statement listed all the invoices relating

to the Defendant for the period concerned and set out also payments received. It is acknowledged for the Defendant that for all practical purposes this statement is accurate and that is the obvious and significant starting point for a consideration of this case. The Defendant has been given the invoices upon which that statement is prepared and does not assert that there is any discrepancy in the statement compiled from them. The Defendant says that it was constantly told to calculate the amount owing from its own record, but it was plainly unable to do that because it had almost no records.

On 4 September 1996 the Defendant paid the Plaintiff \$3712 and believed that that left nothing owing. This is of course where the differences between the parties starts because the Plaintiff's records show an amount owing, if that was paid, of \$16713. One can only wonder at how such a wide discrepancy can be achieved in the time the parties had been dealing together.

As I have indicated it is obvious that the best evidence I have is the Plaintiff's statement which the Defendant has not been able to say is inaccurate. There is a possibility of some discrepancy in this statement in the form of omissions from it and the Defendant says that in particular it omits credit for at least two payments made in cash totalling \$3500 for which unfortunately the Defendant did not bother to obtain receipts. In the event of this being the case it is not possible to arrive at a precise figure but I am bound to say that the Plaintiff's evidence is more nearly right than the Defendant's. In this situation I must do the best I can on the balance of probabilities.

Making what I consider to be reasonable allowance for what I consider discrepancies, which there may well be in the Defendant's claim, I find for Plaintiff for \$22,500 and it is therefore entitled to cost according to scale and disbursements and witness expenses as fixed by the Registrar and together with interest of 8% as from 2 April 1998 which was the date on which the Plaintiff's statement was presented.

A handwritten signature in black ink, appearing to read "William J. J." with a stylized flourish at the end.