

IN THE HIGH COURT OF THE COOK ISLANDS

HELD AT RAROTONGA

(CIVIL DIVISION)

PLAINT NO: 30/02

**BETWEEN COOK ISLANDS TRADING
CORPORATION LIMITED**

Incorporated company,

Rarotonga

Plaintiff

AND URITAU BENIONI

Company director of

Rarotonga

Defendant

Mr Trevor Clarke for Plaintiff

Mr Benioni in person

Date of hearing: 29 November 2002

Date of Decision: 29 November 2002

DECISION OF GREIG CJ

This is a claim for the price of goods and material sold to the Defendant by the Plaintiff. The amount of the sale and purchase was \$5208.45. The Defendant had no personal credit arrangement with the Plaintiff, but a company that he was associated with did have such a credit arrangement. That was a credit arrangement that was personally guaranteed by the Defendant.

The goods and the material were invoiced through the company but clearly the goods were sold, purchased and delivered to the defendant and he was liable to pay the amount for that. He did not pay the amount and has not

paid the amount in spite of some discussions with Mr Clarke the Chief Executive of the Plaintiff.

There can be no doubt that the Defendant is personally liable for the amount of the claim. He claims that he is entitled to some kind of discount or setoff because a building was moved by another contractor, Mr Mangakahia, through property that is owned by the Defendant. It appears and it is not in dispute that that removal was at the behest of the Plaintiff. The Plaintiff contracted with the contractor to do the job. It seems that the contractor thought that he could do it more cheaply by taking a short cut through the Defendant's land.

There seems to have been some discussion between those two to confirm that the Defendant owned the land but it is not suggested that at that stage there was any discussion as to recompense or payment for the privilege of going across the land.

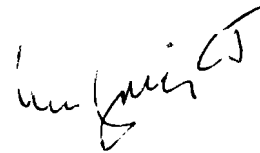
The Defendant tells me that a few days later, he found the building on his land and when he spoke to the contractor, the contractor put him off suggesting that he go and see the Plaintiff. Ultimately the building was removed from the Defendant's land and re-installed elsewhere.

The Defendant says that there was some damage to his land as well as, what is a technical trespass across his land. The Defendant had some further discussions with this contractor and in the upshot he says that the contractor agreed to move a building of his from one place to another at no cost. But in fact the contractor having moved the Defendant's building has presented him with a charge of \$430. The Defendant has refused to pay that saying that he is not liable to pay it.

On the material before me it may be that the Defendant has a claim against the contractor who trespassed across his land but it does not seem to me that

he has any real claim against the Plaintiff on this matter. In any event that is is an entirely separate arrangement and matter. It is not truly a matter that could be setoff assuming in any event that there is any claim beyond say the \$430 or thereabouts that the Defendant claims that he has now had the benefit of.

As I say the Defendant is liable and there can be no grounds for allowing any discount or setoff in this matter. There will therefore be judgment for the Plaintiff against the Defendant in the sum of \$5208.45. There will be in addition interest at the rate of 7% per annum on the amount of the judgment calculated from the date upon which this claim was commenced, namely, 2 October 2002. The Plaintiff is entitled to the cost, not solicitors cost but the expenses, Court costs and other necessary expenses including the witnesses fee.



CHIEF JUSTICE