

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

**PLAINT NO. 3/2010**

**BETWEEN**            **TOREA LIMITED**  
                                 Plaintiff

**AND**                    **MAETRADE COOK ISLANDS LIMITED**  
                                 First Defendant

**AND**                    **TAIRIATA TANGIANAU MAEVA**  
                                 Second Defendant

Hearing  
(In Chambers):      6 September 2010

Counsel:              L Rokoika for Applicant  
                                 No appearance for Defendants

Judgment      :      6 September 2010

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**JUDGMENT OF HUGH WILLIAMS J**

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Solicitors:

L Rokoika, Browne Harvey & Associates, Avarua, Rarotonga ([law@browneharvey.co.ck](mailto:law@browneharvey.co.ck))

Copy:

T Maeva, New South Wales, Australia [maetrade@mbox.com.au](mailto:maetrade@mbox.com.au)

[1] This is a proceeding which was commenced on 17 March 2010 seeking recovery by the plaintiff, Torea Limited ("Torea"), of the balance of the purchase price of a business sold by Torea to Maetrade Cook Islands Limited, the first defendant, the performance of which was guaranteed by the second defendant, Tairiata Tangianau Maeva ("Mr Maeva").

[2] The first defendant was served on 18 March 2010 in Rarotonga and the second defendant on 24 April 2010 in New South Wales. The proceeding being for a simple contract debt, it could be served outside the Cook Islands without leave.

[3] Although the Court file may be incomplete it seems Torea applied successfully for an order requiring both defendants to file and serve a full statement of defence. That appears to have been granted by David Williams CJ on 13 May 2010, after an application for substituted service had been abandoned because personal service had been effected.

[4] Neither defendant has taken any steps in the proceeding despite the Chief Justice's order. Ms Rokoika, counsel for Torea who has been in touch with Mr Maeva recently, says her understanding is that Mr Maeva, who is now in Australia, does not intend to defend the claim. He was aware of the order to file a statement of defence when Ms Rokoika emailed him to that effect on 14 May 2010.

[5] The case is formally set down to be called on Wednesday 8 September 2010, but the hearing has been accelerated because of difficulties with the ongoing criminal trial currently in progress.

[6] Ms Rokoika has filed an affidavit of formal proof setting out all the necessary details on which judgment can be granted. Accordingly, whether the application for judgment is regarded as based on the failure by either defendant to file a statement of defence or whether it is based on formal proof for lack of any steps, the appropriate course is to grant the plaintiff judgment against the defendants for the sum set out in the affidavit of formal proof of \$192,932.00, together with interest at

8 percent from 15 July 2010 to 6 September 2010 and at 10 percent from 6 September 2010 to the date of payment.

[7] The plaintiff is entitled to costs in the sum to be advised by memorandum, including costs of the interlocutory steps and service.

[8] Because of the public date of the fixture the sealed order is to lie in Court and not to issue prior to 9 September 2010.

A handwritten signature in cursive script, appearing to read 'H Williams', is written in black ink. The signature is positioned above a horizontal dotted line.

**Hugh Williams J**