

**CHARLES LITTLE**

v

**DAVID PRATT**

Date: 17 March 2015

Counsel: Mr Ben Marshall for the Plaintiff  
No Appearance for the Defendant

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**MINUTE OF THE HONOURABLE MR JUSTICE HUGH WILLIAMS**

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[1] This is a claim by the Plaintiff for \$2,042.66 being the balance of a loan of \$3,000 made by the Plaintiff to the Defendant Mr Pratt, to enable him to purchase a motorcycle. The arrangement was that this was a loan to be repaid in instalments, but the defendant has breached that arrangement by not making the agreed instalments and has left the Cook Islands for New Zealand.

[2] When he was served in New Zealand with the summons and statement of claim, he made a remark to the process server evincing a determination not to meet the balance of his debt to the Plaintiff. As a result, the Plaintiff issued these proceedings and had them served in New Zealand.

[3] When the defendant took no step an Order was made by the Court requiring the defendant to serve a statement of defence within a fixed period. That Order was served on

the defendant, the fixed period has expired and he has made no payment on account of the outstanding balance.

[4] There will be accordingly be judgment by default for the Plaintiff against the defendant for the sum claimed, \$2,042.66, plus interest at the code rate of 10% on that sum, from the date of entry of judgment to the date of payment.

[5] The only difficulty in this case relates to the question of costs. The Plaintiff is a partner in the firm of Solicitors which has been acting for him in the claim. The sum charged to him for acting on his behalf in this matter by his firm substantially exceeds the head sum of claim. As at today's date including Mr Marshall's appearance to obtain judgment, the sum charged to the Plaintiff is \$4,426.33.

[6] This is not a claim where indemnity costs should be allowed. It simply does not fit the criteria for indemnity costs which are usefully itemised in the New Zealand High Court rules, and require no rehearsal.

[7] Similarly, an order for costs in civil proceedings should be a reasonable recovery by the Plaintiff but should not be akin to a punishment against the defendant for his breach of contract.

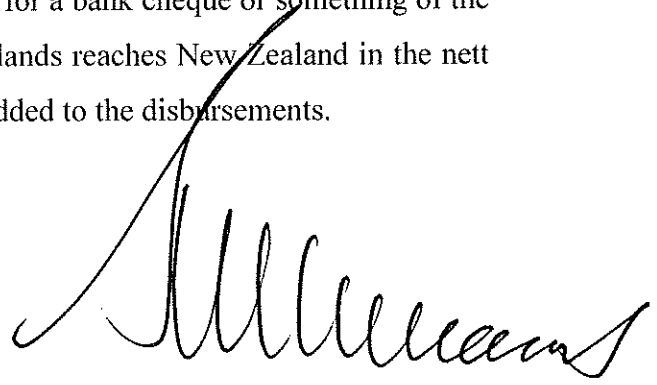
[8] It also need to be borne in mind that the Plaintiff, presumably a profit-sharing partner in the firm of Solicitors acting for him, is likely to benefit personally from any order for costs which creates a profit for his firm, that is to say is in excess of the office expenses proportion of the Solicitor's firm's accounts.

[9] On the other hand the defendant cannot complain justifiably at a substantial Order for costs forming part of the judgment against him as he has treated the claim with indifference and has put the Plaintiff to the choice of either abandoning the debt or suing for the debt and incurring substantial expenses by way of Solicitor's fees process server's fees and the like in order to recover the sum claimed, even though that sum is a relatively modest amount.

[10] In the circumstances, even though it exceeds the head sum of the claim a reasonable allowance for costs would be \$2,900, approximately two thirds of the amount charged to the Plaintiff by his firm to date, plus disbursements.

[11] Those disbursements should include the amount charged to the Plaintiff by the High Court for fees on the filing of the various documents lodged to date. If VAT is payable in addition to those fees - which seems unlikely - it should be added.

[12] The Plaintiff is also entitled to recover the process server's fees. The three accounts to date appear to total \$957. If those accounts have incurred VAT on the funds or GST in New Zealand, those amounts should be added to the fees charged by the process server and similarly, if the bank has charged a transmission fee or for a bank cheque or something of the like in order to ensure the amount paid in the Cook Islands reaches New Zealand in the nett amount charged, the bank's additional fees should be added to the disbursements.

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

**Hugh Williams J**