

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

PLT: 2/2015

**BETWEEN**

**BANK OF THE COOK ISLANDS  
LIMITED** a duly incorporated company  
having its registered office in Avarua,  
Rarotonga and carrying on business  
there as Bankers  
(Plaintiff)

**AND**

**CHRISTOPHER RAUAU TOROHIA  
ALLAN MOETAUA** of Auckland, New  
Zealand  
(Defendant)

**Date:** 20 March 2015

**Counsel:** Mr Ben Marshall for the Plaintiff  
No appearance for the Defendant

**Minute:** 20 March 2015

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**DECISION OF HUGH WILLIAMS J**

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[1] By way of Statement of Claim issued on 22 January 2015, the Plaintiff Bank sought Judgment against the defendant Mr Moetaua for \$4315.56 plus interest for his breach of a loan agreement under which he borrowed \$4912.00 on 24 September 2012.

[2] Mr Moetaua now resides in Auckland New Zealand and was served with the proceedings plus the supporting affidavit, an application for Entry of Judgment, submissions of counsel and Notice of Hearing. All of that taking place on 10 March 2015.

[3] The defendant has taken no steps but the necessity for an application being made for Entry of Judgment arises from the fact that the Cook Islands Code of Civil Procedure makes no provision either for default judgments or for

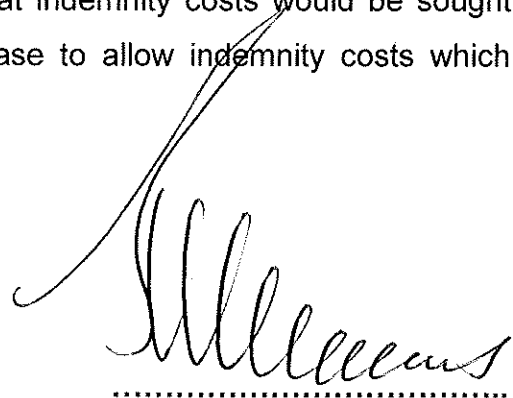
summary judgment and accordingly the rather tortuous procedure opted for in this case has to be followed.

[4] There being no appearance and no excuse offered or any defence put forward on the part of the defendant, there will be Judgment for the Plaintiff against the Defendant for the sum owing as at today's date of \$4554.25 plus interest from the date of judgment to the date of payment at 10%.

[5] In relation to costs, one of the difficulties that arises in cases in cases such as this is that the litigation required and the steps necessarily undertaken particularly where a defendant is no longer in the Cook Islands, ensure that the costs charged to the Plaintiffs are often a significant proportion of the head sum of the claim. That is the case in this instance.

[6] Mr Marshall, for the Plaintiff seeks indemnity costs. Indemnity costs are provided for in the loan agreement between the parties after demand has been made. It was suggested to Mr Marshall that the prayer for relief in claims of this sort should recite the claim for indemnity costs, with the service of the statement of claim thus constituting a demand in terms of the loan agreement.

[7] However, in this case the service of the various documents mentioned on Mr Moetaua included notification to him that indemnity costs would be sought and accordingly it is appropriate in this case to allow indemnity costs which currently amount to \$3541.20.

A handwritten signature in black ink, appearing to read 'H Williams', is written over a horizontal dotted line. The signature is fluid and cursive.

**Hugh Williams J**