

MARINE SERVICES LTD -v- THE OWNER OF THE SHIP "CLASSIQUE"

Solomon Islands Court of Appeal

(Palmer J.)

Civil Appeal Case No. 8 of 1992

Hearing: 5 November 1992

Judgment: 9 November 1992

J. C. Corrin for the Applicant

T. T. Kama for the Respondent

PALMER J.: This is an application under Notice of Motion under Rules 8 and 11 of the Court of Appeal Rules 1983 for an Order that:-

1. The Notice of Appeal be struck out for failure to comply with Rules 8(2) and (3) of the Court of Appeal Rules.
2. Alternatively that the Appellant give an undertaking to the Court that he will consent to the registration of Judgment in New Zealand subject to liberty to apply to have the same set aside should the appeal succeed.
3. Further and alternatively that the Appellant give security for costs.

The matters raised in Rule 8(2) are defects in form. That rule requires that the form shall be in Form A. The Notice of Appeal was titled "In the High Court of Solomon Islands" which is not correct. There are other errors in the use of standard words prescribed in Form A.

Mr Kama for the Appellant explained that the errors were inadvertent and must have occurred when his instructions were passed on to the New Zealand firm of Solicitors & Barristers processing the application. He did undertake however to correct the errors should the appeal be allowed to proceed. I accept his explanation and undertaking.

Under Rule 8(3) it was submitted by Ms Corrin that her client was not served within 7 days as required by that rule.

The Notice of Appeal was filed on the 4 September 1992, but she was not served for and on behalf of her client until the 21 September 1992, some 17 days after.

She sought to press the point that the Appellant since 1990 has been trying all possible means to frustrate the Respondent in the pursuit of its claim.

Mr Kama on the other hand raised the point, that no Registrar was available (the post has been vacant since June 1992) to grant any extension of time even if he had intended to apply for one. He pointed out that the usual practice when such notices were filed was for the Registrar to send the notices back before service would be effected on the other party. This did not happen and so the delay arose. He argued that the appeal should not be struck out because he did not have the opportunity to lodge an application to the Registrar for extension of time, and could not have done so in the absence of a Registrar. He argued it would be unfair on his client. He also explained that he did attempt to have the case listed before the Court of Appeal sessions in August but was advised by the Assistant Registrar that only appeals that have been included in the list for that week will be heard and nothing else.

He also pointed out that there is a substantial issue for determination which has not been settled, the question of the quantum of damages. I accept his explanations and submissions.

This Court should be allowed to consider the merits of the grounds of appeal raised by the Appellant and not be penalised unnecessarily for mere defects in form and defaults in time especially when justifiable reasons have been given.

The delay has not been excessive, nor the defects serious. There is also an issue on quantum, the basis of this appeal which has not been satisfactorily resolved.

I have heard the submissions of Ms Corrin on the need for security and especially when it is her client's view that the grounds of appeal do not stand much chance of succeeding. The main area of contention clearly is the quantum of damages.

Some sort of value has been placed by the Judgment Debtor, the Appellant, on his boat at a figure of \$NZ233,423.00. This is disputed by the Respondent.

Ms Corrin pointed out that the insurance value of the boat was \$NZ700,00.00. Using that basis, 20% would be \$140,000.00 (NZ). This is still well above the AUD85,000.00 Judgment given. In paragraph 13 of the Affidavit of Lois Carol Holmes, a Solicitor of the Appellant, he gave a value of \$560,000.00. Again 20% of this comes to \$NZ112,000.00.

If the lower figure of \$NZ233,423.00 as submitted by the Appellant is used, then 20% of that is approximately \$NZ47,000.00. This figure is vigorously disputed by the Respondent who made reference to such spurious deductions as the value of the defendant's time of \$128,000.00. It is clear the Appellant will have to pay some money. The submission by Ms Corrin therefore for security for payment to be deposited in Court is justified.

I have perused the oral judgment of Judge Barker in the High Court of New Zealand, noting in particular the second order of his judgment.

I also note that there has been considerable expense incurred by the Respondent in the pursuit of this claim, since 1990.

Accordingly, I make orders as follows:

- (i) The application to strike out the Notice of Appeal is denied.
- (ii) A security of \$NZ20,000.00 must be deposited with the Court within 28 days from today's date. (This is additional to the \$NZ25,000.00 that this Respondent will be required to pay as ordered by the High Court of New Zealand.
- (iii) A security for costs of \$15,000.00 (S.I.) also must be deposited within 28 days.
- (iv) Costs of this application to be paid by the Appellant. Failing these, the Notice of Appeal will be struck off.

(A. R. Palmer)
JUDGE