

WILSON WONG -v- CHIN FOOT HAP and ERIC EREKALIA

High Court of Solomon Islands

(Palmer J.)

Civil Case No. 134 of 1991

Hearing: 14 December 1992

Judgment: 7 January 1993

F. Waleilia for the Plaintiff

T. Kama for the First Defendant

C. Ashley for the Third Defendant

PALMER J: This is an application by summons dated 19 November 1992 and filed on the 20 November 1992 on behalf of the Plaintiff for orders inter alia that the Defendant's defence be struck off for failure to comply with the order made on the 7th October 1992 requiring the Defendants to file an affidavit of all documents relating to ownership of the fishing gear affected in this litigation.

The consent order made on the 7th October 1992 stated at paragraph (2) that an affidavit of documents be filed "..... *relating to the fishing gear which the Plaintiff was alleged to have stolen*.....".

The Plaintiff's list of documents were filed on the 10 January 1992. The Second Defendant's list of documents were filed on the 6 January 1992. Whilst the Third Defendant filed his list of documents on the 6 December 1991.

Since then on the 27th March 1992, the First Defendant filed another list of documents, but this time with a different solicitor acting for him.

The Plaintiff relies on order 33 Rule 21 for the defence to be struck out.

There has been a failure to file an affidavit of documents by the defendants as requested.

However, there is no evidence before me that the Defendants are deliberately withholding documents. With regards to documents relating to the fishing gears, the First Defendant has specifically stated at paragraph 4 of the First Defendant's List of Documents filed on the 27 March 1992, that ".....*he has had, but has not now, in his possession of power the documents relating to the matters in question set forth in the Second Schedule*.....".

The Second Schedule states:-

"All documents in the possession of May Sea Food Company Ltd relating the fishing gears."

What is clear is that those documents relating to the fishing ears are in the Company's premises and that they can be obtained or inspected from the Company's Office.

What the Plaintiff however is seeking under the consent order is that an affidavit of the *Specific documents* relating to the fishing gears, which had passed through the hands of the Defendants be filed. That is, what particular documents did at one stage relating to the fishing gears pass through their hands.

It seems to me that the specificity of the details required under the consent order may have been misunderstood.

Accordingly, the proper order is not to strike the defence off but to issue a fresh order for direction that within 14 days the First and Third Defendants respectively file an affidavit of the list of the specific documents relating to ownership of the fishing gears that may at one stage have passed through their possession, and if none to say so.

I understand that this may be more of an exercise of the memories of the Defendants, but there should at least be some records hopefully to indicate what those documents were. These documents are not in the possession of the Defendants and therefore not necessary to order inspection.

This case shall therefore be listed for hearing on application by the Plaintiff within 14 days thereafter and after a certificate of readiness and estimated length of trial and other requirements under Order 38 Rule 3 have been complied with.

Costs in the cause.

Orders accordingly made.

(A. R. Palmer)

JUDGE