

**SOLOMON ISLANDS NATIONAL PROVIDENT FUND BOARD -V- JERRY TUMURI AND EREMA TUMURI**

High Court of Solomon Islands  
(Palmer ACJ)

Civil Case Number 195 of 2001

Hearing: 11<sup>th</sup> April 2002  
Judgment: 22<sup>nd</sup> April 2002

**Mrs. Titiulu for the Plaintiff**  
**A & A Legal Services for the Defendant**

**Palmer ACJ:** The Plaintiff's claim was for the repayment of \$95,000-00 ("the Principal Sum") lent to the Defendant under a loan agreement entered into on or about 6<sup>th</sup> September 1996. The loan was for a period of 20 years at an interest rate of 6%. It was to be repaid in monthly instalments of \$810-00. As security for the loan the Defendants covenanted to have their perpetual estate in Parcel Number 192-009-39 ("the Property") registered as a charge to secure repayment of the money lent. The Plaintiff says that the Defendants have defaulted in their loan repayments and now come to court for judgement of the amount outstanding as at 17<sup>th</sup> July 2001 plus interest at the rate of 6% until payment and for orders *inter alia*, for the sale of the Property. The sum originally claimed in the Statement of Claim filed on 9<sup>th</sup> August 2001 was \$197,634-17 as at 17<sup>th</sup> July 2001. By an Amended Statement of Claim, filed 31<sup>st</sup> January 2002, this was changed to \$98,831-90.

The Amended Statement of Claim was served on the Defendants on 13<sup>th</sup> February 2002. The Defendants were required to file Appearance within 14 days thereafter, which is by 28<sup>th</sup> February 2002. They failed to do so. On 7<sup>th</sup> March 2002, the Plaintiff filed Notice of Motion for leave to enter judgment against the Defendants for failure to enter appearance. This came before this Court for hearing on 11<sup>th</sup> April 2002.

In the meantime, Defendants sought to file appearance on 9<sup>th</sup> April 2002 and a summons seeking *inter alia* the dismissal of the Notice of Motion of the Plaintiff filed 7<sup>th</sup> March 2002. Defendants have also filed an affidavit in support sworn by their Counsel, Mr. Ashley and a draft defence and counter-claim.

The primary issue before me is whether leave should be entered for judgment against the Defendants for default of appearance. In order for the Defendants to succeed in their summons to overturn the Notice of Motion of the Plaintiff and to be given an extension of time to enter appearance, they would need to explain reasons for the delay in entering appearance and to demonstrate that they have a viable defence on the merits.

Have the Defendants offered any explanation for the delay in filing appearance? Respectfully no. The Defendants have failed to offer any explanation for the delay in entering appearance in the affidavit of Mr. Charles Ashley filed 11<sup>th</sup> April 2002.

As to the question of a viable defence, the Defendants rely on the draft defence attached to the affidavit of Charles Ashley marked as Exhibit "CKA5". The Defendants rely on the insurance policy taken out with Solomon Mutual Insurance Limited ("SMI") as somehow affording them a defence from the legitimate claim of the Plaintiff for moneys lent and not repaid according to the terms of the loan agreement. With respect, that cannot be so. The loan agreement was not made with SMI. The Insurance Policy taken out

by the Defendants over the Property was obviously made under a separate insurance agreement with SMI. It had nothing to do with the Plaintiff. The Plaintiff was not a party to that insurance agreement and therefore no action can lie against it. Any breaches or anything to do with the insurance agreement would have been a matter between SMI and the Defendants. The insurance agreement therefore cannot be used as a defence or an excuse for not paying up what is owed under the loan agreement. Plaintiff is not accountable to the Defendants for the insurance contract. Whether recovery can be made from that insurance contract or not makes little difference to the existence and enforcement of the loan agreement by the Plaintiff.

In reality the Defendants did not deny the existence of the loan agreement though what was disputed was the actual amount outstanding. Plaintiff says amount outstanding as at 17<sup>th</sup> July 2001 is \$98,831.90 whilst the Defendants say amount outstanding is only \$58,000-00.

In my respectful view the Defendants have failed to explain delay as well as demonstrating that they have a viable defence to the claim of the Plaintiffs. Accordingly I am not satisfied that the order sought for leave to enter judgment should not be granted. Leave is granted to enter judgment for the Plaintiff. However, in view of the disagreement as to the amount of loan outstanding, I will adjourn this matter to chambers hearing to allow the Plaintiff prove the amount that it claims is outstanding in its Statement of Claim. This case is therefore adjourned and to be listed for hearing by the Registrar of High Court in 14 days time. Any affidavits intended to be used for that hearing is to be filed within 10 days. The Plaintiff shall have his costs in this application.

#### **ORDERS OF THE COURT:**

- 1. Grant leave to enter judgment for the Plaintiff against the Defendants for the relief sought in their Amended Statement of Claim filed 31<sup>st</sup> January 2002.**
- 2. Adjourn question as to the amount of the loan outstanding to chambers hearing.**
- 3. Any affidavits intended to be used for that hearing to be filed within 10 days.**
- 4. The matter to be listed for hearing by the Registrar of High Court within 14 days or as soon as thereafter.**
- 5. The Plaintiff shall have his costs in this matter.**

**THE COURT**