

DEVELOPMENT BANK OF SOLOMON ISLANDS-v-FRANK HARRY DONGA

HIGH COURT OF SOLOMON ISLANDS
(Mwanasalua, J.)

Civil Case No. 106 of 2003

Date of Hearing: 5th May 2005
Date of Ruling: 18th October 2005

D. Nimepo for the Plaintiff
No appearance for the Defendant

RULING

Mwanasalua, J: The Plaintiff applies by Summons filed 5th April 2005 for Orders inter alia that the defence of the Defendant filed 21st March 2005, be struck out on the grounds that it fails to disclose a defence known to law.

Facts

On 6th May 1994 and 8th March 1995, the Defendant obtained a total loan of \$281,680.00 from the Plaintiff. The interest rate was 14.35% per annum. As security for the repayment of the loan, the Defendant charged his interest on Parcel No. 191-001-164 in favour of the Plaintiff. The loan was to be repaid within ten years by monthly installments of \$4,525.00. The Defendant used this money to build and operate a Petrol Depot at Tenagai, near White River. The Defendant built the Petrol Depot on Parcel No. 191-001-164. He defaulted in making regular monthly installments. The principal and the interest on this loan stood at \$672,619.19 on 28th February 2003.

On 14th February 1997 and 5th January 1998, the defendant also obtained a total loan of \$248,293.00 from the Plaintiff to build his residential house. The interest on this loan was 18% per annum. As security for the repayment of this loan, he charged his interest on parcel No. 191-004-12 in favour of the Plaintiff. This loan was to be repaid within fifteen years by monthly installments of \$4,500.00. He built the house on Parcel No: 191-004-12 in Honiara. He also defaulted in making regular monthly installments on this loan. The principal and the interest on this loan reached \$685,839.30 on 28th February 2003.

As on 28th February 2003, the Defendant had a total debt of \$1,358,458.49 to the Plaintiff. The debt has continued to increase since the Defendant had virtually ceased to make any repayments.

The Plaintiff demanded the Defendant to repay the debt on 26th February 2002. The Plaintiff made a follow up demand to the Defendant on 12th March 2003. There were no payments received from the Defendant.

The Plaintiff commenced proceedings against the Defendant to recover the debts on the loans on 14th May 2003. On 20th January 2005, the Plaintiff obtained a judgment in default of appearance against the Defendant. On 18th March 2002, that default judgment was set aside for irregularity. The Defendant filed his defence on 21st March 2005.

Defendant's Defence

The Defendant raised frustration of the contract as a defence to the action. That is to say, that he used cash earned from his Petrol Depot to settle the monthly installments on the loans. His obligation to continue with the monthly installments was frustrated when his Petrol Depot was burnt down by arsonists during the ethnic tension.

This defence is known to law, in particular, in the law of contract. I have yet to hear submissions from Counsels on whether the burning down of the Petrol Depot could, in law, having regard to the terms of the loan contracts, frustrate those contracts. In the circumstances I do not think it would be proper to have the Defence of the Defendant struck out at this stage. The Plaintiff's application to strike out this Defendant's defence is refused.

Order of the Court

Dismiss Application.

THE COURT