

**SOLOMON ISLANDS NAVIGATION
SERVICES LIMITED (IN LIQUIDATION)**

V.

COMMISSIONER OF LANDS

High Court of Solomon Islands

(Palmer J)

Civil Case No: 30 of 1994

Hearing: 6/6/95

Ruling: 4/8/95

Thomas T. Kama for the Plaintiff

Charles Ashley for the Defendant

PALMER J: This is an application by way of summons filed on the 6th December, 1994, and amended summons filed on the 1st of May 1995, seeking an order pursuant to Order 27 Rule 4, of the High Court Civil Procedure Rules, for the Plaintiff's action to be struck out on the ground that the amended statement of claim did not disclose any reasonable cause of action.

The statement of claim filed on the 4th May, 1994 sought a declaration to the effect that the plaintiff was entitled to a grant by the Defendant of a Fixed-Term Estate for fifty years in respect of a land described as Parcel No. 191-041-232 Section VI/H Lot 2037. In the amended statement of claim filed on the 22nd of November, 1994, the plaintiff claimed inter alia, at paragraph 4 that by letter dated the 16th March, 1992, the Defendant offered a Grant of 50 years for a fixed-term estate in parcel 191-041-233 to the plaintiff. The plaintiff claims that there was acceptance of that offer and consideration duly paid by way of the premium for the Grant, registration fees, and stamp duty. The Grant Instrument was then executed by the plaintiff and returned to the Defendant for registration.

In paragraph 5, the plaintiff alleges that the Defendant had failed to register the Grant. In paragraph 6, the Liquidator of the plaintiff demanded on or about the 3rd June 1993, that the defendant register the Grant but the Defendant had refused to do so and directed that the premium, fees and stamp duty be returned to the plaintiff. The plaintiff therefore sought a declaration as set out in the original statement of claim, but with the correct parcel number stated; 191-041-233.

The main contention of the Defendant is based on the fact that the plaintiff company is in the process of being wound up, and on that ground it was decided that it was not appropriate to effect registration of the Grant. In support of this submission, the affidavit of Cherry Tanito filed on the 26th of April, 1995, was relied on by the Defendant.

In his submissions to this court, Mr Kama has raised an important issue, which would need to be addressed in full at the trial. Mr Kama argues that his client relies on the existence of a valid and legally binding contract, a Grant Instrument executed way back in 1992, as between the plaintiff and the Defendant. In the affidavit of Jeffrey Charles Deacon Moore, filed on the 17th May 1995, he deposes to the fact that there were at least three Grant Instruments that were prepared for registration. At paragraph 4 of his affidavit, he deposes that the failure to have the Grant Instruments registered was solely the responsibility of the Defendant.

There has been little said on the other hand from defendant's Counsel, as to the question raised as to the validity and enforceability of that Grant Instrument, executed way back in 1992. Instead, there has been a concession in the affidavit of Cherry Tanito filed on the 26th April, 1995, at paragraph 3, that the Grant Instrument had been processed for registration in mid 1992.

Mr. Kama has also referred to the provisions of section 107(2) of the Land & Titles Act, which provides for the recognition of such unregistered instrument operating as a contract.

I am satisfied there are merits in the statement of claim raised by the plaintiff based on a Grant Instrument executed in 1992, and which it then alleges operates as a legally binding contract between the parties. The proper course of action is to allow the matter to proceed to trial in the normal course, and allow the parties to adduce appropriate evidence in support of their case and to make all such necessary submissions as may be required.

Reference was made to section 327 of the Companies Act by Defence Counsel. Unfortunately, that appears to have been quoted out of context. The events which the plaintiff sought to rely on occurred well before the plaintiff went into voluntary liquidation; and secondly, the plaintiff has not yet been dissolved. One of the matters which the Liquidator is seriously considering, Mr. Kama submits, is whether to bring the company out of liquidation, as the company is currently solvent, and there is a possibility of it being sold.

I am not satisfied therefore that the submission that the amended statement of claim did not disclose any reasonable cause of action can be upheld, and accordingly it is dismissed with costs.

ALBERT R. PALMER

A. R. PALMER
JUDGE