

SOLOMON ISLANDS PORTS AUTHORITY -v- ATASI (PT. CRUZ SHIPPING)

High Court of Solomon Islands

(Awich, CHC)

Civil case No. 95 of 1995

Hearing: 25 May 1995

Judgment: 26 May 1995

A. Radclyffe for Plaintiff

G. Suri for Defendant

SAM AWICH, COMMISSIONER:

The defendant, Atasi (Pt Cruz Shipping) has brought two applications which were consolidated, in both it sought that the court orders that the writ of summons (unfortunately not dated), filed and issued on 30 May 1995 be struck out. The grounds were:

- a) that it "was endorsed, signed and issued contrary to Order 5 r2..."
- b) that the statement of claim indorsed does not disclose cause of action.

Order 5 rule 2 reads:

*"Writs of summons shall be prepared by the plaintiff or his advocate, and shall be written, typewritten or printed, at the option of the plaintiff"*

I take it that ground (a) was that the writ of summons was signed by a Mr H.J. Constantine, not the plaintiff.

It was not in issue that the name of the plaintiff cited in the writ of summons as Solomon Islands Ports Authority was wrong. It was simply the point that Mr Constantine's signature and describing himself thereunder as Secretary was insufficient. Learned counsel Mr Suri submitted that the company's seal ought to have been affixed to it. I understand that really to be a challenge to the authority of Mr Constantine to sign for the company, the plaintiff which of course cannot physically sign, it not being a natural person. The Port Ordinance, Cap 99 at s: 91 does clearly give authority to its employees to present cases on behalf of Ports Authority. It will be stretching words and meaning too far to say that the Authority may be represented during a case, but not in the signing of its case papers. The two cases cited, *Samson Poloso v. Honiara Consumers Coops 1988/89 SILR 16.* and *Guadalcanal Province v. Earthmovers Limited trading as Pacific Timber CC259/89* unreported, agree on one thing, namely that authority exists for those representatives to act for their entities, but not as of their right. The second case, *Guadalcanal Province v. Earthmovers Limited.* may have not put it in simple clear way

Where there has been challenge to authority to sign on behalf of a party, it is for that party to dispel that challenge unless burden of proof rests on the challenger. In this case, the adequate means to confirm authority of Mr Constantine would be to produce the resolution of the plaintiff company by which the plaintiff has decided and authorised the action, and authorised Mr Constantine to act. Companies act by resolution

and if there had been resolution on the case file, there would have been no merit in Mr Suri's argument. The court has not been availed that conclusive proof that the plaintiff has authorised the action and Mr Constantine to sign its case papers and present them. It may not be necessary to file resolution at commencement together with writ of summons, but once authority is challenged, resolution which normally would have preceded the filing of action and would be on company file, must be produced. For that reason I allow the application and strike out the writ of summons.

It is not necessary to decide the second question, but I shall do so briefly. Mr Suri submitted that the statement of claim does not disclose cause of action because the debt was alleged to have been incurred by one Thong Soon Lines, not the defendant. Mr Radclyffe does concede. I can only add that the defect is brought about because there is no description or sufficient particulars in the statement of claim as to how the defendant, Atasi (Pt. Cruz Shipping) becomes liable for debts incurred by Thong Soon Line. Mr Radclyffe submits that amendment would cure the defect. It does not appear so to me. Introducing vicarious liability or liability in agency would be introducing a new cause of action altogether, not just sufficiently particularising by amendment, the original one which is that the defendant incurred the bills now unpaid. I accordingly strike out the statement of claim and there being no other clause to disclose cause of action, the writ of summons must go with the striking out of the statement of claim.

Costs must follow cause, it is awarded to the defendant.

Dated this 26th day of May 1995.

(Sam Awich)

COMMISSIONER OF HIGH COURT