

DAVINIA BOSO -v-
BLUE SHIELD (SOLOMONS) INSURANCE LIMITED

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High Court of Solomon Islands
(Palmer J)

Civil Case No. 181 of 1996
Hearing: 21st August 1996
Ruling : 22nd August 1996

L.D. Tepai for the Applicant/Defendant
A. Radclyffe for the Respondent/Plaintiff

PALMER J. This is an application by Notice of Motion filed on 2nd August 1996 for an order under Order 12 Rule 17 of the High Court (Civil Procedure) Rules, 1964, to have the service of the Writ of Summons on the Defendant set aside, as not having been properly served.

The relevant rules governing the service of a writ of summons and other documents on a company is provided for in Order 9 Rule 8(2):

"In the absence of any statutory provision regulating service on a company carrying on business ...within the jurisdiction of the Court whether corporate or incorporate, service may be effected, by sending the writ or other document to be served, by prepaid registered post to the secretary or other corresponding officer at the registered or head office of such company, ...as the case may be, or by serving the writ or document on such secretary or corresponding officer personally of such office as aforesaid."

Mrs Tepai submits that the use of the above rule is confined to the situation where there is an "...absence of any statutory provision regulating service on a company:...." She points out that in the case of the Defendant, which had been incorporated under legislation, the Companies Act, one must by necessity refer to the provisions of that Act to ascertain whether service on a company is provided for. In this case, she stresses that section 370 of the Companies Act covers the situation on service of documents on a company. She also points out that the term "document" is defined in the interpretation section (section 2) of the Act to include "...summons, notice, order, and other legal process, and registers."

Section 370 of the Companies Act provides

"A document may be served on a company by leaving it at or sending it by post to the registered office of the company."

Mrs Tepai submits that pursuant to the statutory provisions of the Companies Act, service of the Writ of Summons was required to be effected, either by leaving it at the

registered office of the company or sending it by post to the same address of the company. The registered office of the Defendant, she points out, is at the Goh and Partners Office, PO Box 261, Honiara, located at the Victory Enterprises Building. The Writ of Summons had not been served at the said address. This is not disputed. It was served instead on the Defendants' Office located at the Second Floor of the Centre Point Building, Point Cruz. In other words, at the principal place of business of the Defendant in Solomon Islands. Learned Counsel submits that since service had not been effected in accordance with the statutory provisions of the Companies Act, that it was therefore bad and should be set aside. A number of case authorities had also been referred to by Counsel in support of her submissions that section 370 of the Companies Act excludes service by any other method.

Learned Counsel for the Plaintiff on the other hand, seeks to rely on the provisions of the Interpretation and General Provisions Act 1978, section 46(1)(d) as covering and validating the method of service used by the Plaintiff. Is this correct? Does the relevant provision referred to above (section 46(1)(d), of the Interpretation and General Provisions Act 1978, apply to the provisions of the Companies Act (section 370)? In order to answer this question, we would need to turn to what in my view is a crucial section in the Interpretation and General Provisions Act 1978: section 2(b).

"This Act applies to the interpretation of and otherwise in relation to -

- (a) - not relevant
- (b) any other Act made before the commencement of this Act, except in so far as a contrary intention appears in this Act or the other Act; ... "

There are two important parts to the above section. The first part relates to the question of general application of the Interpretation and General Provisions Act to the Companies Act, whilst the second part deals with the question of exception. It is the exception that is of concern here, because if a contrary intention appears in either Act, then the Interpretation and General Provisions Act 1978 will not apply.

Section 46(1)(d) states:

" A document or notice required or permitted to be served on, or given to, a person under or for the purposes of an Act, may be served or given -

- (d) in the case of a body corporate, by leaving it at or sending it by post to the registered or principal office of the body corporate; "

The first part of paragraph (d) above pertaining to the service of the documents at the registered office of the company is in very similar terms to section 370 of the Companies Act. It is the alternative part relating to service at the principal office of the company that is in issue here, whether service is also effective if done through that way.

The question for consideration before this Court is whether there is any contrary intention to be found in either Act. What does the phrase "except in so far as a contrary intention appears in this Act or the other Act"? In Francis Bennion Statutory Interpretation, second edition, at page 405, the learned Author made the following statement

"The reference to 'the contrary intention' includes any divergence from the rule laid down, however minor. Where the interpretative criterion is not left to apply by itself 'the contrary intention' appears, even though (as sometimes happens) the criterion is only partially disappplied. In other words the phrase 'unless the contrary intention appears' really mean 'except where, and to the extent that, a different intention appears'."

In the circumstances of both sections, it is clear that the criterion in the Interpretation and General Provisions Act 1978, that is section 46(1)(d), is only partially applied in section 370 of the Companies Act. According to the statement of the above learned Author, Francis Bennion, I am satisfied that a contrary intention appears, in the circumstances of this case. That contrary intention is that whilst the Interpretation and General Provisions Act 1978 on one hand includes service on a company through the principal office of the company, the Companies Act does not permit that. It only permits service to be effective by and through the registered office of the company. The provisions of section 46(1)(d) of the Interpretation and General Provisions Act 1978 therefore do not apply, and the submission by learned Counsel for the Plaintiff therefore must be dismissed.

I am satisfied, the submission by learned Counsel for the Defendant, that section 370 of the Companies Act is exclusive and exhaustive, correct. I am also satisfied that the word "may" refers only to the two modes of service as prescribed in that section. I did mention that learned Counsel for the Defendant has referred to a number of case authorities in other jurisdictions to support her construction of section 370 of the Companies Act. I am satisfied that those case authorities do correctly support her submissions. The legislation in England, regarding service of documents on Companies is on very similar terms to our legislation. The cases mentioned in that jurisdiction, *Watkins v. Scottish Imperial Insurance Co (1889) 23 QBD 285*; *Pearks, Gunston & Tee Limited v. Richardson [1901] 1 KB 91*; and *Addis Ltd v. Berkeley Supplies Ltd [1964] 1 WLR 943*, all support such a construction of the provisions of the Companies Act.

I am satisfied, the service of the Writ of Summons on the Defendant in the manner effected by the Plaintiff in this case does not comply with the requirements of the Companies Act, and therefore must be bad, and should be set aside.

ORDERS OF THE COURT

- (1) Set aside the service of the Writ of Summons on the Defendant.
- (2) Consequentially, set aside all subsequent proceedings therewith.
- (3) Costs of this application to be paid by the Plaintiff.

ALBERT R. PALMER

A. R. PALMER
JUDGE