

**WESTPAC BANKING CORPORATION -v- HAN SIN CONSTRUCTION LIMITED**

HIGH COURT OF SOLOMON ISLANDS  
(F. O. KABUI, J.)

Civil Case No. 141 of 2001

Date of Hearing: 28<sup>th</sup> May 2002  
Date of Judgment: 30<sup>th</sup> May 2002

*Mr A. Radclyffe for the Plaintiff*  
*No appearance for the Defendant*

**JUDGMENT**

**(Kabui, J.)** The Plaintiff by Writ of Summons and Statement of Claim filed on 18<sup>th</sup> June 2001, claims against the Defendant the sum of \$271,471.45 plus interest and costs. The Plaintiff also asks for an order for the sale of Parcel Numbers 191-011-87 and 191-011-88 and for directions. The hearing of the Plaintiff's action was fixed for 28<sup>th</sup> May 2002 at 9:30 am. The Notice of Hearing was dated 1<sup>st</sup> May 2002. Counsel for the Defendant, Mrs. Tongarutu, did not appear in Court nor did a representative for the Defendant. At about 9:00 am, Mr. Pou, the Office Manager, showed me a letter dated 28<sup>th</sup> May 2002 written by Mrs. Tongarutu. He said Mr. Tongarutu, Mrs. Tongarutu's husband, delivered the letter to him. The letter was addressed to Mr. Pou in which she told Mr. Pou that she would like her case to be adjourned because she had malaria. She said she took chloroquine during the weekend but was not working on her so she took quinine a day ago. She said the quinine treatment was causing her dizziness, headache, and blurry vision and ringing sensation in her ears. She said she was therefore unable to represent her client to the best of her ability. Counsel for the Plaintiff who had in his possession a copy of that letter opposed any adjournment of his client's case. Counsel said that he did not regard the letter as a request for an adjournment because it was not addressed to the Registrar or to the Court. He said he did not believe that Mrs. Tongarutu was so ill that she could not attend Court. Alternatively, he said, she should have instructed her client to come to Court and seek adjournment. I ruled in favour of Mr. Radclyffe and allowed him to proceed in the absence of Mrs.

Tongarutu and her client. This is not the first time that Mrs. Tongarutu has done this sort of thing. She is notorious for writing last minute letters seeking adjournment on medical grounds. I did however take into account the fact that people do get sick from time to time but even if that is the case, proper arrangement would still need to be made for adjournment. What is to be done in such cases was contained in a circular letter written by the Registrar dated 13<sup>th</sup> August 2001, referenced RC/3/2001, addressed to all practitioners. Mrs. Tongarutu has no excuse for not knowing what to do. The fact that she was able to write her letter to Mr. Pou shows that she was able to move around. Why she wrote to Mr. Pou and not to the Registrar does show that she is still ignorant of the line of authority in the High Court Registry. The only point in her favour is that the letter might have been typed by Mr. Tongarutu, her husband. Even if that were the case, she would still have dictated it or written it to be typed on the computer. I did not believe that she was so ill that she was not able to do the correct thing in this case. It is interesting to note that she rang Mr. Pou again sometime after 9:30 am that same day to find out whether I had adjourned the case. Mr. Pou told her that the case had proceeded in her absence. She then put down the phone. She was clearly avoiding the Registrar. Mr. Pou is the Office Manager and not the Registrar of High Court nor the Registrar of High Court's deputy. I now turn to the facts of this case.

### **The Facts**

By an Agreement signed on 28<sup>th</sup> January 1997, the Defendant lent to the Plaintiff the sum of \$250,000.00 as a loan to be repaid with interest. The interest rate was 16.5% per annum. The loan was to be repaid by a monthly instalment of \$5,500.00. The first instalment was due on 28<sup>th</sup> February 1999. The security for the loan is a registered charge over fixed-term Parcel Number 191-011-50 plus unlimited guarantees by Lydia Yeo and James Yeo. Parcel Number 191-011-50 was subsequently subdivided into two Parcel Numbers being 191-011-87 and 191-011-88. A letter of demand was sent to the Defendant on 28<sup>th</sup> May 2001. The Defendant responded to that by letter dated 8<sup>th</sup> June 2001 in which, amongst other things, the Defendant told the Plaintiff that it was unable to repay the loan at that stage. The

Plaintiff by letter dated 11<sup>th</sup> June 2001, rejected the Defendant's re-arrangement proposals and insisted that the loan be repaid immediately.

### **The Defendant's Defence**

The defence filed on 24<sup>th</sup> July 2001 did not dispute liability for the loan. This was further confirmed by Lydia Yeo's answers to interrogatories filed on 26<sup>th</sup> March 2002. Order 23 rule 1 of the High Court (Civil Procedure) Rules 1964 "**the High Court Rules**" says that in actions for a debt or liquidated demand in money as prescribed in Order 3 rule 5 of the High Court Rules, a mere denial of the debt shall be inadmissible. The Defendant does not really have a defence in this case. (**See Solomon Islands Home Finance Limited Civil Case No. 91 of 2001**). The confusion that arose over the registration of Parcel Numbers 191-011-87 and 191-011-88 is not a defence.

### **Judgment for the Plaintiff**

There is no dispute that the Defendant had made some loan repayments towards the liquidation of the loan. However, this is not the point. The point is that the Defendant had failed to pay the instalment of \$5, 500.00 a month as agreed under the Loan Agreement. The outstanding balance brought forward as at 31<sup>st</sup> December 2001 was \$299,945.47. As at the date of trial, the sum stood at \$322, 313.93. The Defendant's loan liability has been increasing than decreasing. How can the Defendant say that it is not liable? The facts speak for themselves on this issue. I therefore enter judgment for the Plaintiff for the sum claimed plus interest. I also order that Parcel Numbers 191-011-87 and Parcel Number 191-011-88 be sold by a tender process subject to approval by the Court. The costs of the trial are to be met personally by the Solicitor for the Defendant under Order 65 rule 3 of the High Court Rules. The Plaintiff is of course entitled to its costs.

**F. O. Kabui**  
**Judge**