

**HIGH COURT OF SOLOMON ISLANDS**

**BEST DISTRIBUTORS AND SERVICES LIMITED -V- PREMIER  
OF GUADALCANAL PROVINCE, JAMES TETEA TUVA, WINNER  
PROPERTIES LIMITED AND THE REGISTRAR OF TITLES**

Civil Case No. 281 of 2003

Honiara: Brown PJ

Date of Hearing: 14<sup>th</sup> May 2003

Date of Judgment: 29<sup>th</sup> May 2003

John Sullivan for the Plaintiff  
James Apaniai for the First Defendant  
In person the Second Defendant  
Andrew Nori for the Third Defendant  
No appearance for the Registrar of Titles

Reasons for Decision

The plaintiff company sought relief, pursuant to Sections 139 and 157 of the Land and Titles Act (Cap 133) against the Premier's forfeiture of the plaintiff's lease of the vacant land in Honiara in August 2002 and consequent orders for rectification of the Land Register to have the company reinstated as lease owner.

The Cause was originally set down for hearing on the 24<sup>th</sup> April when, having regard to the fact that Mr. Sullivan for the plaintiff informed the Court that Mr. Presley Watts, a lawyer, had telephoned him to say that he had been consulted by Mr. Tuva, the 2<sup>nd</sup> defendant and that Mr. Tuva sought an adjournment, I stood the matter over to today. I particularly warned Mr. Tetea Tuva that his lawyer would need to appear on the next occasion, if he wanted to be heard, but that in any event, he would need to come to court. Mr. Tetea Tuva came today. He was not represented, he again asked for an adjournment for he said his lawyer was not available this morning. Well, at some point the convenience of the Court and the other parties had to be considered (especially since the cause had already been adjourned, for Mr. Tetea's convenience, at cost to all the other parties) so I refused the application, telling Mr. Tuva he could address me on the material that I heard later, when everyone had finished. He understood English.

He had filed no material, the case revolved about the actions of the Premier forfeiting the plaintiff's lease and the act of the Registrar of Titles accepting the forfeiture and subsequent registration of a fresh lease by the Province as Perpetual Estate holder to the 2nd defendant, and a sub-lease to the 3rd defendant, so the cause rested very much on documentary material. At the conclusion of the case for other parties, in an attempt to be particularly fair to Mr. Tetea, I asked him to tell me what he wanted to, having heard counsels argument. He then embarked on a history of his recollection of the land transactions back in 1992 whereupon Mr. Sullivan rose to object. I ignored his objection at first, but it quickly became apparent that the 2nd plaintiff was seeking to raise matters, which should properly be on oath. He was then sworn and recommenced telling me about his initial dealings over the land. Mr. Sullivan pressed his objection, for the case was closed, the evidence was heard and to allow (what in effect was a reopening) would cause the plaintiff harm, for he was not available, in Court to hear this evidence, and consequently Mr. Sullivan would be unable to properly address this new material.

It also sounded a warning, that the Court should prevent material, which offended the rule in *Brown -v- Dunn*. In the circumstances, since the 2nd defendant had already embarked on a story which addressed none of the plaintiffs material, I prevented the 2nd defendant from continuing, and asked him to resume his place at the Bar table.

With the assistance of Mr. Nori, who proposed a form of words, he was asked in pidgin whether he wished to respond to the arguments he had heard, and he again sought an adjournment so that "his solicitor could come".

I was somewhat bemused and nonplussed by the turn of events for despite offering a mistrial; all counsel agreed that I continue, on the material already before the Court. On reflection, my suggestion to abort the trial, was contrary to the interest of justice, for all the other parties would again, have had their interests subordinated to those of the 2nd defendant, who had been afforded every opportunity to put any relevant matters to the Court in accordance with the practice and procedure of the Court. The case proceeded by way of affidavits, yet without warning, I proceeded to hear viva voce evidence, after the case for all other parties had closed, and after final addresses.

To be blinded to the importance of being impartial, (while insisting on compliance with rules by those represented) by a misguided sense to favour an unrepresented litigant, who has had time and opportunity to obtain representation, had he wanted it, is a mistake by a judge. Tending to patronize a litigant, does not bode well for impartiality.

The case for the plaintiff

The plaintiff's case was clearly set out in the affidavit of Mr. Robert Goh, the secretary of the plaintiff company filed on the 18<sup>th</sup> November last and read without objection. I propose to reproduce the relevant parts, and describe the annexed document

2. *By lease dated 10 May 1993 and registered on 16 June 1993 the First Defendant as the owner of the perpetual estate granted a lease of Parcel No. 191-023-102/1 to the Second Defendant for a term of 50 years commencing on 1 January 1993.*

The lease of the fixed term estate dated 10 May 1993 to J. T. Tuva was registered, it appears from the photocopy lease, on the 22 July 1993. The lease of the FTE acknowledged receipt of the sum of \$10,000.00 for the grant, and yearly rent of \$2000.00 The lease provided for particular conditions in the second schedule.

The 2<sup>nd</sup> schedule provided:

1. The rent shall be revised every five years based on the unimproved value of the land.
  2. No consent shall be required from the Premier or the owner of the perpetual estate for the time being if the lessee decide to transfer, lease, sublease, charge or subdivide his lease of part.
  3. No development shall take place on the land without the prior approval of the appropriate Town and Country Planning Board.
3. *Parcel No. 191-023-102/1 was subsequently subdivided into a number of parcels including Parcel No. 191-023/136/1 ("the Land") and the lease was registered in respect of the Land.*

This Transfer, photocopied from the records of the plaintiff company, has not recorded details of the Registrar of Titles actions on registration. The details of the registration come from another copy document annexed to this affidavit, but the original of which is in the custody of the proper officer at the Honiara Land Registry. This other copy document is of the Lease Register, annexure RG13, which shows Best Distributors Services Limited as Entry No. 2 in the ownership section of the fixed term lease affecting parcel 191-023-136/1 ( the subject land).

The transfer document, in the 1<sup>st</sup> schedule, states “subject to the terms and conditions in the original lease agreement between Premier for and on behalf of Guadalcanal Provincial Assembly and James Tetea Tuva dated 10<sup>th</sup> May 1993.”

The transferor’s (J. T. Tuva) signature was witnessed by Becky Olofia, PO Box 261, Honiara, yet the certification or verification of execution, required by S.203 of the Lands and Titles Act to a transfer required to be registered (such was the case here) was by Robert Goh, Commissioner of Oaths, (the deponent in this affidavit before me) and the Secretary of Best Distributors Ltd, the plaintiff. The company seal was affixed in the presence of one signatory, the words, Director/Secretary having not been scored through to identify the office of the witness. Nevertheless, a transfer was subsequently registered and, in the absence of objection, the maxim *omnia praesumuntur rite esse acta* (it is presumed that the usual formalities have been complied with) must presume to apply. Certainly time has passed since the date of registration. The Registrar of Titles may well be faced with latches, now.

4. *By a transfer dated 23 May 1994 the Second Defendant transferred his lease of the Land to the Plaintiff, who was registered as lessee of the Land on 6 April 1999.*
5. *By a document entitled “Notice Before Forfeiture” dated variously 15 April 2002 on the first page and 13 April 2002 on the second page, the First Defendant purportedly gave notice to the Plaintiff claiming that:*
  - (a) *the transfer of the lease from the Second Defendant to the Plaintiff (ex.RG2) had been affected without the written consent of the First Defendant; and*
  - (b) *the Plaintiff was in arrears of rental of \$2000.00 per annum in that the last rent received from the Plaintiff was for 1995.*
6. *The Plaintiff was never served with a copy of ex RG3. The first the Plaintiff knew of the existence of ex. RG3 was when I received a handwritten letter addressed to me and the Plaintiff from the Lands Officer of the First Defendant dated 3 July 2002 asking that the notice of 15 April 2002 (i.e., ex. RG3) be ignored and referring to anew notice of 3 May 2002, but enclosing a new “Notice Before Forfeiture” in fact dated 3 July 2002. Now produced and shown to me and marked “RG4” and “RG5” respectively are true copies of the said letter and notice. On receiving exs. 4 and 5 I caused a search of the registry to be conducted and obtained a copy of ex.RG3. In accordance with the request in ex.RG4, I ignored ex.RG3.*
7. *As appears from ex.RG5, the First Defendant claimed substantially the same defaults as were claimed in ex. RG3.*

8. *By document entitled "Request for Rectification Before Forfeit" dated 5 July addressed to me and the Plaintiff, which was expressed to "supersede" ex.RG5, the First Defendant claimed a default in that the said lease was transferred by the Second Defendant to the Plaintiff without the consent of the First Defendant but no longer alleged that there was any arrears of rent. Now produced and shown to me and marked "RG6" is a true copy of that notice.*
9. *The Plaintiff has in fact paid all rent and as ex.RG6 was expressed to supersede ex.RG5 and as ex.RG4 had requested that ex.RG3 be ignored, I assumed that this was now accepted by the First Defendant and that arrears of rent were no longer alleged or in issue. It followed that the only default being alleged by the First Defendant was the lack of consent for the transfer of the lease to the Plaintiff. As appears from ex.RG1, the lease expressly states that such consent was not required and accordingly there could be no such default. I therefore did not respond.*
10. *By a letter dated 31 July 2002 to the Fourth Defendant copied to me and received on 6 August 2002, the First Defendant, relying on the lack of a response to ex.RG6, stated that he would be seeking forfeiture under s.115 of the Land and Titles Act (Cap 133). Now produced and shown to me and marked "RG7" is a true copy of that letter.*
11. *Accordingly I instructed my solicitors to write to the First Defendant, requiring ex. RG6 to be withdrawn and to the Fourth Defendants to request that no action be taken on ex.RG6. Now produced and shown to me and marked "RG8" and "RG9" respectively are true copies of letters from Sol-Law to the First Defendant and the Fourth Defendant dated 6 August 2002 and 7 August 2002 respectively.*

The letter to the Premier of 6 August 2002 deals with two mistakes, which Mr. Sullivan stated, invalidated the purported notice to rectify before forfeit. He referred to the 2<sup>nd</sup> Schedule of the original lease by the Premier to Mr. Tuva which recited that no consent from the Premier was required for a transfer by the lessee, and secondly, the period of 5 days allowed for rectification was unreasonably short. Mr. Sullivan, for abundance of caution, also pointed out that the lease rent payments had been made and were up to date. His second letter, to the Registrar of Titles was as follows:

*The Registrar of Titles  
 Ministry of Home Affairs  
 PO Box G15  
 Honiara*

Dear Sir,

**RE: PARCEL NO. 191-023-136/1**

*We act for Best Distributors and Services Limited, the registered lessee of the above parcel. We refer to the letter to you from the Premier of Guadalcanal Province dated 31<sup>st</sup> July 2002. We enclose a copy of our letter to the Premier dated 6<sup>th</sup> August 2002 and draw your attention to the Second Schedule of the lease.*

*In the circumstances we trust that you will take no steps to register any instrument of forfeiture without adequate notice to this firm. In the meantime we shall endeavor to get the Premier to accept our client's position, failing which our client will have to seek relief under s.139.*

*Yours faithfully*  
**SOL-LAW**

**John Sullivan**

*cc: Best Distributors and Services Ltd  
Premier, Guadalcanal Province*

12. *Notwithstanding that correspondence, by a document dated 8 August 2002 entitled "Notice of Re-entry", the First Defendant purported to re-enter and take possession of the land. Now produced and shown to me and marked "RG10" is a true copy of that notice. The Fourth Defendant registered exRG10 on the same date. I note that exRG10 purports to rely non-compliance with a notice dated 13 April 2002 (presumably ex.RG3 as there is no other notice bearing that date) notwithstanding that I was expressly told in ex.RG4 to ignore ex.RG3 and notwithstanding ex.RG7 refers to ex.RG6.*
13. *On the same date, 8 August 2002, the First Defendant purported to grant a fresh lease of the Land to the Second Defendant for a term of 50 years commencing 1 January 2002 at an annual rental of \$2000.00. Now produced and shown to me and marked "RG11" is a true copy of the lease instrument.*
14. *Earlier on 6 August 2002, the Second Defendant purported to grant a sub-lease of the Land to the Third Defendant also for a term of 50 years commencing 1 January 2002 for a grant premium of \$750,000. Now produced and shown to me and marked "RG12" is a true copy of the sub-lease instrument.*
15. *I am informed by Dennis Kwan of the Third Defendant and verily believe that the Third Defendant has so far paid only \$100,000.00 of the grant premium to the Second Defendant and that the Third Defendant has not yet entered into possession of the Land.*

16. *I say that for some years the Plaintiff has been trying to eject the Second Defendant from the Land and that this has been subject to litigation in Civil Case 332 of 1996. I say that both the First and Second Defendants were at all times aware that the consent of the First Defendant to the transfer of the lease to the Plaintiff was not required as it was an express term of the lease to which both were parties. I say that the various notices issued by the First Defendant were issued without any basis in fact and that there was no default as alleged and that the notices were issued for the improper purpose, to which the Second Plaintiff was a party and had notice, of depriving the Plaintiff of its leasehold interest in the Land and conferring the Plaintiff's interest on the Second Defendant so that the Second Defendant could profit by his dealing with the Third Defendant.*

When queried about the outcome of the civil case no.332/96, Mr. Sullivan said that it "petered out" in about 1998. I do not propose to consider that matter further, for it has not been raised in these proceedings for any other purpose. The latter part of this paragraph are matters which are properly objectionable and whilst the point was not taken by other counsel, Mr. Sullivan could not expect the court to accept the opinions on their face.

17. *Accordingly the registration of the lease to the Second Defendant (ex RG11) was obtained by fraud or mistake and the Second Defendant had knowledge thereof or caused such fraud or mistake or substantially contributed to it by his own, neglect or default.*
18. *Now produced and shown to me and marked "RG13" is a true copy of the Lease Register for the Land.*
19. *Now produced and shown to me and marked "RG14" is a true copy of the Sub-Lease Register for the Land.*

Both the lease and sub-lease copies are apparently from the source of the Registrar of Titles. The lease register shows, after the cancelled entry no. 2, that of Best Distributors Services Ltd as owner, a cancelled caveat entry (3) by Paul Yee, PO Box 398, Honiara, a cancelled re-entry by Premier of Guadalcanal Province with effect 8<sup>th</sup> August 2002 and lastly (5) that entry of James Tetea Tuva, Farmer of PO Box 1891, Honiara by transfer dated 8 August 2002 presented for registration on the 8 August 2002 and current. The sub-registry shows the sub-lease to the 3rd defendant, Winner Properties Ltd, PO Box 1818, Honiara (showing consideration of \$750,000) registered on the same day, pursuant to instrument dated 6<sup>th</sup> August 2002. Mr. Kwan for the 3<sup>rd</sup> defendant says only \$100,000.00 of the consideration has been paid. I mention this for later on I deal with the nature of the Registrar of Titles correspondence, and her urging to have the whole consideration paid by Winner Properties.

That, then was the evidence of the plaintiff, and Mr. Sullivan pointed to the filed affidavit of service of the process on the Registrar of Titles. I am satisfied service has been properly effected and consequently the court may make orders, if appropriate, affecting the Registrar.

It was also agreed by counsel that the land in question was vacant land and no one was in occupation.

I accept that state of affairs.

Mr. Apaniai said the Premier had no material for the Court.

Mr. Tuva had no material and Mr. Nori proceeded to read the affidavit of Dennis Kwan, the Managing Director of the 3<sup>rd</sup> Defendant company. His affidavit was short and I reproduce it here.

*I Dennis Kwan, of Honiara, businessman, MAKE OATH and say as follows:*

1. *I am the Managing Director of the Third Defendant Company*
2. *I purchased the land now under dispute based on advice I received from the Fourth Defendant, after having being approached many times by the Second Defendant.*
3. *Annexed hereto and marked "DK1" are a bundle of correspondences sent to me by the Fourth Defendant which I ask the Court to take into consideration.*
4. *I purchased the land for the sum of \$444,630.80*
5. *Consent for the Second Defendant's sub-lease to me was made by the Premier of Guadalcanal Province by letter dated 21<sup>st</sup> November 2001, which is annexed hereto and marked "DK2". The consent was specifically given in respect of the sublease to the Third Defendant.*

The annexure being those letters by the Assistant Registrar of Titles, Irene Vaukei are also reproduced in full and annexed to this judgment, to show the extent of her interest in the particular transaction involving Winners Properties Ltd. Apart from that letter dated 5<sup>th</sup> August 2002, they were hand written.

Then the Premier's letter of the 21<sup>st</sup> November 2001 was annexed, addressed to Mr. Tetea.



I then called upon Mr. Sullivan to address on the close of the defendant's cases even though the 3<sup>rd</sup> defendant had gone into evidence, a course which Mr. Sullivan was gracious to accept. He handed up an outline of the plaintiff's submissions.

The plaintiff comes by way of S.139 of the Land and Titles Act (Cap 133)

*S.139... The owner of an estate upon whom a notice has been served under section 138, or against whom the Commissioner is proceeding, by action or re-entry, to enforce his right of forfeiture, may apply to the High Court for relief, and the Court may grant or refuse relief, as the Court, having regard to the proceedings and the conduct of the parties and the circumstances of the case, thinks fit, and, if it grants relief, may grant it on such terms as it thinks fit, and may, under section 229, order rectification of the land register.*

Section 157 of the Act applies the provisions of both S.138 and S.139 to leases. Section 138 says:

*The Commissioner shall not be entitled to exercise the right of forfeiture until he has served on the owner of the estate and on every other person shown by the land register to be interested a notice –*

- (a) specifying the particular breach complained of; and*
- (b) if the breach is capable of remedy, requiring the owner to remedy the breach within such reasonable period as is specified in the notice; and*
- (c) in any case other than non-payment of rent, requiring the owner to make compensation in money for the breach, and the owner has failed to remedy the breach within a reasonable time thereafter, if it is capable of remedy, and to make reasonable compensation in money.*

[The Premier stands in place of the Commissioner in the legislation, having the Perpetual Lease estate]

Mr. Sullivan says that the notice specifying breach referred to in S.138 must relate the breaches to those of kind specified by S.155.

Section 155 (1) gives a lessor the right to forfeit the lease if the lessee commits any breach of, or omits to perform, any agreement or obligation on his part express or implied in the lease.

*The right of forfeiture may be –*

- (a) exercised, where neither the lessee nor any person claiming through or under him is in occupation of the land comprised in the lease, by entering upon and remaining in possession of the land; or*
- (b) enforced by action in the High Court.*

*The right of forfeiture shall be taken to have been waived if –*

- (a) the lessor accepts rent which has become due since the breach of the agreement or obligation which entitled the lessor to forfeit the lease or has by any other positive act shown an intention to treat the lease subsisting; and provided that the acceptance of rent after the lessor has commenced an action in the High Court under subsection (2) shall not operate as a waiver.*

Mr. Sullivan says that the plaintiff is entitled to relief against forfeiture by the Provincial Government because:

- i) there was no breach of the terms of the lease for the rent was paid and the Provinces consent to the sale of the FTE way not required since the original grant of the FTE to Mr. Kuva expressly waived, in the 2<sup>nd</sup> Schedule, the need for consent.
- (ii) the time nominated by the Province to rectify the alleged breaches was unreasonable.
- (iii) the lessor did not enter upon the land and remain in possession and
- (iv) there is no High Court order of forfeiture.

Mr. Sullivan goes on to say that the notice ultimately relied upon as founding cause for forfeiture, was that Premier's notice of forfeiture dated 15<sup>th</sup> April (exhibit RG3) despite the various substituted notices sent the plaintiff, including one asking the plaintiff to ignore that notice of the 15<sup>th</sup> April 2002. That notice alleged only one breach of the lease, the failure by the lessor, Mr. Tuva to obtain the Premier's consent to the transfer to the plaintiff.

The plaintiff therefore relies upon the express terms of the 2<sup>nd</sup> Schedule to the grant by the Premier of a FTE of 50 years to Mr. Tuva which specifically states that the Premier's consent is not required for a subsequent transfer, and says that there was no breach sufficient for the purposes of the notice.

He goes on to say that the Premier did not in fact, re-enter and take possession of the land despite his Notice of Re-entry dated 8<sup>th</sup> August 2002 (and registered on the same day) for the 2<sup>nd</sup> defendant purported to re-enter and take possession (for the sublease to the 3<sup>rd</sup> defendant was, by transfer dated two days earlier, registered on the same day as the Notice of Re-entry by the Premier.)

Clearly no power rested in the 2<sup>nd</sup> defendant on the 15<sup>th</sup> August to sublease the property by instrument, yet he purported to do so. Mr. Sullivan also pointed to the 5 days allowed by the notice to comply sent by the Premier as wholly unreasonable.

It was obvious that the Premier had no intention of giving consent. On the 21<sup>st</sup> November 2001, the Premier wrote to James Tetea in the following terms (DK7).

*James Tetea  
PO Box 941  
Honiara*

*Ref: LOT 107 PN 191-023-102/1*

*Date: 21<sup>st</sup> November 2001*

*Dear Sir,*

**CONSENT TO TRANSFER LOT 107 PN 191-023-102/1**

*Thank you for your letter dated 21/11/01.*

*Your request for consent to transfer your lease interest is hereby granted.*

*Please help the office of the Premier informed of the progress as fresh surveys and sub-divisions will be made on the whole land area.*

*Yours faithfully*

***RT. HON. E. ALEBUA***

***Premier***

*cc: Commissioner of Lands*

Coming to the matters complained of by Mr. Sullivan, I am satisfied that the eventual notice relied upon to ground the purported forfeiture by the Premier, was the one which the Premier has specifically asked the plaintiff to ignore, for the Premier had gone on to send substitute notices in lieu of that of the 15<sup>th</sup> April 2002.

This scattergun approach cannot avail the Premier, where the Act expects a degree of fairness in relation to acts likely to adversely affect ownership rights. The Premier's act, in relying on the notice of the 15<sup>th</sup> April 2002 in the face of the expressed direction to ignore it, breaches the Wednesbury principles, as to fairness (*Associated Provincial Picture Houses Ltd -v- Wednesbury Corporation* (1948) 1 KB 223).

It is a breach of such a nature, that the purported act of re-entry by the Premier is void, based as it is on a notice that the plaintiff had been told to ignore.

Mr. Nori addressed me. He said that there had been no mistake in terms of S.229 of the Act, because the 3<sup>rd</sup> defendant is protected by S.229(2).

*S229(1) Subject to subsection (2), the High Court may order rectification of the land register by directing that any registration be cancelled or amended where it is so empowered by this Act or where it is satisfied that any registration has been obtained, made or omitted by fraud or mistake.*

*(2) The land register shall not be rectified so as to affect the title of an owner who is in possession and acquired the interest for valuable consideration, unless such owner had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought, or caused such omission, fraud or mistake or substantially contributed to it by his act, neglect or default.*

I have appended to this judgment copies of the correspondence annexed to the affidavit of Dennis Kwan, for that correspondence satisfies me the purchaser, Winner Properties Ltd was on notice that Best Distributors had an interest in the parcel of land. Neglect or default to enquire into and seek proper legal advice in the face of the warnings on the Land Register cannot afford the 3<sup>rd</sup> defendant any protection envisaged by S.229. As well, he is not, consequently able to rely on S.229(2) to avoid rectification for the transfer under which he took the sublease was defective, for that it predated the grant of the FTE to the transferor, Mr. Tuva.

The purported "advice" contained in the Registrar of Titles letter of the 5<sup>th</sup> August 2002 (see the annexure to these reasons) to Mr. Dennis Kwan was wrong in fact, as well as law. No rental arrears existed, and the purported notice of forfeiture did not rely on arrears of rent as a ground. Section 155(1) deals with the right of forfeiture. The Registrar of Titles knew of this change of grounds in the Premier's purported notice of forfeiture and re-entry, knew of the denial by Best Distributors of any breach of covenants or agreements in the lease (by reason of Sol-Laws letter of 7<sup>th</sup> August 2002, set out earlier) and ignored S.155(1) when purporting to "advise" Mr. Kwan on the law.

Yet on the 8<sup>th</sup> August, the Registrar, in the face of a set of circumstances, which clearly called for caution, purported to register a sub-lease which predated ownership of an estate in the transferor, Mr. Tuva.

A prudent purchaser of the sublease cannot turn a blind eye to these warnings on the register.

Mr. Nori's submissions went on to suggest the Registrar of Titles held herself out as acting for Mr. Tuva and persuaded Mr. Kwan to complete the purchase of the sublease from Mr. Tuva.

I need make no finding on the proprietary or otherwise, of Mr. Kwan's act in seeming to adopt the Registrar's course of advice (except to say that he neglected or defaulted to heed the warnings on the Register) but clearly the Registrar's acts of registering the forfeiture, the subsequent lease immediately to Mr. Tuva and sublease to Winner Properties, in the face of the caveat, warnings in letters by Sol-Law and the requirements of the Act affecting forfeiture do lead me to find such a series of errors as to amount to serious mistake giving rise to a suggestion of fraud by the Premier of the Province and the Registrar, on the registered owner Best Distributors and Services Ltd.

I prefer to base the order for rectification on the clear ultra vires act of the Premier of the Provincial Government in relying on a defective notice of forfeiture (which had been specifically disregarded) and purported re-entry to extinguish the plaintiff's right of ownership in the Fixed Term Estate. Registration of the Re-entry by the Registrar of Titles had been obtained by mistake of the Premier in terms of S.229(1) of the Act. His mistake cannot be allowed to stand.

In any event, after some 8 years, the Premier of the Province would appear to be estopped from acting against the plaintiff under the principle of laches. It was the Premier's original grant of a Fixed Term Estate to Mr. Tuva which had, by the 2<sup>nd</sup> schedule contained an express provision not requiring the Premier's subsequent consent to transfer of lease.

But the basis for rectification of the Register, and the consequent orders, is the complete absence of procedural fairness in the Premier by virtue of the use to which he had put the defective notice of forfeiture dated 13<sup>th</sup> April 2002 to ground re-entry.

I accordingly make orders in terms of the prayer for relief, as follows:

I order in terms of paragraphs 1 and 2 of the originating summons. I further order the 1<sup>st</sup> and 4<sup>th</sup> defendants to pay the costs of the plaintiff.

**BROWN PJ**

**Annexure:** The material forming part of and annexed to the affidavit of Dennis Kwan filed and read in these proceedings.



**SOLOMON ISLANDS  
GOVERNMENT**

Telegrams:



Lands Registry  
P.O.Box G15  
Honiara  
Guadalcanal  
Solomon Islands

Telephone: 22227

Facsimile: (677) 20786

Dennis Kwan  
Winners Properties Ltd  
Honiara.

Your Ref:

Our Ref

Date: 27 - 9 - 02

Dear Kwan:

Re: Parcel no. 191-023-136/1

I note that you require copy of the consent for the lease from Premier to James Tetea. Please be advised consent is not required.

I confirm all paper works our end is complete. Please arrange to pay James Tetea what is due to him including Mr. Indu. I believe and confirm there is no reason why you should not pay James what is owing to him.

If you have any queries pls contact me soon.

Yours faithfully

*RENE VAUKEI*  
RENE VAUKEI



**SOLOMON ISLANDS  
GOVERNMENT**

Telegrams:



Lands Registry  
P.O.Box G15  
Honiara  
Guadalcanal  
Solomon Islands

Telephone: 22227  
Facsimile: (677) 20786

Dennis Kwan  
Winners Properties Ltd  
PO Box 1818  
Honiara

Your Ref:

Our Ref:

Date 24.9.2002

Dear Mr. Kwan,

Re Parcel Number 191-023-102/1

I am again writing to confirm that the Premier has verbally assured his agreement to the sub-lease of this parcel to your company.

Please refer to our conversation in my office some week ago that registration proceeded because of the consent Premier gave to James. I see no reason why you should not pay James Tetea in full the balance of money due to him. Enclosed is a copy of the consent letter we accepted as consent.

Trusting you will pay James in full so that they don't have to return to me again. Please note all documents were in order that's why registration proceeded. If we have to answer to any queries our files are available.

Yours faithfully

*IRENE VAUKE*  
IRENE VAUKE





**SOLOMON ISLANDS  
GOVERNMENT**

Telegrams:



Lands Registry  
P.O.Box G15  
Honiara  
Guadalcanal  
Solomon Islands

Telephone: 22227  
Facsimile: (677) 20786

3

Dennis Kwan,  
Winners Properties Ltd.  
Honiara.

Your Ref:

Our Ref:

Date: 17<sup>th</sup> Sept 02

Dear Sir,

Re: Parcel Number 141-023-136/1

We write to advise that there are caveats registered against the Lease and Sub-lease by Best Distributors & Services Limited. The caveats are lodged because Best Distributors has an interest in the parcel of land.

However, the Caveats do not in any way affect your ownership / sub-lease; the caveats are merely to stop my office from registering any further dealings. You are according to our office the sub-lessee of this land and have all rights to it. You have a Sub-Lease Title to the land.

If you have any queries please contact me immediately

Yours faithfully

*Irene Vaukei*  
IRENE VAUKEI  
Registrar of Titles

REGISTRY OF TITLES



**SOLOMON ISLANDS  
GOVERNMENT**

Telegrams:



Lands Registry  
P.O.Box G15  
Honiara  
Guadalcanal  
Solomon Islands

Telephone: 22227  
Facsimile: (677) 20786

Dennis Kwan,  
Honiara.

Your Ref.

Our Ref

Date: 30<sup>th</sup> August 20

Dear Mr. Kwan,

James reached me and I asked him to provide me the last documents I need from him. They are working on it and I am now happy with them. You may now pay James whatever you owe him.

Please be assured of our assistance

Regards,

*Irene Vaukei*

IRENE-VAUKEI  
Registrar of Titles



**SOLOMON ISLANDS  
GOVERNMENT**

Telegrams:



Lands Registry  
P.O.Box G15  
Honiara  
Guadalcanal  
Solomon Islands

Telephone: 22227  
Facsimile: (677) 20786

Dennis Kwar

Your Ref:

Our Ref:

Date: 07 - 8 - 02

Dear Sir,

This is to confirm that a fee of \$200 for registration fees would be payable to Registrar of Titles for the lease and sublease.

A premium to be set by G/Province would also be payable, last time the premium was \$10,000 - , it would go up this time I believe. This cheque would be payable to Guadalcanal Province.

For your information

*D. Vanhi*  
Registrar of Titles



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GOVERNMENT**

Telegrams:



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Honiara  
Guadalcanal  
Solomon Islands

Telephone: 22227  
Facsimile: (677) 20786

Dennis Kwan  
Jimmy Store  
Honiara

Your Ref:

Our Ref:

Date 5th August 2002

Dear Sir

RE: LAND AT GUADALCANAL PROVINCE AREA- PARCEL NUMBER 191-027-136(1)

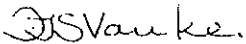
This letter is to confirm that my office is in the process of registering forfeiture and re-entry formalities as the current lease title holder has failed to pay rental since 1996 to the Guadalcanal Province.

We are currently awaiting the Notice of Re-Entry from G/Province. As soon as we receive this, we will complete all the required and necessary steps to revert Title back to G/Province.

As Best Distributors have failed to pay rental, I believe this matter does not need to go to the courts. Administratively, my office needs to complete all formalities to complete the forfeiture process.

If you have any queries, please do not hesitate to contact us.

Yours faithfully

  
Irene Vaukei  
Registrar of Titles

D/K



**GUADALCANAL PROVINCE**

P.O. Box GC7  
Honiara

James Tetea  
P O Box 941  
Honiara

Ref: LOT. 107 PN 191-023-102/1

Date: 21<sup>st</sup> November 2001

Dear Sir,

CONSENT TO TRANSFER LOT 107 PN 191-023-102/1

Thank you for your letter dated 21/11/01.

Your request for consent to transfer your lease interest is hereby granted.

Please help the office of the Premier informed of the progress as fresh surveys and sub-divisions will be made on the whole land area.

Yours faithfully,

RT. HON. E. ALEBUA  
Premier

Cc: Commissioner of Lands