

COMMISSIONER OF INLAND REVENUE -v- YUNG HUANG FISHERY COMPANY LIMITED AND REGISTRAR OF TITLES

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

Civil Case No. 505 of 2005

Date of Hearing: 17th November 2005.
Date of Ruling: 22nd November 2005

J. Katabanas for the Applicant.
N. Monsbinsky, QC with M. Ipo for the Plaintiff
No appearance for the 1st Defendant.
R. Ziza for the 2nd Defendant.

RULING

Kabui, J: Rule 11 of Order 17, in the High (Civil Procedure) Rules, 1964, "the High Court Rules" does allow the Court in the exercise of its discretion, to order additional persons to become plaintiffs or defendants in any action if such ought to have been joined in the first place or that their presence in court is necessary for the proper and effective settlement of questions that arise in the action before the court. The National Bank of Solomon Islands, (the NBSI) by summons filed on 7th November 2005, applied for an order that it be added as one of the Defendants in this case and for consequential amendments that would follow such order.

The Facts.

Yung Huang Fishery Company Limited is the owner of Parcel No. 192-010-3 since 1999. The NBSI had advanced money to Solgreen Enterprises Limited on the strength of a guarantee by Yung Huang Fishery Company Limited executed on 10th August 2000. Solgreen Enterprises Limited also mortgaged to the NBSI all its assets whatsoever and wheresoever, both present and future, including its uncalled capital to be paid in the manner agreed in the Deed executed on 10th August 2000. Similarly, the Yung Huang Fishery Company Limited mortgaged to the NBSI all its assets in a similar manner and to the same extent by a Deed executed on 10th August 2000 as further security for the payment of the owing money to the NBSI. Both Solgreen Enterprises Limited and Yung Huang Fishery Company Limited are therefore indebted to the NBSI for the money owing to the NBSI. As a further security for the money owing, both Yung Huang Fishery Company Limited and Solgreen Enterprises Limited executed a charge instrument in favour of the NBSI on 10th August 2005. The charge instrument is yet to be registered. To prevent any further dealing in Parcel Number 191-010-3, the NBSI Solicitor notified the Registrar of Titles on 12th August 2005 of the concern of the NBSI over a caveat against the interest of the NBSI. Yung Huang Fishery Company Limited endorsed the same concern on the same date. The caveat was not registered until 20th February 2005.

The Commissioner of Inland Revenue (the Commissioner) had earlier lodged a caveat against the same parcel Number 191-010-3 on 17th March 2004 because Yung Huang Fishery Company Limited had failed to pay its tax resulting in a notice of payment of taxes being addressed to Yung Huang Fishery Company Limited and a distraint notice being sent on 23rd August 2005.

By letter dated 24th August 2005, the Solicitor for the NBSI requested the Registrar of Titles to register the charge created over Parcel No. 191-010-3. By letter dated 25th August 2005, the same Solicitor requested the Registrar of Titles to register the equitable mortgages in favour of the NBSI. The same Solicitor in another letter dated 25th August 2005 told the Registrar of Titles of the NBSI's concern over the caveat lodged by the Commissioner and advised that the caveat be removed.

The caveat was not removed but instead extended for a further period of 35 days as from 6th September 2005 by the Registrar of Titles. The NBSI then threatened court action to protect its interest.

The point that affects the interest of the NBSI and is the sting.

The Commissioner's caveat is dated 17th March of 2004. This caveat was registered on 24th February 2005. It was later extended by the Registrar of Titles for another 35 days which have also expired. There is no evidence to show that it has been further extended. If it is not extended, then it has lapsed. If it has lapsed, then it is no longer of any effect and therefore it should not bother the NBSI any more.

There is however always the possibility that the Registrar of Titles may further extend it on request from the Commissioner or a fresh one lodged afresh by the Commissioner. That is a real possibility. Perhaps to guard against this possibility, the NBSI may consider taking action against the Commissioner to prevent the Commissioner from filing further caveats to prevent any further dealings in Parcel No. 19-010-3. Clearly, the point of argument is that the Commissioner does not have any legitimate ground in law to lodge any caveat against any dealings in Parcel No. 191-010-3. The Registrar of Titles may be joined as a party to the proceedings for obvious reason. This point however has become one of the issues to be argued between the parties to this action without the presence of the NBSI. This point is the basis of the declaration being sought in paragraph 15(d) in the Statement of Claim.

The issues in paragraph 15(b)(c) and (e) are also relevant because they form the basis for having to invoke the power to lodge the caveat against Parcel No. 191-010-3.

The NBSI is a stranger to this case.

As far as the Commissioner is concerned, the NBSI is a stranger to the action between the parties. The only connecting strand in this action is that both the Commissioner and the NBSI are interested in Parcel No. 191-010-3 being of security value to each side for reasons of indebtedness.

The NBSI, on the other hand, is very much interested in maintaining its position to safeguard its interest in Parcel No. 191-010-3 being its security for the money owing to it from the Yung Huang Fishery Company Limited. It goes without saying that it desires its position to be heard at the same time the action filed by the Commissioner is heard and so it should be added as one of the Defendants to enable it to do that. That strategy will save costs and all the issues decided in one proceeding.

But the parties to this action are not interested in the NBSI being added as one of the Defendants and so no application has been made to that effect though Yung Huang Fishery Company Limited did not oppose at a later stage the NBSI being joined as one of the Defendants in this action.

Nevertheless, the Commissioner must have known the position of the NBSI from the letter by the Solicitor for the NBSI as far back as 24th August 2005 being the date of that letter but the Commissioner did nothing to add the NBSI as one of the Defendants for the obvious reason that the NBSI is a stranger to the action between the parties.

The law.

Clearly, the Court has a discretionary power to decide either for or against a joinder under rule 11 of Order 17 of the High Court Rules. The discretion must however be exercised judicially in that it must be based upon evidence before the Court and a proper assessment of that evidence. There are numerous authorities on this and I need not refer to them but **Vandervell Trustees Ltd. v. White** [1971] AC 912 as applied in **White v. London Transport Executive and Another** [1971] 3 All E. R. 1 are useful references.

The acceptance of the NBSI as a party though a stranger.

In my view the issue of joinder in this case must be decided on the basis that the NBSI is a non-party to this case. Is the NBSI ought to have been joined or its presence before the Court is necessary to enable the Court to effectually and completely adjudicate upon all the questions that arise in the action in this case?

The answer to this question lies in the issues to be decided between the parties to this action. The issues to be decided are set out in the Statement of Claim filed by the Plaintiff. The orders being sought by the Commissioner in paragraph 15 (c), (d), (e), (f), (g) and (g) which should be (h) do raise issues touching upon Parcel No. 191-010-3 which are the heart of the NBSI's concern, especially (d) raising the issue of the lodgment of the caveat which is at the heart of the NBSI's complaint against the Commissioner. Clearly, the NBSI is not a busybody trying to meddle with other's business. It is not a matter of convenience for the NBSI to be joined as a party but rather a matter of necessity because the removal of the caveat imposed by the Commissioner will secure its position as the creditor and can enforce the charge once it is registered in its favour.

Conclusion.

In my view, the NBSI ought to have been joined as one of the Defendants in the first place. As I said above, its position was communicated to the Commissioner by a copy of the letter written by the NBSI's Solicitor, addressed to the Registrar of Titles, dated 24th August 2005. (See Exhibit "CC12" attached to Mr. Levo's affidavit filed on 7th November 2005) to which there was no response. That lack of response had made it necessary for the NBSI to apply to the Court for a formal order for joinder in its favour. The facts do show that its presence is necessary to enable the Court to deal with the issues before the Court and conclude them effectually and completely. The fact that the NBSI has been excluded as a party in this action has formed the basis of this application.

The NBSI's application is therefore granted. Costs reserved. I order accordingly.

F.O. Kabui
Puisne Judge