

**SOLOMON ISLANDS NATIONAL PROVIDENT FUND BOARD-v-
JOSEPH SEDIE WALE**

HIGH COURT OF SOLOMON ISLANDS
(Mwanasalua, J.)

Civil Case No. 212 of 1999

Hearing: 10 February 2005

Ruling: 26 January 2007

J. Apaniai for the Plaintiff

C. Ashley for the Defendant

RULING

Mwanasalua, J: The Solomon Islands National Provident Fund Board is the Plaintiff and Joseph Sedie Wale is the Defendant in this case. In 1990 and 1991 the Defendant borrowed the total sum of \$70,000.00 ("the loan") from the Plaintiff. The loan was to redeem his loans from the National Bank of Solomon Islands Limited and the Home Finance Corporation Limited. Part of the loan was also to finance the completion of work on a house being built on Parcel Number 191-056-193 at Vura II, in Honiara. The Defendant was the registered owner of Parcel Number 191-056-193 which he charged as security for the re-payment of the loan from the Plaintiff.

The interest on the loan was 12.5% per annum. It was to be repaid within a period of 20 years starting from 30 November 1999. The Defendant defaulted in making monthly re-payments of the loan. So, by 31 March 1999, the principal loan balance increased to \$84,171.87 and the loan arrears likewise increased to \$15,013.00.

The Plaintiff commenced this suit on 8 June 1999 when the Defendant made no positive steps to pay up the loan after default notice was sent to him. He was personally served with the originating summons and affidavit in support of the action at Vura II on 17 June 1999. He was again served personally with copies of the same documents at Vura II on 11 October, 1999.

On 25 April 2000, he and advocate for the Plaintiff attended court to hear the case. On the same date, Kabui J. decided in favour of the Plaintiff. Kabui J. granted orders which were signed, sealed and perfected on 26 April 2000. The orders were in these terms:

- "1. The Plaintiff be at liberty to sell and transfer the property comprised in the charge, namely, Parcel Number 191-056-193 or in the alternative, that the Land charged be enforced by foreclosure.**

2. That the Defendant pay to the Plaintiff all monies due under the covenants in the legal charge dated 12th October 1999 made between the Defendant and the Plaintiff.
3. That the Defendant account to the Plaintiff for what is due under and by virtue of the said charge for principal, interest and costs.
4. That the Defendant deliver to the Plaintiff possession of the said property, namely, Parcel Number 191-056-193.
5. That the sale of the said property be by public tender and that the said sale must be approved by the High Court.
6. That in view of the Defendant's wish to sell by private Treaty, that these orders be suspended for a period of one month from the date of judgment (25/04/2000) and after the said period, these orders will take effect thereafter.
7. That the Plaintiff's costs be paid by the Defendant."

The above orders were suspended for one month in accordance with order 6 of the Orders, to allow the Defendant to sell Parcel Number 191-056-193 by private treaty. As the Defendant could not sell the property within this period, he filed an inter parte summons in court. His desire was to vary order 6 from one month for a further two months within which to sell the property by private treaty. The orders sought by the Defendant in that summons were refused by Kabui J. on 13 July 2000. His Lordship refused to accept the Defendant's application for an extension of 2 months to arrange for a private sale of the property. His Lordship held that it was not sufficient that the Defendant was fishing for funds in Honiara.

In April 2003, the Plaintiff advertised Parcel Number 191-056-193 for sell on public tender. At the close of the tender period two offers were received to purchase the property. The First offer was from Mr. Fitzpatrick Sale and Mrs. Grace Geli Sale who offered to purchase the property for \$119,522.82. The Second offer was from Col Peter Prichard who offered to buy the property for \$50,000.00. On 20 January 2004, the Plaintiff agreed to sell the property to Mr. Fitzpatrick Sale and Mrs. Grace Geli Sale for \$119,522.82.

On 29 March 2004, the Plaintiff filed an inter parte summons. The Defendant was personally served with this summons at the RAMSI Compound, at Henderson Airport, on 29 April 2004.

This summons was heard by the court on 7 May 2004. There was no appearance from the Defendant. The court granted the orders sought in the summons to the Plaintiff. The terms of these orders were:-

- "1. That the property comprised in Parcel Number 191-056-193 ("the property") owned by the Defendant be offered for sale to Mr. Fitzpatrick Sale & Mrs. Grace Geli Sale for the sum of \$119,522.82.**
- 2. In the event that the Defendant refused or fails to execute the documents necessary for the transfer of the property to the Purchaser, the said documents may be signed by the Registrar of the High Court for and on behalf of the Defendant.**
- 3. Consequential orders that the Defendant, their servants, agents, licensees, invitees or any other person entering the property under authority of the Defendant immediately:-**
 - (a) vacate the property immediately;**
 - (b) deliver vacant possession of the property to the Plaintiff; and**
 - (c) remove all their belongings from the property.**
- 4. The Defendant pays the costs of the Plaintiff."**

The Plaintiff served a copy of these orders on the Defendant at Vura Il on 12 May 2004. The Defendant and his family had not vacated the property or delivered possession of the property to the Plaintiff since these orders were granted to the Plaintiff.

The Plaintiff thus filed ex parte summons on 12 October 2004. This summons was heard by the court on 23 November 2004. The court granted the following orders in favour of the Plaintiff. The orders were in these terms:

- "1. That the Plaintiff do have leave to issue Writ of Possession against the Defendant, his servants, agents, licensees, invitees and any other person occupying the property under the authority of the Defendant to recover possession of Parcel Number 191-056-193.**
- 2. That the Defendant or the person occupying the property pays the costs of this application."**

On 24 November 2004, the court issued a Writ of Possession in favour of the Plaintiff against the Defendant. That Writ was served on the Defendant in January 2005.

The Defendant filed this present inter parte summons with his supporting affidavit on 10 February 2005 at 9:10am. The summons was heard by the Court on the same day. The Defendant seeks, inter alia, to stay the Writ of Possession until further orders of the court. The Plaintiff gave a number grounds in his affidavit of support to stay the Writ of Possession.

The main ground being that the Plaintiff did not sell Parcel Number 191-056-193 through public tender as required by order 5 of the Orders of the court dated 25 April 2000. This ground cannot be supported, as it was clear from affidavit evidence of Roselyn Tapalia, a Supervisor in the Plaintiff's Members Loan Department, that the Defendant's property comprised in Parcel Number 191-056-193 was advertised for sale by public tender in April 2003. This court will accept that evidence.

The second ground given by the Defendant being that he was not served with notice of hearing of the summons through which the Plaintiff obtained the orders of the court dated 7 May 2004 above. Those orders are to remain in force as the Defendant had taken no action to deal with them other than expressing his concern about them.

The third ground raised by the Defendant was that he took no part in the ex parte summons through which the Plaintiff was granted ex parte orders of the court dated 23 November 2005 above. He was not required to take part in that proceeding as it was merely an ex parte application by the Plaintiff for leave under Order 49, Rule 1 of the High Court (Civil Procedure) Rules 1964 to issue a Writ of Possession.

The fourth ground raised by the Defendant was that his property was worth more than the sum of \$119,522.82 offered by Mr. Fitzpatrick Sale and Mrs. Grace Geli Sale and accepted by the Plaintiff. But one needs to bear in mind that the Plaintiff will only be expected to accept the highest price offered through public tender for the property. This was what the Plaintiff did in this case.

The Defendant had not mentioned any special circumstances in his supporting affidavit for the Writ of Possession to be stayed.

In view of the above reasons, this court would not exercise its judicial discretion to stay the execution of the Writ of Possession served on the Defendant by the Plaintiff in January 2005. The Defendant's application is refused.

Francis Mwanalua
Puisne Judge