

PEAT MARWICK v. THE REGISTRAR OF CO-OPERATIVE SOCIETIES

High Court of Solomon Islands
(Ward C.J.)
Civil Case No. 29 of 1989
Hearing: 12 September 1989
Judgment: 14 September 1989

J. Corrin for the Plaintiff
R. Teutao for the Defendant

Ward CJ: The plaintiff's claim is for payment due for work done in respect of an audit of the books and accounts of the Central Co-operative Association which was ordered by the defendant who is the Registrar of Co-operative Societies.

It is admitted by the defendant that the plaintiff was appointed by him to carry out the audit and it is admitted also that the sum claimed is part only of a larger sum the balance of which has been paid by the Registrar.

Counsel have asked the Court to limit the hearing at this stage to the determination of a point of law the answer to which may resolve the whole case.

The question that arises is who is responsible for paying an auditor appointed by the Registrar of Co-operative Societies under section 32 of the Co-operative Societies Act to audit the books and accounts of one of the societies, the Registrar or the society?

Section 32 and 33 provides:

"32 (1) The Registrar shall audit or cause to be audited by some person authorised by him by general or special order in writing the accounts of every registered society once at least in every year.

33. The Registrar, or any person authorised by general or special order in writing by the Registrar, shall at all times have access to all the books, accounts, papers and securities of a registered society, and shall be entitled to inspect the cash in hand; and every officer of the society shall furnish such information in regard to the

transactions and working of the society as the person making such inspection may require".

This is also covered by Rules 48 and 49 of the Co-operative Societies Rules:

"48 In pursuance of the provisions of section 32 of the Ordinance, the accounts of every registered society shall be audited at least once in every year by some person authorised by the Registrar. Such person shall have access to all the books and accounts of the registered society and shall examine every balance sheet and annual return of the receipts and expenditure, funds and effects of the registered society, and shall verify the same with the accounts and vouchers relating thereto, and shall either sign the same as found by him to be correct, duly vouched and in accordance with the Ordinance, and shall report to the Registrar accordingly, or shall specially report to the Registrar in what respects he finds the same incorrect unvouched or not in accordance with the Ordinance. The Registrar shall thereupon forward the report of such person to the committee.

49 (1) There shall be constituted a fund to be known as the Audit and Supervision Fund if the Registrar so directs and every registered society shall, when called upon to do so by the Registrar, make annually a contribution to such fund.

(2) Until such time as a society has been registered for the purposes of supervision and audit, such contributions shall be held by the Registrar and administered by him on behalf of the contributing registered societies.

(3) So long as the Registrar administers the fund on behalf of the contributing registered societies, he shall report in every year to the Government in respect of the income derived from contributions, the expenditure he has sanctioned from the fund and the balance in his hands.

(4) As soon as a society for supervision and audit has been registered, the fund shall be credited to such society and shall be utilised by such society in accordance with its objects and by-laws.

(5) Until a society for supervision and audit has been registered the Registrar shall fix the amount of the annual contribution to the fund of every registered society called

upon to contribute to the fund. The amount of every such annual contribution shall be subject to a maximum of either ten per centum on the net annual profits of the registered society or of one per centum of the working capital of the registered society, and shall not in any case be less than twenty dollars".

The plaintiff's case is simply that they were appointed by the Registrar to do this work. As such there was a contract between themselves and the Registrar. It may well be that under the provisions of the Act and the Rules he can recover any fees from the society involved but that is not a matter for the plaintiff. That contract is clearly with the Registrar.

It is a little difficult to follow the defendant's argument against that.

He suggests that, as the Registrar appoints the auditor as part of his statutory duty under section 32, he should not need to pay. He also points to rule 49 and suggests that the Registrar has a discretion to use the money of that fund to pay the audit fees. However, in the case of the CCA, they have never contributed to the fund and so he feels the Registrar should not have to pay for them. He also points out that, as CCA is nearly bankrupt, the Registrar will be unlikely to recover these fees and therefore should not need to pay.

He quotes no authority to support these propositions and I confess I am not surprised. There is no contract between the CCA and the plaintiffs. They were not parties to the agreement to audit the society's books neither is there any suggestion here of agency.

The Registrar has a statutory duty under section 32 to ensure the societies have their books audited at least annually. It is his duty and he makes the arrangements. He may do it himself or he may authorise someone else. When he follows the latter course, he does so on his own initiative. Once the audit is complete, the auditor reports to the Registrar and it is the Registrar who forwards the report to the society committee.

The agreement was clearly a contract between the Registrar and the plaintiff. Whether the Registrar should be able to use the Audit and Supervision Fund for these payments is not clear from Rule 49. It would seem to be the intention behind the rule although it is not specified.

The court was told that this society has never contributed to the fund and the contribution fixed by the Registrar has been

set at the minimum of \$20 p.a. It would seem to me that in such circumstances the fund will never be adequate to meet the audit fees involved. The Registrar or his predecessors have clearly failed adequately to carry out their duties. It is up to him to ensure the sum contributed is adequate within the substantial limits set in rule 49(5). Equally it is up to him to ensure the societies comply with the requirement. I find it a novel suggestion that, because he has failed in that duty and therefore has little prospect of being reimbursed, he can avoid his obligations under a contract he entered with a separate and independent party.

The answer to the question in this case is that, where the Registrar appoints an auditor under section 32, he is responsible for paying the fees and can sue and be sued on the contract.

R. Teutao: We say in view of that, we will pay the sum.

Court: Judgment to plaintiff and costs.

(F.G.R. Ward)
CHIEF JUSTICE