

SASAPE MARINA LIMITED -v- BOLTON

High Court of Solomon Islands

(Ward C.J.)

Civil Case No. 118 of 1990

Hearing: 21 February 1991

Judgment: 21 February 1991

J. Corrin for the Plaintiff

A. Nori for the Defendant

WARD CJ: By writ of summons filed on the 13th June 1990 the plaintiff claims a total sum of \$21,086.70 and interest for repairs to the yacht "Classique" owed by the defendant.

Judgement in default of appearance was entered on 19th July 1990.

On 14th January 1991 an affidavit supporting a summon to set aside was filed by the defendant. Further affidavits have been filed by the solicitor for the plaintiff Jennifer Corrin, William Joseph Cuckson and a further affidavit by the defendant.

It appears clearly from the evidence that the defendant does not dispute liability but only quantum. Exactly how much of the sum is disputed is unclear and the statements about this are conflicting and confused.

In deciding whether that would be sufficient to support such an application, I bear in mind that the defendant left the jurisdiction knowing of the claim, knowing the yacht had been seized and without notifying anyone. I also note that despite frequent references to the fact that at least half the sum is not in dispute and the fact that many months have elapsed since the debt arose and since judgement was entered, no money has been paid or offered.

This court, in order to set aside, must not only consider the question of whether or not there is a prima facie defence but also the length of and reason for any delay in applying to set aside.

The defendant deposes to the fact that he instructed a local lawyer, Mr Campbell, to defend the action. It is clear that the failure to enter appearance was the fault of that lawyer. Although there is no evidence before the court, Miss Corrin fairly concedes that there was, as a result, correspondence between the defendant's New Zealand solicitors and Mr Campbell up to 4th September 1990. By that date, and I would have thought well before, it was plain that fresh lawyers needed to be instructed and step taken to set aside immediately. However, nothing occurred until January of this year when Mr Nori was instructed and with commendable expedition filed papers within 24 hours.

I feel such a delay is unjustified especially in a case where the defendant was already being advised by solicitors in New Zealand. I also note that the action in January only occurred immediately after the plaintiff's had registered the judgement in New Zealand.

I feel there is not adequate explanation for the delay in this case and I do not feel the affidavits reveal sufficient cause to set the judgment aside.

Application refused.

Costs to plaintiff.

(F.G.R. Ward)
CHIEF JUSTICE