

SOLOMON ISLANDS INVESTMENT LIMITED -v- ANISI ALOYSIUS and R. S. WALE

High Court of Solomon Islands

(Ward C.J.)

Civil Case No. 91 of 1990

Hearing: 8 March 1991

Judgment: 11 March 1991

J. Corrin for the Plaintiff

A. Radclyffe for the First Defendant

WARD CJ: The plaintiff claims arrears of rent and also money due for goods supplied.

There is no dispute the rent is owing and I give judgment to the plaintiff against the first defendant for two months rent of the residential premises at \$430 per month giving a total of \$860. I also give judgment for rent of the joinery workshop at \$275 per month giving a total of \$550.

The sum claimed for goods supplied is \$18,558.42 as evidenced in invoices and the first defendant does not dispute the goods were supplied except for six invoices totalling \$647.28 which have not been signed by the consignee.

The first defendant worked for the plaintiff company for some years and, in late 1987, he was in charge of furniture sales. Solomon Islands Investment Limited had run a joinery workshop but had recently closed it down and a number of their ex-employees worked under the name of R.S. Wale. When the first defendant left SIIL he went to join R.S. Wale. Shortly prior to his departure and after it, goods were supplied to R.S. Wale for their furniture work and, in June and possibly July 1988, the plaintiff bought the completed furniture from them.

The first defendant's case is that, in late 1987, he discussed leaving SIIL with the, then, General Manager, Lawrence, and going into business with the other employees. He said Lawrence agreed orally that he would supply materials on credit and would buy back all furniture they made if, on their part, they bought all materials from SIIL and sold their furniture to nobody else.

The first defendant did not leave then but, on the advice of Lawrence, waited until the next Managing Director, Cuthbertson, had taken over.

After the first defendant left, the company took a large amount of furniture in June but, in July, stopped taking any. The first defendant's case is that the company was in breach of the agreement and so he feels he should not pay.

Cuthbertson gave evidence and denies the agreement. He says the company were certainly happy to encourage the venture but they made no agreement beyond the agreement to lease premises.

I have considered the evidence of the agreement and on balance I prefer the plaintiff's evidence on this. The agreement described by the defendant was one into which no commercial venture would enter. The company would have been bound to buy whatever the joinery decided to make and in indefinite quantities. They had recently closed down their joinery shop and, had they made such an agreement, would effectively have had another one but, this time, one over which they had no control in terms of choice of items or quantities.

Even if I had not come to that conclusion, the defendants' case would have failed on another ground. Whatever happened in June, by July it was clear the agreement was at an end. Cuthbertson had told him he did not want any more furniture and wanted the invoices paid. There was also further evidence by the defendant himself that he had also breached the agreement because he had bought materials from at least five other suppliers. The defendant told the court that, on 28th July, he conducted a stocktake and he had \$33,276 worth of completed furniture. Had the company taken that furniture, it would have paid off the debts. However, the first

defendant then sold that and other furniture for "cost". By that term, the first defendant explained to the court he meant the cost of manufacture including all materials, labour and other expenses. Having done that, he was clearly liable to pay for the materials.

The remaining matter is the six disputed invoices. The defendant pointed out that he could not say whether he received those goods because there was no signature to show receipt. The plaintiff called a witness to deal with one invoice. The witness pointed out that, as many of the items were collected by the defendants over a period of time, he would ask the last one to sign. Clearly, in this case, he said this was forgotten. He did say he wrote the invoice and the goods were supplied. I accept that invoice did describe goods supplied to the defendant.

Miss Corrin suggests that, on the evidence of that invoice, the court can accept the remaining five. I am not satisfied that sufficiently discharges the burden on the plaintiff.

Therefore I give judgment for the plaintiff for \$18 558.42 less the five invoices numbered 05155, 05655, 07149, 07120 and 07522. They total \$398.63 and so the total sum for goods supplied is \$18,159.79.

In summary, I award the plaintiff \$1410 rent and \$18,159.79 for goods supplied; a total of \$19569.79, interest and costs.

(F.G.R. Ward)
CHIEF JUSTICE