

SOLOMON AIRLINES LIMITED -v- NIUE AIRLINES LIMITED

High Court of Solomon Islands

(Ward C.J.)

Civil Case No. 59 of 1991

Hearing: 30 April 1991

Judgment: 8 May 1991

J. Corrin for the Plaintiff

A. Nori for Defendant

WARD CJ: The plaintiff claims a total of NZ\$253,000 under an agreement to purchase passenger and cargo capacity on the plaintiff's B737 - 200 aircraft. A defence and set off has been filed and the plaintiff now seeks summary judgement for the full sum or, alternatively, the lesser sum of NZ\$118,000 which is the total of two dishonoured cheques for \$59,000 each.

I can deal with the latter claim very briefly. It is admitted those cheques were passed and have been dishonoured. The courts, for good reason, treat bills of exchange, promissory notes and cheques as equivalent to cash so that it is not a defence to show a valid set off arising from the transaction.

In *Fielding and Platt Ltd -v- Nanjar* (1969) 2 All E.R. 150, at 152, Lord Denning MR stated it simply:-

"We have repeatedly said in this court that a bill of exchange or a promissory note is to be treated as cash. It is to be honoured unless there is some good reason to the contrary".

Good reasons have been limited to such fundamental defences as fraud or a total failure of consideration. No such defence is relied on here and the plaintiff must have summary judgement in relation to the claim for NZ\$118,000.

However I must consider the claim as a whole. The plaintiff claims there is no triable defence because there is a valid agreement between the parties which the defendant does not dispute. The thrust of the defence is not to deny the fact of the alleged breaches but to claim the sums claimed are inaccurate and the parties were not ad idem.

Miss Corrin also suggests that the defendant in O.14 proceedings must file an affidavit of defence. Whilst that is certainly usual and wise, I cannot accept it is necessary in all cases. The defendant has filed no affidavit but Mr Nori relies on the defence itself. O.14 places the burden on the defendant to satisfy the Court that he has a good defence to the action on the merits "or shall disclose such facts as may be deemed to be sufficient to entitle him to defend the action generally". It is clear that requires a good defence on the merits or else the defence will need to disclose facts. Without an affidavit of defence, it seems to me the second limb is not available.

Mr Nori relies on *Miles -v- Bull* (1968) 3 All E.R. 632 but that case was decided on the new English O.14 which differs substantially from the wording of the older Rule which our O.14 reflects. It is of interest, in view of Miss Corrin's contention, that the even older O.14 included, after the passage shall satisfy the Court the words "by affidavit or otherwise." The omission of those in the revised rule left the discretion with the Master as to what evidence is required. However counsel for a defendant would be wise in all cases, where he does not resist the application by a preliminary objection, to file an affidavit of defence.

The defence filed admits much of the claim. Paragraphs 1 - 5 of the statement of claim are admitted and so is paragraph 6 as far as the liability is concerned. The only reservation is a reason why payment has not yet been made. I do not feel that paragraph 2 of the defence is a denial of liability. The defence to the remainder is that the conditions relied on by the plaintiff were never agreed. I feel that reveals a triable defence to that part of the claim.

I therefore give judgement to the plaintiff for the sums claimed in paragraph 6 of the statement of claim i.e. NZ\$198,500. The sum of NZ\$118,000 is part of that sum and so I do not give judgment on that sum separately.

As there is a triable defence on the balance the defendant is entitled to unconditional leave to defend and so I cannot accede to Miss Corrin's request for deposit of the sum outstanding.

Judgment to the plaintiff for NZ\$198,000 with interest and costs.

(F.G.R. Ward)
CHIEF JUSTICE