

CC 65-91.HC/Pg.1

PETER ALEXANDER MATTHEW -v- REEF PACIFIC TRADING LTD

High Court of Solomon Islands

(Ward C.J.)

Civil Case No. 65 of 1991

Hearing: 5 December 1991

Judgment: 12 December 1991

J. C. Corrin for the Plaintiff

R. Teutao for the Defendant

WARD CJ: This is an application by the defendant to set aside a default judgment entered on 6th June on the grounds that it was improperly entered. The plaintiff objects that the Court has already set it aside conditionally and so this application cannot be made again.

Having heard argument on the matter and looked at the papers in the cases it becomes clear the application and opposition are misconceived.

The action was commenced by a writ of summons filed on 2nd April 1991 claiming \$57,356.92 AUD and damages for breach of contract. On the 26 April 1991 judgment in default of appearance was entered. On 1st May a writ of fieri facias was sealed. On 13th May the judgment was set aside and the defendant was given 21 days to file a defence. This was not done and, on 6th June, judgment in default of defence was entered and it is this judgment that it is sought to set aside.

When that judgment was signed, it was apparently not known the defendant had already, on 4th June, filed an application to enlarge the time for filing a defence and so, on 19th June, an amended summons was filed seeking both to set aside the judgment of 6th June and to enlarge the time to file a defence. That was heard on 20th June and I ordered the default judgment be set aside and the defence to be filed within 3 days. I further ordered that the sum admitted by the defence to be due, namely \$12,737.21, was to be paid into Court within 14 days or the defence would be struck out. The defence was filed the next day 21st June.

Despite these steps, on 12th September an application was made to set aside the writ of fieri facias which was refused. On, it would appear, 5th November a further application to set aside the writ was made and granted until further notice. The writ of fieri facias was sealed on the 1st May on the first default judgment and must have fallen when that judgment was set aside. I can find no other.

In order to avoid doubt, I order that any writ of execution on the judgments of 26th April 1991 and 6th June 1991 be set aside.

Application refused.

Costs to plaintiff.

(F.G.R. Ward)  
CHIEF JUSTICE