

AUSTRALIA AND NEW ZEALAND BANKING GROUP LTD -v- SOLOMON AUDIO & VIDEO SERVICES LTD and OTHERS

High Court of Solomon Islands

(Muria ACJ)

Civil Case No. 65 of 1992

Hearing: 16 July 1992

Ruling: 23 July 1992

A. H. Nori for the Plaintiff

A. Rose for the Garnishee

MURIA ACJ: The plaintiff applies to attach the second defendant's National Provident Fund contributions for the purpose of satisfying the Judgement obtained by the plaintiff against the first and second defendants on 28 April 1992 in the sum of \$21,572.70 together with costs.

The issue is a short one but of considerable importance. That issue is whether the second defendant's contribution held by the National Provident Fund is a debt due, owing or accruing from the Fund to the second defendant and thus can be attached in garnishee proceedings.

The power of the Court to attach debts due to a judgment debtor for the purpose of satisfying a judgement or order is provided for under Order 48 rule 1. That provision clearly states that the Court has power to:

"..... order that all debts owing or accruing from such third person (hereinafter called the garnishee) to such debtor shall be attached to answer the judgment or order, together with the costs of the garnishee proceedings"

It will be seen under the rule that there is the requirement that what is to be attached is the *debt owing or accruing* to the debtor from the garnishee. There must be a debt and it is either *"owing or accruing"*.

What is a debt owing or accruing? A *"debt"* is a liquidated money demand recoverable by action: *Rawley -v- Rawley 1 QBD 460*. It must be presently due to the debtor and owing or accruing although it may be payable in the future. Thus the debt

which is to be attached must be that which is due to the judgement debtor and it must be owing at the date of the garnishee summons: *Bagley -v- Winsome and National Provincial Bank [1952] 2 QB 236.*

The plaintiff in the present case sought to attach the amount standing to the credit of the second defendant and held by the Garnishee, the Solomon Islands National Provident Fund. The Solomon Islands National Provident Fund Act provides the circumstances at which such amount is payable to a member of the Fund. Under section 31 of the Act, such amount is payable on the approval of the Board and that the Board's approval cannot be given before the "*date of entitlement*" of the member. The Act goes on to prescribe what is the "*date of entitlement*". This is done under section 2 which states:

"date of entitlement' means, in respect of any member of the Fund, the day (whichever shall first occur) on which it is proved to the satisfaction of the Board that such member -

- (a) *has attained the age of fifty years; or*
- (b) *has died; or*
- (c) *is physically or mentally incapacitated from ever engaging in any further employment; or*
- (d) *is about to leave or has left Solomon Islands with no intention of returning thereto; or*
- (e) *has been unfairly dismissed or has been made redundant and has not, during the three months period immediately preceding the date on which he applies to withdraw the amount standing to his credit in the Fund, been engaged in employment or;*
- (f) *has attained the age of forty years and has satisfied the Board that he has retired from employment as an employee"*

It will therefore be seen that when a member exercises his right to claim the amount standing to his credit in the Fund and on the happening of one of the events specified under Section 2, it is then and only then that such amount can be said to be due, owing or accruing to a member of the Fund. There must be a claim or demand on the part of the member *and* one of the events specified must have occurred. For a member who, although, satisfies one of the situations specified in section 2 and does not claim or demand the amount standing to his credit is not owed any money by the Fund. His amount is still standing to his credit and such it is not yet due, owing or accruing from the National Provident Fund to that member.

In the present case there is no evidence that the second defendant had made a demand of the amount standing to his credit in the Fund and that he did so on the happening of one of the events specified in section 2 of the Act. There is therefore

nothing yet due, or owing or accruing from the National Provident Fund to the second defendant. What is more, there is no evidence of any such amount standing to the second defendant's credit in the Fund. There may be or may be not.

There is a further obstacle faced by the plaintiff here. Even if there is such amount standing to the credit of the second defendant in the Fund section 38(1) of the Act prohibits such amount to be attached for or in respect of any debt or claim whatsoever. Section 38(1) says:

"Subject to subsections (2) and (3), no contribution to the Fund nor any amount standing to the credit of a member in the Fund nor interest on any such contribution or amount, nor withdrawals made by the authority of the Board from the Fund under section 31, nor the rights of any member of the Fund acquired thereunder, shall be assignable or transferable or liable to be attached, sequestered or levied upon for or in respect of any debt or claim whatsoever."

Parliament saw fit in its wisdom to give such protection to the amount standing in a member's credit in the Fund until such amount has become due to that member.

As the amount (if any) held by the Fund in the credit of the member is not due and owing it cannot be a debt owing or accruing from the garnishee to the judgment debtor and therefore cannot be attached.

Application refused.


(G.J.B. Muria)
ACTING CHIEF JUSTICE