FREDERICK SOAKI -v- THE ATTORNEY GENERAL

High Court of Solomon Islands
(Palmer J.)
Civil Case No. 30 of 1992
Hearing: 8 December 1992
Judgment: 14 January 1993 [i.e 1993?]

J. C. Corrin for Plaintiff
C. Ashley for the Defendant

PALMER J: The Plaintiff, Mr Frederick Soaki claims for loss and damages caused as a result of what he alleges to be a breach of the terms of his employment with the Defendant. Those terms are contained in the Constitutional Offices (Terms and Conditions of Service) (Commissioner of Police) Regulations 1990 made under the Constitutional Offices (Terms and Conditions of Service) Act 1987.

The Defendant is the Solomon Islands Government but is represented by the Attorney General.

The Plaintiff is the Commissioner of Police. He was appointed to that post on the 1st of March 1982. From that time to 1990 he had to make his own private arrangements for accommodation. On or about 1983 or 1984 he stated that he did make enquiries for allocation of a government quarter, but was told that there was none available.

In 1990 there was a change in the terms of conditions of his employment. By Legal Notice Number 155 of 1990 and dated 31 October 1990, the Constitutional Offices (Terms and Conditions of Service) (Commissioner of Police) Regulations 1990, (referred to hereinafter as the Commissioner of Police Regulations of 1990), were passed. Clause 7 states:-

> *"The Commissioner of Police shall be provided with an official residence free of rent"*

It is the interpretation and application of this clause that the Plaintiff relies on for the loss and damage claimed. It is clear that with effect from 31 October 1990 he is entitled to an official residence free of rent.

The Plaintiff has two private residences. One a **'local'** type and the other, I will call an **'executive type'** house. The latter house was financed by a loan that the Plaintiff took from the National Bank of Solomon Islands Limited. As a result of this he resided at his **'local type'** dwelling whilst renting out the executive house to repay the loan.

That executive house was rented to Government from 1985 to the end of 1989. In 1990 the house was rented out to a private company for 6 months. The house became vacant in September and October of 1990. During that period the house was repaired. On the 31 October 1990, the Plaintiff became entitled to an official residence free of rent. He was not provided with one and so he sought to make suggestions about suitable alternative arrangements. The suggestion he made was for the Government to rent his executive type house for him to reside in.

The Plaintiff stated on evidence under oath that he had several verbal discussions with the Secretary to the Prime Minister in late 1990. At that time it was Mr Leonard Maenu'u. Mr Wilson Ifunaoa then replaced Mr Maenu'u and the Plaintiff stated he also spoke with him. He also recalled conversing with the Attorney General and the Secretary to the Prime Minister after a Cabinet meeting about the Solomon Islands Public Employees Union's strike around that same period.

In February 1991 he formally wrote to the Secretary to the Prime Minister. A copy of that letter is marked **Exhibit 1.** There then followed a series of correspondence between the Plaintiff and the Public Service Division culminating in the letter from the Public Service Division to the Plaintiff dated 20 June 1991 (**Exhibit 5**) in which it agreed to pay rental of the Plaintiff's house effective from January 1991 to June 1991. A house had then been identified which would become available in June. On inspection however, it was found to be unsuitable for the Plaintiff's large family. There was however another house identified but which would become available only towards the end of 1991. That house eventually became available in June of 1992 and the Plaintiff moved in.

What is important to note is that towards the end of 1991 a tenancy agreement was entered into between the Plaintiff and the Government and backdated to the 1st of November 1990. The rental for the period from 1 January 1991 to 31 July 1991 was paid and collected on the 24th of July 1991. The rental for the period 1 August 1991 to 31 December 1991 was paid to the Plaintiff on the 2 October 1991. The rental for the period of November and December 1990 was paid out on the 24 December 1991, some 12 months later.

The question that the Plaintiff faced was that he had a separate loan with National Bank of Solomon Islands Limited and he was relying on the rental he was getting from his house to keep up with the instalment payments to the bank. Where he delays payment, interest accrues on a daily rate.

What is important to note here are:-

(1) **that there are two separate agreements. The first one is between the Plaintiff and the National Bank of Solomon Islands Limited. The second one is between the Plaintiff and the Government.**

(2) **The interest that the Plaintiff is charged by the bank is based on the amount of his loan with the bank and the amount outstanding at any particular time when default is made.**

(3) **The Government does not have any agreement with National Bank of Solomon Islands Limited. It does have, however, a legal obligation to provide an official residence free of rent. Where none is available it was obliged to provide a suitable alternative arrangement.**

This was not done until June of 1991 when the Government then agreed to provide alternative rent free accommodation. Subsequently a tenancy agreement was drawn up and signed between the Government and the Plaintiff as landlord and occupier of the house.

The Plaintiff has been refunded in full of all the rental arrears outstanding as from the 1st of November 1990.

He however claims that he has incurred loss as a result of the failure of the Government to comply with its statutory duty and one of those losses he claims should include the accrued interest charged by the bank for default in repayments of his loan.

What had to be understood is that the Government was not obliged to rent the Plaintiff's house. The Government was obliged to provide a suitable alternative such as rent free accommodation and it could do that by renting a suitable house for the Plaintiff. But it does not have to be the Plaintiff's house.

There are two relationships involved here. The landlord and tenant relationship on one hand and the employer and employee relationship on the other.

First, the landlord and tenant relationship. This was reflected in the tenancy agreement executed in November of 1991 but backdated to the 1st of November 1990. That agreement was executed between the Plaintiff as the Landlord and the Commissioner of Lands on behalf of the Government as tenant. The Plaintiff also signed as the occupier.

Second, the employer and employee relationship. From the 31st October 1990, till about June of 1991, the Plaintiff had to make alternative arrangements for his accommodation. He stayed at his own residence, the more executive type house. It is this employer and employee relationship that I am primarily concerned with. And it is important to note that it is the breach in this relationship as at the 31 October 1990 that the claim is based on.

It is important at this stage to consider the general principles of law as applicable to this case.

The starting point would be to reiterate that the purpose of damages, is "..... ***to put the party whose rights have been violated in the same position, so far as money can do so, as if his rights had been observed.***" **(McGregor on Damages 14th Edition, page 131** quoting the case ***Victoria Laundry -v-Newman*** *[1949] 2 KB 528 (CA) per Asquith LJ.)* However, this general rule is restricted to the extent that the "..... ***aggrieved party is only entitled to recover such part of the loss actually resulting as was at the time of the contract reasonably foreseeable as liable to result from the breach.***" (***Victoria Laundry -v-Newman*** *[1949] 2 KB 528 at page 539 - 540*).

The test applied in that case by the Court was that if the contract breaker did consider what loss is liable to result from the breach and his answer as a reasonable man would be that the loss in question was liable to result then that is sufficient to warrant a recovery for damages for that loss.

In ***Czarnikow -v-Koufos*** *[1969] 1AC 350 (H.L.)* Lord Reid modified the test as -

> *"of a kind which the Defendant, when he made the contract, ought to have realised was not unlikely to result from the breach ..... the words* ***"not unlikely"*****..... denoting a degree of probability considerably less than an even chance but nevertheless not very unusual and easily foreseeable."**

Lord Upjohn stated that it *"should depend on their assumed common knowledge and contemplation .....".* **(Ibid p. 422).**

Without getting bogged down with the detailed analysis and distinctions made by the various Law Lords in these and subsequent cases I am satisfied that the statements just quoted reflect the general statements of law on the liability for loss on a breach of contract.

The question in this case then is, as at the 31st October 1990 when the breach occurred was it contemplated by the Government that this particular loss, of accrued interest would occur? If Government applied its mind to the breach caused, would it have realised that the loss suffered was not unlikely to result, or was it reasonably foreseeable as liable to result or likely to occur.

With due respects I must answer this question in the negative. Whether Government provides an official residence free of rent or not makes no difference to the Plaintiff's liability to his bank for his loan repayments. He still has to have his executive type residence rented out to be able to meet the loan repayments to the bank. The presumption is made that once the Plaintiff is provided or had he been provided with an official residence rent free that this particular loss would not have occurred, that is it would never have happened. Unfortunately, this is a false assumption, because if the Plaintiff did not rent out his property then most likely he would have defaulted in the loan repayment and incurred the same loss despite the fact that he had been provided with a rent free residence.

These are two completely different things. On one hand is the requirement to provide an official residence, rent free on the other hand is the Plaintiff's liability to his bank in terms of the loan repayments. That liability to the bank is not dependent on the requirement of Government to provide an official residence rent free. In fact these are completely separate arrangements and in my view would be regarded so remote as to be closely linked to each other to meet the "***reasonably foreseeability test***". In other words they are severable and independent of each other.

It is important to note that the breach on Government's part is on its legal obligation to provide an official residence free of rent. Government's breach **is not** based on a legal obligation to rent the Plaintiff's residence. If Government had been **legally obliged** as at 31st October 1990 to rent the Plaintiff's house and it failed to do that so that there has been a breach of that agreement, then I would hold that Government could reasonably foresee that if it breached the rental agreement, that the Plaintiff would incur such particular losses.

But in this case, there was no contractual agreement to rent the Plaintiff's property as at 31 October 1990. There was no legal obligation on Government to rent the Plaintiff's house. Government could have rented another suitable property for the Plaintiff and it would have discharged its duty in terms of Clause 7.

On breach of the legal obligation to provide an official residence free of rent, the Plaintiff was obliged as a matter of law to take such reasonable steps to avoid the consequences of that breach or wrong. And where he has failed through unreasonable action or inaction to avoid such losses consequent upon the defendant's wrong then he cannot recover such loss. This is referred to as avoidable loss. (See **McGregor on Damages, 14th Edition, page 150**).

He could have rented out his executive house and found alternative accommodation at an affordable rate or even remained at his local type house whilst sorting out with Government about alternative arrangements for accommodation to comply with Clause 7 of the Commissioner of Police Regulations. Perhaps these were not reasonable steps to take at that time as they were not practicable to do!

Perhaps the only reasonable step to take in his circumstances at that time was to rent his own house and occupy it whilst sorting out the problems. He should then be able to claim for such losses that he has incurred in having to rent or find suitable alternative accommodation.

Unfortunately for the Plaintiff, he defaulted in his rental payments of his own house or rather loan repayments to the bank. Had he paid rent on his house for those periods he occupied it, he would not have incurred the penalty losses imposed on his loan by the bank. The penalty losses imposed were as a result of his default in paying rent on his house, which basically converts to his loan repayments to the bank. The decision to reside at his own house

was his own decision. In making that deliberate choice, he knows that he will be obliged to pay rental/or loan repayments for living in that house. He knows that if he defaults then he will incur accrued interest charges. He cannot blame Government for not providing a suitable alternative for his non-repayment of rent on his house. It is not an issue as at that time Government had already breached its duty to provide an official residence free of rent or a suitable alternative. There was already a breach.

He however was obliged at that time to mitigate his losses by finding alternative accommodation for himself. And in staying in his house he is obliged to pay rent. The proper thing for the Plaintiff to do is pay rent and then claim such rent and any other losses that he may have incurred as a result of that. But with due respects I am unable to accept the argument that he can claim the losses that have occurred as a result of his own default in not repaying loan arrangements to the bank as a result of his not paying rent for his accommodation.

The fact that there has been a breach does not mean that he can sit back and let the contract-breaker, the Government in this case, bear all the loss that can be avoided by him. It is trite law that he is under a duty to mitigate his losses by taking such reasonable steps to avoid those losses. By not paying rent he has allowed this particular loss to occur. It is avoidable loss, and not recoverable therefore.

As to the landlord and tenant agreement which he relies on, that was not executed until late in 1991. That was an attempt by Government to put things right. The Government sought to do this by backdating the agreement to cover the rental as from the 1st of November 1990 and to repay the rental expenses incurred by the Plaintiff. This Government has done.

The Plaintiff however is entitled to interest for the period the rental were not paid. The applicable minimum lending rate of National Bank of Solomon Islands Limited for that period was 18%.

Based on that rate the amount due as interest is as follows:-

(i) For the November and December rentals totalling $3,400 less housing allowance (i.e. $1,700 x 2) at 18% interest for 1 year (payments were only made on 24 December 1991) **equals $571.78.**

(ii) For January 1991 at 18% for $1,700 less housing allowance for 6 months **equals $141.89.**

(iii) For February 1991 at 18% for $1,700 less housing allowance for 5 months **equals $118.24.**

(iv) For March 1991 at 18% for $1,700 less housing allowance for 4 months **equals $94.60.**

(v) For April 1991 at 18% for $1,700 less housing allowance for 3 months **equals $70.94.**

(vi) For May 1991 at 18% for $1,700 less housing allowance for 2 months **equals $47.30.**

(vii) For June 1991 at 18% for $1,700 less housing allowance for 1 months **equals $23.64.**

TOTAL EQUALS $1,068.39

I order that this amount plus the court fees of the Plaintiff be paid within 28 days.

No other orders for costs.

(A. R. Palmer)
JUDGE