**N.B.S.I -v- S.I.N.P.F.B**

**High Court of Solomon Islands**
**(Palmer J.)**
Civil Case No. 18 of 1993
**Hearing:** 26 March 1993
**Judgment:** 7 April 1993

**J.C. Corrin** for Plaintiff
**A Rose** for the Defendant

**PALMER J**: This is an application by National Bank of Solomon Islands Limited for certain declarations and subsequent orders on interpretation of the Solomon Islands National Provident Fund Act 1973 (as amended).

The questions for determination are as follows:

1. *Whether upon a true constitution of the Solomon Islands National Provident Fund Act 1973 (as amended) the Plaintiff is entitled to enforce a pledge given by one Jay Rotu on his contributions to the Fund.*

2. *Whether the pledge form signed by one Jay Rotu on 17th and 18th June, 1992 is a valid guarantee for the repayment of the sum referred to therein by Jay Rotu to the Plaintiff.*

3. *Whether the Defendant is obliged to accept the said pledge form as evidence of the said guarantee.*

4. *If the answer to question 3 is yes, whether the Defendant is obliged to release up to two thirds of the contributions credited to Jay Rotu's account in the Fund to the Plaintiff at the time provided for in the Act.*

**The Facts:**

The action in this case stem from a civil suit taken by the Plaintiff against a former employee of the bank, Jay Rotu for recovery of sums of money embezzled from his employer, the Plaintiff bank. Judgment was obtained on the 23rd of April 1992 in Civil

case number 82/92 in the High Court for the sum of $10,681.00 plus interest and fixed costs. The amount was not paid and subsequently an application for oral examination of Jay Rotu was filed by the Plaintiff. At the hearing on the 18th of June 1992 however it was agreed that a lesser amount was outstanding and that the debt owed be converted to a loan. Jay Rotu then executed a pledge form over his National Provident Fund contributions as guarantee for the loan.

The lesser figure agreed upon was $9,771.00 plus interest and costs.

The pledge form was forwarded to the Defendant but was not accepted.

**The Law:**

The applicable law is to be found in the Solomon Islands National Provident Fund Act.

That Act set up the Solomon Island National Provident Fund Board which was responsible for administering the Act.

The purpose behind the Act was to set up a compulsory saving scheme for all persons engaged in employment in the country.

A certain percentage was deducted from each pay of the workers and the employers were required to contribute certain sums towards that.

The Act also sets out when withdrawals can be made.

The relevant provisions relied on is subsections 38(1) and (3) of the Solomon Islands National Provident Fund Act. These say:

> 38. (1) *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, sequestrated or levied upon for or inrespect of any debt or claim whatsoever.*
>
> (3) *A member may pledge up to two-thirds of the contributions credited to his account in the Fund by way of guarantee for a loan from -*
>
> (a) *a bank licensed under section 6 of the Banking act 1976;*

(b) *the Development Bank of Solomon Islands; or*

(c) *the Solomon Islands Housing Authority.*

The words *'subject to'* has been addressed in one of my judgments in this court in the case of ***Bjannar Pty Ltd and Roberts -v- The Comptroller of Customs & Excise*** *CC279/92* judgment given on the 29th of September 1992.

It is sufficient to state that the words 'subject to' indicate which subsection is to prevail in the event of a clash between the two subsections. If there is no clash then it should be ignored, i.e. that the master subsection shall prevail.

The effect of the words 'subject to' in subsection 38(1) and subsection 38(3) is to allow or enable a member of the Fund to make a pledge of up to two thirds of his contributions for a loan that he or she may have taken out.

A loan is taken out for many reasons. One takes out a loan to buy a house or car. Some even take out a loan to repay a debt or even moneys misappropriated. A typical example would be where a Provincial Member having misappropriated Provincial Funds raises a loan from a commercial bank to repay that debt.

So, for the purposes of interpreting the extent of the word 'loan', it should not necessarily make any difference what the purpose of the loan is. Whether a pledge is accepted for a particular loan or not is another matter.

So if a person takes out a loan to repay a debt from a commercial bank, then that person may pledge up to two thirds of his contributions as guarantee for that loan. The effect of the words 'subject to' as used in section 38(1) is to allow a person to do that under subsection 38(3).

What happens when a member wants to make a pledge of his contributions? Mr Rose (Counsel for the Defendant) has pointed out clearly the procedures under which this is done. The crucial point to note here is that the pledge cannot be made effective until the Fund approves and endorses it.

The procedure for making the pledge is an administrative matter. It is made by the responsible body. Accordingly if the member wants to make a pledge he has to comply with that.

There has been no submission made before me to say that the Fund is not the responsible authority for processing such pledges.

What is clear to me is that the member has to let the Fund know first of all about his decision to make a pledge. The fund then processes that as an application, checks the purposes on which the pledge is being guaranteed for, endorses it and returns that pledge to the member, who then can use it as a guarantee under subsection 38(3). When a member decides to pledge his contributions he must get the approval of the Fund. He cannot do it on his own. The money is not at his disposal at will. He must get the approval and endorsement of the Fund.

This is a procedural requirement and is an administrative matter. The Fund, as the custodian of the member's contributions and placed in the position of a trustee has a right to be informed and to be able to screen the purposes and reasons for the pledge.

It has been submitted by counsel for the plaintiff that there is no requirement on the Fund to look behind the purposes of the loan. However, there is nothing to stop the Fund from screening such applications.

It has a duty to safeguard the member's contributions and to ensure that the member is acting responsibly and wisely. Section 49 of the Solomon Island National Provident Fund Act gives very wide powers of inspection, inquiry and examination to the Fund.

There is nothing illegal or wrong or improper about policy guidelines and directions issued by the Fund in the processing of pledges of members for purposes of guaranteeing loan under subsection 38(3).

If the member decides to make a pledge of his contributions, is the Fund obliged to process that pledge come what may? or does the Fund have the power to say no?

Subsection 38(30 should be read bearing in mind the whole context of the Act. A member cannot make decisions in isolation. The reason is because his money is in the care of the Fund. Any pledge therefore that a member wishes to make must be endorsed by the Fund. A member cannot make a decision in isolation.

Now the Fund has set out certain procedures to follow. The reason is simple, so that proper checks can be made to void any irresponsible or illegal activities. Also to ensure that the funds are not tied up for petty or useless loans.

The Fund in that same regard can set policy guidelines and directions as to when pledges can be accepted or refused. And if the Fund decides that pledges will not be

granted for certain types of loan then that is perfectly valid. Subsection 38(3) does not impose any obligation on the Fund to grant a pledge. That subsection merely gives an opportunity to the member to pledge two thirds of his contributions. Whether that pledge will be accepted by the Fund is another matter.

The Fund in this particular case has refused to process the pledge in essence on the ground that the loan taken out was for moneys stolen. The debt was incurred through the criminal activity of the member Jay Rotu, and that accordingly it is contrary to the policy of the Fund to grant pledges for such loans.

The submission of Ms Corrin is that there is no power of enquiry in which the Fund is obliged to inquire into the purposes of the loan. Her submission is that as long as the requirements of subsection 38(3) are complied with, the Fund has no other choice but to accept the pledge and endorse it as a valid guarantee.

I do not think with due respects that such a restrictive interpretation can be taken of that subsection. Such a tunnelled vision interpretation can open up the floodgates to all sorts of loans, which with due respects would seem not to be for the purposes for which the amendment had been intended.

But more importantly that subsection should not be read restrictively. It is neither prohibitive. It does not stop the Fund from enquiring to ensure that the purposes and objectives of the Fund are complied with.

Mr Rose did hint on the policy guidelines set, in which pledges would be approved for such loans. These include loans for houses, vehicles, small business and agricultural projects, outboard motors etc.

Is the policy reasoning, guidelines and directions of the Fund wrong in law, illegal, or without proper foundation?

It is my view that there is both an inherent power vested in the Fund in its capacity as a trustee of the member's contributions, and an implied power to ensure that the purposes for which the Fund was set up are not compromised or diverted from, and are complied with. This is reflected in the policy guidelines and directions set out.

It has not been shown in my view that the refusal of the Fund to process the pledge has been illegal, improper or based on unreasonable grounds.

The actions of the plaintiff in this particular case however are questionable.

The sole purpose of converting the debt incurred into a loan was so that the contributions of Jay Rotu could be used as a guarantee under subsection 38(3) and so that the plaintiff could recover its debt.

The misconception here is in assuming that the pledge made by Jay Rotu to the plaintiff bank is a valid guarantee. The plaintiff knows very well that such a pledge must be endorsed first by the Fund before it can be accepted as a valid guarantee. The pledge has never been actioned by the Fund and accordingly the plaintiff cannot rely on it.

The agreement made between Jay Rotu and the plaintiff is but an agreement to pledge his two thirds contributions. No pledge therefore has been completed. It is the Fund who must execute that pledge to make it complete.

There is another matter that needs to be pointed out here. The correct person to seek a relief in this court is Jay Rotu and not the plaintiff bank. It is he who should have been made a party because it his decision to make a pledge of his two thirds of contributions that has not been actioned by the Fund. Nevertheless, it does not matter now because my ruling on the effect of subsections 38(1) and (3) would have been the same.

The Fund has refused to action the pledge, and that is the end of the matter as far as the plaintiff bank goes. There are other ways that the plaintiff can look at to recover that debt.

I have ruled that the refusal to issue a pledge was within the power of the Fund.

Accordingly, the declarations sought cannot be granted. The answers to the 4 questions raised therefore are all **NO.**

Costs of this application to be paid by the plaintiff.

**(A. R. Palmer)**
**JUDGE**