

REEF PACIFIC TRADING LIMITED -v- ANDREW NORI

High Court of Solomon Islands

(Palmer J.)

Civil Case No. 223 of 1993

Hearing: 16 September 1993

Ruling: 27 September 1993

P. Tegavota for Plaintiff

J. Corrin for the Defendant

RULING

PALMER J.: The Defendant applies by way of summons for an order to strike out the Writ of Summons and Statement of Claim filed on the 18th of July 1993. The summons was filed on the 9th of August 1993.

A judgement in default of defence dated the 8th of September 1993 was filed but the date of filing has not been entered on the document.

There are several objections raised by Ms Corrin, counsel for the Defendant in this case.

First, the judgement in default is objected on the ground that it is irregular. The Plaintiff's claim is not in respect of a debt or a liquidated demand but a claim for damages. Accordingly, only an interlocutory judgement should have been entered and the question of damages to be determined by the court as required by 0.29 R.4.

The second objection raised is that the judgement in default was filed after the summons to strike out was lodged with the court. It should be obvious therefore that the Defendant wished to take part in the proceedings and has made a bona fide application. Ms Corrin also pointed out that had a defence been filed then that would have prejudiced its application to strike out the Writ of summons and statement of claim.

I am satisfied that the judgement in default is irregular on its face. Further, it was lodged after the summons to strike out was filed, though perhaps that summons may not have been served on the plaintiff in this case, and perhaps that may have been the reason why the Plaintiff was not aware of the summons. I am satisfied it would be

proper to strike off the judgement in default. I now consider the substantive part of the summons.

The first ground raised is that the Writ of summons and the Statement of Claim are void under the Legal Practitioners Act of 1987. The Writ of Summons and the statement of claim were issued by Kerry Leon Milte as advocate for the Plaintiff. Mr Milte however was admitted as a Barrister and Solicitor to practice in this jurisdiction pursuant to a Certificate of Admission dated the 5th of October 1992 to represent "...*Reef Pacific Trading Ltd, Wolfgang Meiners, Joann Meiners and Davinia Philips in the proceedings now before the court, in particular, in Civil Case No.246/91.*" Ms Corrin submits that Mr Milte has acted contrary to the Legal Practitioner's Act.

She relies on two case authorities from this jurisdiction, *Guadalcanal Province -v- Shell Company Civil Case 195/90* and *Island Enterprise -v- Reef Pacific Trading Limited Civil Case 119/90.*

The second objection raised to the Writ of Summons is that no proper address for service had been given as required by Order 4 Rule 1. Order 4 Rule 1 requires that there "... *shall be an address for service where notices, pleadings, orders, summonses, warrants and other documents, proceedings and written communications, if not required to be served personally, may be left for him.*"

In this particular case, the address for service is stated as P.O. Box 408, Honiara.

In its response, Mr Tegavota for the Plaintiff points out that he is the solicitor generally for the Plaintiff. He denies any knowledge of P.O. Box 408 and says that documents should be sent to him.

I am satisfied that the Writ of Summons and the statement of claim should be struck off for breach of the Legal Practitioners Act of 1987 and for improper address of service.

However, having now heard Mr Tegavota's submissions, I will allow 7 days for an amended writ of summons and statement of claim to be filed, failing which the writ and statement of claim will be struck off.

The costs of the Defendant are to be paid by the Plaintiff.

(A.R. Palmer)

JUDGE