

REEF PACIFIC(SYDNEY) PTY LTD and OTHERS -v- REEF PACIFIC TRADING LIMITED and OTHERS

High Court of Solomon Islands

(Muria CJ.)

Civil Case No. 246 of 1991

Hearing: 7 March 1994

Judgment: 18 March 1994

T. Kama (not attending) for Plaintiffs

Joanne Meiners, 3rd Defendant and representing all Defendants

MURIA CJ: These applications have been brought by the Defendants, Reef Pacific Trading Ltd and four others. The first application, filed on 3/2/94 seeks an order from the Court directing the Registrar of High Court to released fund held under a Bank Guarantee and held by the Court as security for Costs. Mrs Meiners who appeared as 3rd Defendant as well as representing the other four Defendants, suggested that the Guarantee held on behalf of the plaintiff should be released to satisfy part of the judgement of Palmer, J who awarded Party-Party costs to the Defendants on 3/9/93.

The second application filed on 24/2/94 seeks to have the judgements of this Court made on 23/4/92, 3/9/93 and 27/1/94 set aside. The Defendants for the third time relied on the same grounds as were put before Palmer, J on 29/7/93 (Judgement given on 3/9/93) and 24/11/93 (Judgement given on 27/1/94).

At the hearing before Palmer, J on 29/7/93, the Defendants argued that the judgement made by this Court on 23/4/92 should be set aside on the ground that that judgement was obtained by fraud. In support of that contention the Defendants argued that the Bank Guarantee from the National Australia Bank received by the Registrar of High Court as security for costs was not genuine. Therefore it was said that the Court was tricked into accepting that Bank Guarantee. Palmer, J rejected the Defendant's arguments and refused to set aside the judgement of this Court made on 23/4/92.

The Defendant's not being satisfied with the judgement of 3/9/93 of Palmer, J brought another application on 24/11/93 again to this Court seeking once again to set aside the judgement made by this Court on 23/4/92 on the ground that it was obtained by fraud. This time the non-genuineness of the Bank Guarantee was again raised.

Together with that argument, the Defendant also argued that the fraud here was in respect of the Deed of Agreement which was signed on 24/1/91. That Agreement, the defendants said, was signed by a company that was non-existent at the time. It was also argued by the Defendants that Rosa and Graeme Price misrepresented themselves as directors of the Plaintiff and fraudulently signed and affixed a company seal to the Agreement. These and other arguments were put forward by the Defendants challenging the validity of the Agreement. Palmer, J rejected all those contentions made by the Defendants.

The Defendants also relied on the Stamp Duties Act, in particular, section 6, to challenge to validity of the Agreement. The Defendants argued that the Agreement was not valid and inadmissible as it had not been stamped. Palmer, J also rejected that argument.

Now the Defendants have come back again to this Court and asked the Court to set aside its judgement made on 23/4/92 again on the ground that the said judgement was obtained by fraud. The Defendants once again argued that the Agreement of 24/1/91 was a fraud in that Rosa and Graeme Price fraudulently misrepresented that they were directors of the plaintiff company and thereby fraudulently affixed a company seal to the document purported to have been executed on the 24/1/91.

It has been again argued by the Defendant that the Agreement relied on by the Plaintiffs in the Statement of Claim was made by a company which did not exist at the time of signing. The Defendants also said that the Plaintiff's company did not come into existence until 6/3/91. Like at the hearing before Palmer, J on 24/11/93, the Defendant relied on the Affidavit of Michael Harley Roberts in support of that argument.

The argument relying on section 6 of the Stamp Duties Act was again put forward by the Defendants.

In his judgement delivered on 27/1/94 Palmer, J dealt with those arguments and having considered them refused to accept them as grounds for setting aside the judgement of this Court made on 23/4/92.

I do not need to repeat what was stated in the two judgements of Palmer, J. But upon listening to Mrs Meiners and reading the two judgements of Palmer, J I cannot help but wonder why the Defendants chose to come back to this Court once again and repeat all over what they had put before the Court earlier and had been decided upon by the Court. Surely the Defendants ought to have realised that the Court cannot

decide on the issues raised otherwise than on the materials placed before the Court. Materials placed before the court previously are again put before the court.

In this case the Defendants raised the same issues and relied on the same materials as those before the Court previously. The law is clear in such a case. A litigant ought not to be allowed to bring proceedings to set up the same issue which had already been decided upon by the Court in a previous proceedings. See *Reichel -v- MaGrath* (1889) 14 Appl Cas 665 and *Macdougall -v- Knight* (1890) 25 QBD 1.

In the former case the House of Lords decided that it was within the jurisdiction of the Court justice to prevent a defeated litigant from raising the very same question which the Court had decided in another action. Lord Halsbury LC had said at page 668:

"My Lords, I think it would be a scandal to the administration of justice if, the same question having been disposed of by one case, the litigant were to be permitted changing the form of the proceedings to set up the same case again"

The Lord Chancellor went on to add that there must be an inherent jurisdiction in every Court of Justice to prevent such an abuse of its procedure.

A plea of *res judicata* would also succeed in such a case as was the case in *Macdougall -v- Knight*. There the Court accepted the notion that the Court should not unduly shut the doors of the Court in the face of the litigants. But where the questions for the Court in the second action is the same as those raised and decided upon in the first case, the plea of *res judicata* must succeed and successive actions raising the same questions for the Court's determination would be an abuse of the process of the Court.

The Defendants in this case have been given their days in court, both at the previous action and in the present one. The doors of the court have certainly not been shut in their face. But the defendants should have realised that the questions which they now ask the court to decide on have already been decided upon by Palmer, J at either or both the last two proceedings.

Applying those principles to the present case, I come to the obvious conclusion that this is another attempt by the Defendants to maintain reliance on the allegation that the judgement made on 24/3/92 was obtained by fraud by re-trying the same issues which have already been conclusively decided against them. Those issues are *res judicata*.

The Defendants raised that same issues in this action. That is an abuse of the Court's procedure and the inherent jurisdiction of the Court must be exercised to forbid such an abuse.

The claim by the Defendants that the judgement of this Court made on 23/4/92 was obtained through the abuse of the process of the Court is clearly insupportable. In any case, it is clear, in my opinion, that what the Defendants are now doing is an abuse of the process of the Court.

As I have said, this Court has an inherent jurisdiction to prevent a defeated litigant from abusing its process. That the Court will do so by refusing to set aside its judgement made on 23/4/92 and striking out these two summons as being frivolous and vexatious and an abuse of the procedure of the Court.

(G.J.B. Muria)
CHIEF JUSTICE