

JOSEPH RODI TOTOREA

v.

GRAINGER CORPORATION (VANUATU LTD)
INTERNATIONAL CASINO SERVICES LTD
ANDY AYAMISEBA
VINCE CONTE
SEAN GULLY

PLAINTIFF

1ST DEFENDANT
2ND DEFENDANT
3RD DEFENDANT
4TH DEFENDANT
5TH DEFENDANT

High Court of Solomon Islands

(Palmer J.)

Civil Case No: 74 of 1995

Hearing: 13 March, 1995

Ruling: 14 March, 1995

F. Waleilia for Plaintiff

J. Corrin for Defendant

PALMER J: The Plaintiff applies inter alia for leave to issue and serve Writ of Summons and Statement of Claim on the First and Second Defendants who reside outside the jurisdiction of this Court. These are set out more fully in paragraphs (1) and (2) of the ex parte summons filed on the 13th of March, 1995, by the Plaintiff. The application for leave has been filed pursuant to Order 2 Rule 3 of the High Court (Civil Procedure) Rules, 1964.

An affidavit in support by Joseph Rodi Totorea has been filed also on the 13th of March, 1995. I have read through the said affidavit and also heard the submissions of Mr. Waleilia of Counsel for the Plaintiff, and the submissions in reply of Ms Corrin, of Counsel for the Defendants, and have formed the view that the Plaintiff does have a good cause of action and that the First and second Defendant are incorporated companies whose business addresses are outside the jurisdiction of this Court. It is clear therefore that this is a proper case for service of process outside the jurisdiction of this Court. However, having formally been informed that Ms Corrin appears for and on behalf of all the

Defendants in this hearing. I will direct that service on the 1st and 2nd Defendants be affected instead through their Solicitor. Ms Corrin until further orders.

That deals with paragraph (1) and (2) of the Summons. The remaining paragraphs seek a number of restraining orders against the defendants and orders for discovery and disclosure of various bank accounts conducted by the Defendants and all transactions relating to those accounts. In those circumstances the criteria expounded in the American Cyanamid v. Ethicon Ltd [1975] AC. 396. as a general rule of practice apply to this application.

The first criteria. relates to the question whether there is a serious issue to be tried. It has not been disputed in my view that there are serious and may be complicated issues raised in the affidavit of the Plaintiff

It has also been satisfactorily raised in the affidavit evidence of the Plaintiff that there are legal and equitable rights that have been infringed and continue to be infringed if no restraining orders are being granted. The Plaintiff therefore argues that in order to protect and preserve his legal and equitable rights. that the orders sought should be granted.

The Defendants on the other hand argue that there had been delay on the part of the Plaintiff in bringing this action and that therefore the Defendants have continued their operations since without any interference or hindrance. The operations of the Defendants therefore should be allowed to continue as usual until trial in this action.

Further. it is pointed out that when the second criteria as set out by the American Cyanamid case is considered. the conclusion must go in favour of the Defendants in that. whatever losses that the Plaintiff may claim will be adequately compensated for by damages. Mr Waleilia concedes that although the 1st and 2nd Defendants may not have much in terms of assets backing in this country. it is very probable that they would have sufficient funds and assets overseas.

On the other hand, there is insufficient evidence to show that the Plaintiff will be in a position to satisfactorily compensate the Defendants for damages if a restraining order is granted and he loses this claim at the end of the day. No undertaking for damage has been provided and no explanations or submissions made as to why it has not been given. This must weigh against the Plaintiff.

I appreciate that one is looking at a legal battle between a small businessman as against a large well established company(s) overseas which has an annual turnover in profits of may be in the millions of dollars, and that therefore it may be said that one should not construe monetary requirements strictly as against the small businessman. However, despite taking that factor into account, the determining factor in this case in my view is the issue of delay of some six months or so and which in my view weighs heavily against the Plaintiff as to the question of whether the orders sought should be granted.

As correctly submitted by Ms Corrin, the issues raised to justify the issue of restraining orders, occurred in September, October and November of 1994. And yet no application was made until the 13th of March, 1995. The Defendants have been in operation since, until the present.

No evidence has been adduced to show that there is a strong possibility of the funds obtained from the operations of the Honiara Gaming Club ever leaving the shores of this country overnight. However, even if that should be contemplated now, the Defendants now have notice of the impending claim of the Plaintiff and it would be most unwise and unprofitable, to seek to have any of the proceeds from the Honiara Gaming Club removed beyond the jurisdiction of this Court, until trial of all the issues raised in this action.

The restraining orders sought against the Defendants, their servants and agents from carrying on and continuing with the normal operations of the Honiara Gaming Club or Honiara Casino are denied. However, all proceeds since the beginning of the operations of the Honiara Gaming Club should be accounted for to date and I will direct that a statement of account, containing all the details of the takings and expenditures of the Honiara Gaming Club or Honiara Casino, to the date of this ruling be

prepared and submitted within 30 days. All takings from the date of this ruling shall be paid into a Solicitor's trust account in the names of Messrs. Waleilia and Corrin and placed in an interest bearing deposit account at the National Bank of Solomon Islands Limited. Any expenditures of the Honiara Gaming Club or Honiara Casino as from the date of this order must first obtain the Court's approval before payment is made.

Any other orders sought in the summons (excluding those in paragraphs (1) & (2)) are denied.

Further, I give directions as follows:

- (i) Writ of Summons and Statement of Claim to be filed and served within 14 days:
- (ii) Memorandum of Appearance and Statement of defence to be filed 14 days thereafter:
- (iii) Replies 14 days hence:
- (iv) Discoveries by list 21 days after:
- (v) Interrogatories 14 days after:
- (vi) Answers 14 days after:
- (vii) And the matter to be listed for trial on a certificate of readiness with Judges Bundle of Pleadings to be filed by the Plaintiff's Counsel:

(viii) Liberty to apply on 2 days notice to either party:

(ix) Costs in the cause.

ALBERT R. PALMER

A. R. PALMER

JUDGE