

In the High Court of Solomon Islands
Case Number 16999

BETWEEN

WIDE CENTURY LTD	Plaintiffs
And	
SOLOMON PROPERTIES DEVELOPMENT LTD	Defendant

Before Registrar Chetwynd
Hearing 24th March 1999
Judgment 24th March 1999

Mr Sullivan for the Plaintiff
✓ Mr Radclyffe for the Defendant

Registrar Chetwynd - This is an application on Summons for Judgment against the Defendant. The brief history of this case is that the writ of Summons was issued on 18th September 1998. A Memorandum of Appearance was filed on 28th September 1998. An Amended Statement of Claim was filed on 18th February 1999, the same date as the Summons. A Defence has been filed but unfortunately it had not reached the Case file by the time of the hearing. I was able to read a copy of the Defence during the submissions by Counsel. It is a short Defence.

The Plaintiff's claim is based on an agreement which is evidenced in the affidavit of Tam Tai Kin a Director of the Plaintiff. Exhibited to his affidavit are the "Sales Contract" of 22nd November 1992 and a letter of 20th January 1993. I have to say that there is clear evidence of a contract between the parties. The evidence does not appear to be disputed. What is being disputed is whether this was a leasing agreement or a straightforward sale. The Defendant is not saying that it did not enter into a contract with the Plaintiff, it is simply saying that there is a difference of opinion as to exactly what that contract was. In short the Defendant seems to be saying that I do not dispute that I owe you money, I am disputing how I came to owe you the money.

I remind myself that in an application such as this I am being asked to decide a case without hearing any evidence or at least having it tested. It is not a step that any Court should be willing to take without being sure. In many ways this is like a Criminal matter in that the benefit of any doubt must go to the Defendant's credit. Our Rules say that if it appears to me that the Defendant has a good defence or ought to be permitted to

defend the action then I should refuse the Plaintiff's application. If I am satisfied that there is a triable issue (which is the way the modern English Rules phrase the question to be answered) then the Defendant must be allowed his day in Court..

Is there a triable issue here ? In my view no. The Defendant says, in so many words, that there is a dispute between the parties as to the exact nature of the agreement that was reached between them. There is no dispute that an agreement of one kind or another was reached. There is no dispute that as a result of that agreement the Defendant was indebted to the Plaintiff. There is no dispute about the amount of the indebtedness. The only dispute is as to how that indebtedness came to be.

My own view, for what it is worth, is that there was an agreement whereby the purchase price was to be paid over a period of three years and that property in the goods was not to pass until the final payment had been made. There was a collateral agreement that the purchase price would attract interest at 12% throughout the term of the agreement. In the meantime the Defendant was entitled to use to goods. Nothing in the Defence would seem to contradict that conclusion.

I have seen no evidence that the goods have been rejected or that the Defendant is somehow unhappy with them. Quite the contrary, the evidence I have seen leads me to the inevitable conclusion that Defendant was perfectly happy with the goods and paid a total of 19 payments amounting to some 525,000 Hong Kong dollars over a period of 18 months. The Defendant even offers to pay off the balance of the agreement by March 1995, (see exhibit "TTK5").

I have to say therefore that I can see no triable issue between the parties. As I have no evidence to show that the Defendant disputes the amount of the sum claimed I order :

1. Judgement in the sum of HK\$639,499.20 together
2. Interest at the contractual rate of 12% from 1st January 1999
3. Interest at 12 % from to day until payment.
4. The Defendant must also pay the costs of the application, such costs to be taxed if not agreed.

Dated 24th March 1999


RD Chetwynd
Registrar