

**SOLOMON ISLANDS HOME FINANCE LIMITED -v- SOHPIA CHOTTU**

HIGH COURT OF SOLOMON ISLANDS  
**(F. O. Kabui, J.)**

Civil Case No. 91 of 2001

Date of Hearing: 08<sup>th</sup> April 2002  
Date of Judgment: 12<sup>th</sup> April 2002

*Mrs. C. B. Titiulu for the Plaintiff*  
*Mrs. A. N. Tongarutu for Defendant*

**JUDGMENT**

**(Kabui, J):** By a Writ of Summons and Statement of Claim filed on 21<sup>st</sup> May 2001, the Plaintiff claims against the Defendant the sum of \$ 87,144. 81 plus 12% per cent interest accrued as at 1<sup>st</sup> May 2001 until payment and orders for directions for sale of Parcel No.191-001-27 under section 171 of the Land and Titles Act (Cap. 133). The Writ and the Statement of Claim were served on the Defendant on 31<sup>st</sup> May 2001 having been filed and sealed by the High Court on 21<sup>st</sup> May 2001. The Defendant filed a Memorandum of Appearance on 18<sup>th</sup> June 2001. The Defendant failed to deliver her defence resulting in the Plaintiff filing a Notice of Motion on 24<sup>th</sup> July 2001, seeking leave to enter judgment for the Plaintiff on the ground of the Defendant failing to deliver a defence since service was effected on her on 31<sup>st</sup> May 2001 plus costs. The Motion was served on the Defendant's Solicitor on 26<sup>th</sup> July 2001. By a Notice of Motion filed on 31<sup>st</sup> July 2001, the Defendant sought leave of the Court to extend time within which to file her defence. I granted that application and ordered that her defence be filed within 14 days from the date of that ruling. Defence was filed on 14<sup>th</sup> August 2001. The case came before me on 1<sup>st</sup> March 2002 but had to be adjourned due to non-service of the Court papers on the Defendant's Solicitor. The case was then re listed for 8<sup>th</sup> April 2002 before me for hearing.

**The Facts**

In or about November, 1993 the Plaintiff agreed in writing by offering to lend to the Defendant the sum of \$50,000.00 as a loan to the Defendant which the Defendant accepted on terms and conditions expressed in the Loan Agreement. One of the terms, amongst other things, was that the Defendant would repay the loan in installments of \$255.00 per fortnight for a term of 20 years plus interest of 12% per annum for that duration. On or about 1<sup>st</sup> December 1989, the Defendant executed a charge over Parcel No. 191-001-27 as security for the loan. The charge was later stamped and registered on 9<sup>th</sup> December 1993. On or about 5<sup>th</sup> May 1998, the parties agreed to restructure the repayment schedule after it was clear that the Defendant had been unable to repay the loan due to default to repay on numerous occasions. As a result of the restructure in 1998 the Defendant had to

repay \$850.00 per month for a term of 14 years. Again, despite several demands to pay, the Defendant failed to repay as before.

The Motion filed by the Plaintiff on 24<sup>th</sup> July 2001 was no longer relevant after I delivered my ruling on 1<sup>st</sup> August 2001 giving leave to extend time. The Defendant filed her defence on 14<sup>th</sup> August 2001. The Plaintiff delivered no reply within 14 days or thereafter. In terms of Order 25, rule 1 as read with Order 32, rule 1(a) of the High Court (Civil Procedure) Rules 1964 "the High Court Rules" pleadings must be assumed to have closed after 14 days without a reply. Summons for directions should have been taken out within 21 days thereafter but none was taken out in this case. In terms of Order 32, rule 8, the failure to take out a summons for directions on the part of the Plaintiff would have resulted in the Defendant taking action to dismiss the action. The Defendant took no action in this case. The least the Plaintiff could have done was to have requested a hearing date to be fixed. Apparently this too was not done. Or, if the Plaintiff did not believe that the defence filed by the Defendant on 14<sup>th</sup> August 2001 was not a good defence it could have sought redress under Order 14, rule 1(a) of the High Court Rules. The Plaintiff did not do this either. Instead, the Plaintiff filed a Summons on 20<sup>th</sup> February 2002 seeking final judgment against the Defendant for the sum claimed plus costs. At the hearing of this Summons Counsel for the Plaintiff indicated that she was relying on Order 15, rule 1 of the High Court Rules because she believed the Defendant had no defence. The citation of Order 15, rule 1, I think, was a mistake because Order 15, rule 1 above only applies to summary judgment in actions for specific performance. Counsel however might have meant Order 14, 1 (a) of the High Court Rules but incorrectly cited Order 15, rule 1 above. This must be the case because the supporting affidavit filed by Mr. Allan on 20<sup>th</sup> February 2002 in general satisfies the requirements of Order 141 (a) above. I would rectify this position by applying Order 30, rule 12 of the High Court Rules (**see Mill Lin Chan v The Premier of Malaita Province cc 159 of 1998**).

**The Agreement on 17<sup>th</sup> October 2001 Counter-signed by the Defendant on 24<sup>th</sup> December 2001**

Discussions and correspondence between the Solicitor for the Defendant and Mr. Allan an officer of the Plaintiff had resulted in an agreement to restructure the repayment schedule of the loan arrears. The agreement was contained in a letter dated 17<sup>th</sup> October 2001 addressed to the Defendant and counter- signed by her on 24<sup>th</sup> December 2001. The terms of this agreement were that the Defendant was to pay \$4,000.00 for arrears by 31<sup>st</sup> October 2001 plus \$1,310.00 at the end of each month commencing on 30<sup>th</sup> November 2001 until all the arrears were cleared. In the event that the Defendant failed to comply with those terms the Plaintiff would be at liberty to apply to the Court to continue the proceedings against the Defendant. The Defendant paid the sum of \$4,500.00 by cheque in February 2002 well after 31<sup>st</sup> October 2001. This was a clear breach of the agreement reached between the parties. The Plaintiff took action immediately and filed a Summons on 20<sup>th</sup> February 2002 for judgment to be entered against the Defendant. Counsel for the Defendant argued that the agreement reached between the parties on 24<sup>th</sup> December 2001 had changed the character of the claim by the Plaintiff as stated in

the Plaintiff's Statement of Claim. Counsel argued that it was unfair for the Plaintiff to claim the full amount by alleging the breach of that agreement. I cannot accept that argument. It may well be the case that the loan arrears was the main objective of the agreement as understood by the Defendant when she counter-signed on 24<sup>th</sup> December 2001. The irony however is that the Defendant was clearly in breach of that agreement on day one when she did not pay \$4,000 on 31<sup>st</sup> October 2001 as stipulated in that agreement. The Defendant eventually complied in February 2002 some 3 months later. The Defendant's breach of that agreement clearly entitled the Plaintiff to reactivate the legal proceedings already hanging over her head under (c) of that agreement. It is therefore wrong for the Defendant to challenge the correctness of the Plaintiff's action in this case. The Defendant is clearly liable to repay her loan to the Plaintiff. The Defendant clearly has no good defence in this case. The conduct of the Defendant clearly shows that she would not be able to repay her loan and therefore must accept the inevitable. That is to say, the Defendant must accept orders for the sale of Parcel No. 191-001-27 for the recovery of the loan.

#### **The Orders of the Court**

Upon hearing Counsel for the Plaintiff and for the Defendant and having read the affidavits filed in each case, I am satisfied that I should grant the relief sought in the Statement of Claim filed by the Plaintiff. I grant the orders sought accordingly. Counsel for the Plaintiff will draw up the orders and I will sign them accordingly.

**Justice F. O. Kabui**  
**Judge**