

VERNON SMITH -V- THE ATTORNEY GENERAL AND OTHERS

HIGH COURT OF SOLOMON ISLANDS  
(PALMER J.)

CIVIL CASE NUMBER 85 OF 2001

HEARING: 1<sup>ST</sup> AUGUST 2002  
JUDGMENT: 30<sup>TH</sup> AUGUST 2002

*Crystal Lawyers for the Plaintiff*  
*S. Manetoali for the Defendants*

**Palmer J.:** The Plaintiff applies by Notice of Motion filed 27<sup>th</sup> May 2002 for orders inter alia that the Defence of the Defendants filed 18<sup>th</sup> July 2001, be struck out on the grounds that it does not disclose any valid Defence.

Plaintiff relies on the judgment of this court in *Premium Balsa Products Limited and Vernon Smith v. The Attorney General HC-CC 231 of 1999 judgement delivered 31<sup>st</sup> August 2000* (hereinafter referred to as "Civil Case 231 of 1999") in which this Court had ruled in favour of the Plaintiffs in that case that the decision of the Investment Board ("Board") taken on 9<sup>th</sup> April 1999 "to withdraw and cancel Premium Balsa Products Limited Certificate of Approval No. 52/95" was to be regarded as vitiated (see page 8 of the judgment).

### Background facts

The Plaintiff, Vernon Smith had commenced proceedings against the Investment Board in Civil Case 231 of 1999 in essence, **for damages for cancellation** of his Certificate of Approval No. 52/95, which had entitled him to invest in Solomon Islands for purposes of raising 8 Balsa plantations. He had hoped to raise sawn Balsa wood timber for export from those plantations. He was granted Certificate of Approval on or about 1<sup>st</sup> October 1995. On or about 21<sup>st</sup> October 1998 his Certificate of Approval was withdrawn on allegations that he had breached the terms of his approval. He objected and the decision was withdrawn on the ground that the Board felt he had not been given opportunity to be heard. On 9<sup>th</sup> April 1999 however, the Board again purported to cancel his certificate after what it thought, having given Mr. Smith opportunity to be heard. Mr. Smith again objected and filed Civil Case 231 of 1999 to have inter alia, the decisions of the 21<sup>st</sup> October 1998 and 9<sup>th</sup> April 1999 declared as **unlawful and void**.

In his findings, his Lordship Awich J. held that the decision of 21<sup>st</sup> October 1998 had been repudiated by the Board and therefore was not in issue. The order sought therefore was misconceived. I quote:

*"It thereby repudiated its first decision and was to decide the matter anew taking into account the representation to be made by the plaintiffs at the meeting intended for 26.2.1999. Although the letter of the Board dated 12.4.1999 written after the meeting on 3.3.1999, stated that the Board decided to maintain its previous decision, the subject of proposed declaratory order 1, the previous decision had actually been abandoned, the Court cannot make any declaration about non existent decision."*

His Lordship however purposely refused to grant declaration that the decision of the Board of 9<sup>th</sup> April was unlawful and void, opting instead to simply grant declaration that there had been non-compliance with the requirement of section 15(2) of the Investment Act and that it had been thereby vitiated.

## The Issue

The issue before this court is whether there is valid defence to the Plaintiff's claim for damages for cancellation of his Certificate of Approval. The Plaintiff says that no valid defence had been raised in the Defence of the Defendants. Plaintiff argues that the only defence raised was in paragraph 3(a) of that Defence. However he submits that cannot be accepted as a ground of defence as it had already been dealt with by the Court in its judgment in Civil Case 231 of 1999. It follows that the Defendants do not have any valid defence and that their Defence ought to be struck out.

## Findings

I accept submission of learned Counsel Mrs. Samuels for the Plaintiff that paragraph 3(a) of the Defence afforded no defence and that the denial of the Defendants regarding the successful challenge of the decision of 21<sup>st</sup> October 1998 had been completely misconstrued. His Lordship Awich J. had found that the said decision had been repudiated by the Board and therefore was no longer in existence or valid. The denial pleaded in paragraph 3(a) of the Defence therefore was a non-issue.

It is another matter however to suggest thereby or conclude that the Defence of the Defendants should be struck out. The fact that there had been a failure to perform public functions for instance does not necessarily imply that damages must follow. The awarding of damages is discretionary. Depending on the facts and circumstances, damages may or may not be awarded. So whilst there may have been no defence to the substantive issue that the cancellation of the Certificate of Approval on 9<sup>th</sup> April 1999 was held by the court to have been vitiated, the question whether or not damages should be awarded is a live issue. In paragraphs (4) and (5) of the Defence, the Defendants expressly deny that Plaintiff is entitled to damages. That in my respectful view is sufficient for purposes of requiring the Plaintiff to prove on the balance of probabilities that he is entitled to damages. The mere fact a decision had been vitiated does not necessarily imply that the Plaintiff is automatically entitled to damages. This it seems was indirectly hinted at by his Lordship Awich J. in his judgment in Civil Case 231 of 2001 when he declined to use the phrase "unlawful and void", opting instead for the word "vitiating". I quote:

*"I decline though to use the phrase, "unlawful and void" used in the proposed declaration. That is because the consequence of the term void might have not been intended as the consequence of contravention of s. 15(2). In London and Chyside Estates Ltd v. Aberdeen DC [1979] 1 All ER 876 [1980] 1 WLR 182, the House of Lords highlighted the risk in using terms such as void and voidable in Administrative Law where the jurisdiction of the court is to ensure the proper exercise of powers by public authorities."*

It is therefore arguable and ought to be tried as an issue of law and fact whether the Plaintiff is entitled to any damages at all or any of the relief sought in the Plaintiff's Statement of Claim. Though I do accept that the issue on whether the decision of 9<sup>th</sup> April 1999 had been vitiated is a non-issue in this case, having been finally determined in Civil Case 231 of 1999. The consequential issue however, of whether damages may be awarded is yet to be determined. That remains a live issue and the Defendants are entitled to argue in their Defence whether or not the Plaintiff is entitled.

There is also another issue that of misconduct in office, which was raised in the Claim of the Plaintiff at paragraph (b) of the relief sought. The Defendants deny this. This is also another issue which is yet to be determined. Again the mere fact proper procedures under section 15(2) of the Investment Act had not been complied with does not necessarily imply that the Defendants are guilty of misconduct in office, raising issues contained in Chapter VIII of the Constitution and the Leadership Code (Further Provisions) Act [Cap. 86]. Defendants are entitled to deny this and to require the Plaintiff to prove on the balance of probabilities that the actions amounted to misconduct in office.

In the circumstances I do not think it would be appropriate to have the Defence of the Defendants struck out though, Counsels may appreciate that the issues for determination in this court are quite narrow, focusing essentially on questions of whether or not damages may be awarded and if so how much. Pleadings have closed and the matter more or less ready for trial it seems. The Plaintiff should now consider arranging with the Registrar of High Court to have the matter set down for trial.

**ORDERS OF THE COURT:**

**Dismiss Notice of Motion of the Plaintiff with costs.**

**THE COURT**