

**DEVELOPMENT BANK OF SOLOMON ISLANDS -V-
LAWRENCE LUKISI (trading as or under the firm name of PANDANI
CONSTRUCTION)**

HIGH COURT OF SOLOMON ISLANDS
(KABUI, J.).

Civil Case No. 072 of 2002

Date of Hearing: 12th November 2002

Date of Judgment: 14th November 2002

Mr G. Fa'aitoa for the Plaintiff

Mrs A.N. Tongarutu for the Defendant

JUDGMENT

Kabui, J. This is an application by Summons filed by the Plaintiff on 22nd October 2002 seeking the following orders-

1. The Plaintiff have leave to enter judgment herein against the Defendant in the sum of SBD583,435.21 together with interest thereon at the rate of 16% per annum from 30th June 2002 up to and including the date of payment and costs;
2. The Plaintiff have leave to sell by tender the property within the Fixed Term Estate in Lot 120 Parcel Number 097-005-28 situated at Gizo, Western Province;
3. No tender is to be accepted without the further leave of a Judge in Chambers;
4. The Defendant, his servants, agents, invitees, licensees or others entering the land in Lot 120 Parcel Number 097-005-28 under the Defendant's authority be permanently restrained from entering the said land;
5. The Gizo Town Police Commander and all Police Officers under his direction forthwith upon receipt of any order made pursuant to order 4 hereof shall attend and enforce as is reasonably necessary for such purpose upon request by the Plaintiff or its solicitor;
6. The Defendant pays the Plaintiff's costs of an in connection with this action including this application.

7. Such further order or other order as this Honourable Court shall deem meet.

The Background

The Plaintiff in or about 8th August 1995, made an offer of \$240,342.00 to the Defendant as a loan. The purpose of the loan was to finance site development, factory construction and the purchase of machines and equipment for the manufacture of fibreglass products in Gizo in the Western Province. The term of the loan was a period of 5 years. The interest rate was 14% subject to variation by the Plaintiff. The loan repayment was by a monthly instalment of \$5,750.00 commencing on 20th January 1996. The Plaintiff accepted the offer on 25th August 1995. The Defendant began to have problems as early as March 1996. The pre-fabricated factory unit ordered from Australia arrived in Honiara in a damaged condition. A replacement unit was being expected. Land allocation by the Western Province Government had also been changed with the effect that the new allocation was swampland, which required extra costs to prepare for occupation. The Defendant's intention to move back to Honiara, as a temporary measure never came to fruition. The loan was never secured until 7th January 2002 when a charge was created over Parcel Number 097-005-28 in favour of the Plaintiff. Every attempt by the Plaintiff to assist the Defendant to repay the loan had failed. The letter of demand was dated 18th April 2001, requesting the Defendant to pay up the sum of \$505,419.97 as at 31st March 2001. The arrears at that time stood at \$257,665.88. When the Writ of Summons and Statement of Claim were filed on 2nd August 2002, the sum as at 30th June 2002 stood at \$583,435.21. The Plaintiff claims that sum with interest and costs.

Does the Defendant have a defence?

The Plaintiff has claimed that the Defendant has got no defence and sought leave to enter judgment against the Defendant under Order 14, rule 1 of the High Court (Civil Procedure) Rules 1964 "**the High Court Rules**". As against this claim is the defence filed by the Defendant on 20th August 2002. The defence is essentially that the contract was frustrated by an event beyond the control of the Defendant. The event is theft of the fibreglass products in 1998. I think this is a good defence in law. I refuse to enter judgment for that reason. I refuse the Plaintiff's application on that basis. The case should proceed to trial. Costs to be in the cause.

F.O. Kabui
Judge