

DEVELOPMENT BANK OF SOLOMON ISLANDS –V- JAN SANGA

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

Civil Case No. 209 of 2002

Date of Hearing: 8th November 2002
Date of Judgment: 13th November 2002

Mr J. Apaniai for the Plaintiff
Mr R. Ziza for the Defendant

JUDGMENT

Kabui, J. This is an application by Summons filed by the Defendant on 24th October 2002 for the following orders-

1. That the execution of judgment in Default of Defence be stayed or set-aside;
And/or
2. That the Judgment in Default of Defence obtained by the Plaintiff on 8th October 2002 be set-aside; and.
3. That leave be granted to the Defendant to file her Defence within 7 days; and.
4. That costs be in the cause.

The Facts

The Defendant was a former employee of the Plaintiff until her resignation on 7th April 2002. The position she held then was Assistant Manager Training up until she resigned. By a Bonding Agreement she signed on 15th December 1997 with the Plaintiff, she undertook study leave for a period of 3 years with James Cook University in Australia. She drew full salary during the course of her study in the sum of \$127,461.54. On completion of her study, she returned to Solomon Islands on 22nd June 2001. She resumed work with the Plaintiff as was agreed in the Bonding Agreement she had signed with the Plaintiff on 15th December 1997. Having resigned on 7th April 2002, she breached the terms of the Bonding Agreement. She still had 2 years; 3 months and 9 days balance outstanding in return for her 3 years study leave. She therefore owed the Plaintiff the sum of \$100,693.10 being the equivalent of salary for the remaining period of 2 years, 3 months and 9 days. The Plaintiff by letter dated 15th March 2002, demanded the

payment of this sum from the Defendant. The Plaintiff also claims 5% interest per annum commencing on 7th April 2002 until payment plus costs. The Defendant had failed to pay the Plaintiff on demand.

The liability of the Defendant

This claim is for a liquidated sum of \$100,693.10. In her letter of 26th April 2002, the Defendant seemed to have accepted her liability towards the Plaintiff short of admission. The Plaintiff filed its Writ of Summons on 27th August 2002 and Statement of Claim on 28th August 2002 after a period of 3 months since her letter of 26th April 2002. The Plaintiff had waited 3 months to hear from the Defendant as to how the Defendant would meet her obligation and pay the Plaintiff the sum of \$100,693.10. The Defendant had entered a Memorandum of Appearance on 18th September 2002 in response to the Plaintiff's Writ of Summons and Statement of Claim. She had failed to deliver a defence. She said she was expecting her Solicitor, Mr. Nori, to do it for her. Obviously, Mr. Nori did not deliver any defence within time nor applied for an extension of time. She has now moved the Court to set aside the default judgment. The Plaintiff obtained a default judgment under Order 29, rule 2 of the High Court (Civil Procedure) Rules, 1964 "the High Court Rules". Rule 2 states-

... "If the plaintiff's claim be only for a debt or limited demand, and the defendant does not, within the time allowed for that purpose, deliver a defence, subject as provided by Rule 13 of this Order, the plaintiff may, at the expiration of such time, enter final judgment for the amount claimed with costs" ...

Order 29, rule 12 of the High Court Rules does however allow for the setting aside of such default judgment. The Defendant has invoked this rule in her bid to set aside the default judgment entered against her on 8th October 2002. The Court does however have discretionary power to decide one way or the other in these sorts of cases. The discretionary power to decide is however to be influenced by the following factors-

1. The reason for the delay and the length of time to deliver a defence within time; how the delay affected the other party or allowed rights of a third party to intervene would be important factors to be borne in mind;
2. Whether or not there is a prima facie defence; the defence could arise from the facts or it could be technical in nature. (See page 308 of Australian Civil Procedure, by Bernard C. Cairns, 1981 and **Rosing v. Ben Shemesh** [1960] V.L.R. 173).

The delay in this case is minimal. The main issue is therefore whether the Defendant has a prima facie defence or not. There is no denial or admission of the debt by the Defendant in this case. In his letter of 11th September 2002, the Plaintiff's Solicitor, Mr. Nori advised that he could not advise whether there was a defence or not until he saw a copy of the Bonding Agreement. Clause 5 of the Bonding Agreement states-

..."Should the officer re-enter full-time employment but fail to complete the period specified in Clause 3 of the Agreement, he/she shall be liable to refund to the Bank on demand such proportion of the salary paid to him by the Bank during the course of instruction on a pro-rata basis"...

Clause 3 of the Bonding Agreement states-

..."On the date to be mutually agreed by the Bank and the officer following completion of the course of instruction, the officer shall re-enter full-time employment with the Bank in such capacity as may be decided by the Bank and shall remain in such employment for a continuous minimum period equal to the period stated in clause 1 of this Agreement"...

Clause 1 of the Bonding Agreement states-

..."The officer shall undertake a course of instruction at James Cook University for a period of 3 years commencing on 12th January 1998"...

It is not disputed that the Defendant had undergone and completed her study for 3 years with full-pay at the James Cook University. After that she returned to Solomon Islands and continued her employment with the Plaintiff on full-pay until her resignation on 7th April 2002. What the Plaintiff did was simply to call up the balance of the salary paid to her under the Bonding Agreement upon her resignation on 7th April 2002. Can she really dispute liability to repay the sum of \$100,693.10? Is there a prima facie defence on that score? I do not think so. I think what she can dispute is the imposition of 5% interest per annum on the sum of \$100,693.10. I think there is a prima facie defence on this point. I will set aside the default judgment on that basis alone. It does not affect the Defendant's liability to repay the sum of \$100,693.10. There is no prima facie defence on that point. In the result, I make the following orders-

1. The default judgment entered on 8th October 2002 against the Defendant be set aside in respect of the imposition of 5% interest per annum on the sum of \$100,693.10;
2. The Defendant is to deliver her defence to that effect within 7 days from today;
3. Costs be in the cause.

F. O. Kabui
Judge