

IN THE HIGH COURT OF SOLOMON ISLANDS

BETWEEN: SOLOMON ISLANDS ECO TIMBER
TRUST AND OTHERS

Plaintiff

AND: NATIONAL BANK OF SOLOMON ISLANDS

Defendant

Contract- banking- banker/customer relationship-practice of bank in debiting customer's account when credit (on subsequent cheque dishonour) reversed in customers account- regularity of practice not raised as issue in earlier proceedings involving same parties and accounts

Practice and procedure-res judicata-whether all issues to be subsumed in judgment of earlier proceedings- principle to be applied in common law proceedings- need to specifically plead irregularities which amount to "unlawful acts" or statutory provisions which affect the common law so as to give rise to a particular cause of action under statute in the circumstances.

These plaintiffs seek to recover moneys representing the value of a cheque credited to a particular account but dishonoured. The Bank reversed such credit following such dishonour and the plaintiffs allege "unlawful acts" by the Bank in the manner of the reversal. In earlier proceedings which were contested, the Bank had recovered moneys due and unpaid under account stated between the parties. The Bank now pleads *res judicata* in these new proceedings. Facts appear from the judgment.

Held: (1) The issues between the parties in the former proceedings and these proceedings arise out of the same banker/ customer relationships and involve the same accounts with the Bank.

(2) The earlier judgments are conclusive of the liability of these plaintiffs (in this cause, the defendants in the former proceedings) to the Bank in respect of the moneys owing and are conclusive not merely as to the issues raised but also as to issues that might have been raised.

obiter (3) Whether acts of the Bank in reversing the credit of a particular account following dishonour of a cheque paid to the credit of such account is unlawful should be strictly pleaded and should not be merely alleged.

Cases cited: *Hoysted v- Federal Commissioner of Taxation* (1921) CLR 537

Mr. J. Katahanas for National Bank of Solomon Islands
Ms. Samuel Bird for Plaintiffs.

At Honiara: 11 October, 12 November 2004.

Summons.

Brown J. In the amended statement of claim in this case filed on the 23 March 2004 the various plaintiffs alleged that the Bank had unlawfully debited the 1st plaintiffs account by the amount of cheques drawn on that account by the plaintiff in amount corresponding to the face amount of a cheque deposited to the credit of the account by one W. Philip. That cheque of W. Philip for \$13,028.85 was dishonoured by the Bank and consequently the Bank reversed the credit in the 1st plaintiffs account and sought recovery of the moneys advanced by the Bank. Those cheques drawn by the 1st plaintiff on its account to the value of the earlier credit in its account were honoured and paid by the Bank. This is common banking practice and by virtue of the law affecting such practice, (in terms common to bank account holders,) when a cheque paid to the credit of a particular account is dishonoured, the bank has a commonly accepted right to reverse the credit and recover the money, even where the account holder has in good faith, drawn on such funds.

By the amended statement of claim the plaintiffs allege that the Bank had *unlawfully taken money* from the 1st plaintiffs account in part reduction of this amount claimed back by the Bank for that the Bank had wrongfully created this debt on the 1st plaintiffs account by seeking to recover the amount of the dishonoured cheque of W. Philip. Further that the balance of the overdrawn trust account of the 1st plaintiff was unlawfully paid from the fully drawn loan account of the 3rd plaintiff.

As a consequence of this amended claim, the Bank sought an order for further and better particulars.

Ms. Bird sought to strike out this application of the Banks, but Mr. Katahanas argued (as he is entitled to at any time) the plaintiffs are faced with a *res judicata* on the fact of the judgments in those earlier proceedings.

The first proceedings

When I read the statement of claim in those earlier proceedings I see there the Bank, sought to recover overdrawn sums of this 1st plaintiffs account and the loan amount outstanding, a loan secured to cover the debts of the 1st entity, Premium Balsa Products Limited (in its own corporate capacity and as trustee of the Solomon Islands Eco Timber Trust) and which attached to the personal account of the two individual guarantors of the debts of the 1st entity (the 1st plaintiffs in these proceedings).

Those earlier proceedings were issued on the 12 May 2000 and related to, at that time, the various balance of accounts of these same entities and Vernon Smith.

On the 12 July 2001 judgment was entered for the Bank after court hearing, for the sum of \$14,948.34 against Vernon Smith; A defence in relation to the balance of the claim was to be entered within 7 days of that date (the 31 July 2001); the Court refused Vernon Smith's application by summons for a stay of execution of the above judgment and that he be allowed reasonable time to repay the remaining balance of the judgment. On the 1 August 2001 Palmer J (as he then was) after hearing argument and reliant on the earlier court order for judgment postponed execution of the judgment on terms.

"By judgment of the 1 August included orders in these terms -

1. *Subject to payment by the 1st defendant (Vernon smith) within 14 days of the date of these orders:-*
 - (a) *the sum of \$19,731.84 to the plaintiff (Bank); and*
 - (b) *the sum of \$37,140.57 into Court subject to the terms of these orders or until further or other order.*

Execution of the judgment herein against the 1st defendant (Vernon Smith) perfected signed and sealed on 17 October 2000 be stayed for six months from the date of the making of these orders."

The original judgment by default.

That earlier judgment of the court was entered in default of appearance of the defendants, (including Vernon Smith & Rose Arulabata) on the 17 October 2000 for the sum of \$28,130.32 plus interest at the rate of 18% p.a. from 1 April 1999. Since that date on the 17 October 2000, those proceedings became the subject of various other summons, but at no time up to the further judgment and orders on the 1st August 2001 or the time of the consent orders of the 29 August 2001 (dealing with moneys in Court) was there application made to set aside that last order of the 1st August or any appeal lodged against any part of or those earlier orders and judgment.

The new proceedings.

These proceedings clearly relate to the same relationship of banker/customer and bank accounts of the same parties in those earlier proceedings which came to judgment. I am satisfied that the actions of the Bank (allegedly unlawful), the subject of the new present proceedings, were actions which gave rise to the balance of the debts claimed by the Bank in those earlier proceedings and that there has been a final adjudication between the parties of the issues between them in relation to those debts in the former proceedings. The issues between the parties in those former proceedings appear from the various judgments and orders of the respective judges (see above) and those judgments are conclusive not merely as to the issues raised but also as to issues that might have been raised:

The law to be applied.

*"I fully recognize the distinction between the doctrine of res judicata where another action is brought for the same cause of action as has been the subject of previous adjudication, and the doctrine of estoppel where, the cause of action being different, some point or issue of fact has already been decided (I may call it "issue-estoppel"). As stated by Lord Ellenborough in *Outrain v. Morewood* (1), "the estoppel precludes parties and privies from contending to the contrary of that point, or matter of fact, which having been once distinctly put in issue by them, or by those to whom they are privy in estate or law, has been, on such issue joined, solemnly found against them." In the cases relating to res judicata in the former and stricter sense - a decision as to the same cause of action - it seems clear that the verdict and judgment are conclusive, not merely as to the points actually taken, but also as to points which might have been taken (*Henderson v. Henderson* (2); *Hall v. Levy* (3)."*
Hoysted v. Federal Commissioner of Taxation, (1921) 29 CLR 537 per Higgins J. at 560, 561)

This statement of principle is the common law explanation for the doctrine of *res judicata* and has effect in the Solomon Islands. The earlier judgments are conclusive of the liability of the plaintiffs (in this cause, the defendants so named in the earlier proceedings) to the Bank with respect to their indebtedness in their various accounts and conclusive, not merely as to the issues raised, but also as to issues that might have been raised.

I do not need to consider whether or not this amended statement of claim has disclosed a justifiable cause for the issues clearly are issues which may have been raised in that earlier case.

When relief claimed under principles of common law or statute must be pleaded.

What is clear, however, is that the plaintiff here, has not pleaded the acts of the Bank which the plaintiff's say, give rise to the allegation of illegality, nor pleaded any breach of statute which may arise in these circumstances and which may be the basis for the allegation of unlawful behaviour by the Bank. Statute may provide relief not available under common law but the statute must be pleaded if it is to be relied upon. So if I was obliged to decide whether this application for particulars needed to be struck out, I would say not for the plaintiffs must plead the facts on which they seek to rely.

These proceedings of the plaintiffs fail on the basis of this *res judicata*.

The originating summons and statement of claim is struck out. I also order that the amended defence and counter claim unfortunately permitted to be filed in CC157 of 2000 be struck out.

The Bank shall have its costs of these proceedings to-date, but that agreement is reserved as to amount and parties.