

SUNCOAST LOGGING PTY LTD AND OTHERS -v- ANTHONY WHITTAL

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

Civil Case No. 110 of 2004.

Date of Hearing: 24th September 2004.

Date of Ruling: 28th September 2004.

P. Lavery for the Plaintiffs.

A. Nori for the Defendant.

RULING

Kabui, J. This is an application by Notice of Motion filed by the 2nd Plaintiff on 13th July 2004 for the following orders-

1. The Defendant personally or through his solicitor in writing reveals to the Plaintiff the whereabouts of the property described in the exhibit to the affidavit of the Second Plaintiff filed herewith within seven days;
2. The Defendant takes all steps necessary to facilitate the removal and transfer of all such property to the secure location chosen by the Second Plaintiff;
3. A penal order shall be attached to this Order whereby failure to comply with this Order shall be a contempt of court and the Defendant may be summoned to show cause why he should be imprisoned;
4. For the reasons set out in the said affidavit service of the Order shall be deemed to be good service if it is served upon the Defendant's Solicitor notwithstanding the penal notice attached thereon;
5. UPON THE UNDERTAKING to give full credit at trial of the issues in this action for any losses incurred fair wear and tear excepted the Plaintiffs or any of them may subject to compliance with all other laws and regulations of Solomon Islands use or utilize the property the subject of these

proceedings as more particularly described in the exhibits to the affidavit of the Second Plaintiff sworn on the 24th March 2004 and filed on 25th March 2004 PROVIDED THAT notice in writing as to which items of property shall be used or utilized and where shall be given to the Defendant's solicitor.

6. Such other directions as the Court thinks fit;
7. Costs in favour of the Plaintiffs in any event.

These orders being sought arise from the orders made by this Court on 13th May 2004. Those orders were-

1. Any of the property referred to and itemized in the affidavit of the Second Plaintiff sworn on the 24th March 2004 be removed from the domestic premises situated at Kaibia Honiara being the residence of the Defendant and detained and preserved in the guarded commercial premises of Dalgro (SI) Limited at Burns Creek, Honiara, FORTHWITH, pending resolution of any dispute as to ownership title or right of possession of or to the said property as between the parties.
2. An inventory shall be drawn up in the presence of representatives of all parties of all that property described in the Statement of Claim herein as "the whole property" wheresoever situated and in particular but without prejudice to the generality of this Order:
 - (a) The property presently situated at the premises of DALGRO (SI) LIMITED at Burns Creek Honiara;
 - (b) The Caterpillar 518 log skidder and all other of the property situated at the domestic premises of the Defendant at Kaibia Honiara;
 - (c) The Lucus Sawmill situated in Isabel Province;
Any other of the property wheresoever situated and each party shall be under a duty to reveal to all other parties the whereabouts of any such of the property.
3. The property referred to in paragraph 2(b), (c) and (d) shall thereafter forthwith be removed from their locations and moved to the premises of the said Dalgro (SI) Limited where

it shall be stored pending resolution of the issues joined between the parties in these proceedings.

4. The Defendants shall pay the Plaintiffs' costs in this application.

The 2nd Plaintiff alleges that the Defendant had failed to disclose the whereabouts of a number of items as ordered by this Court on 13th May 2004. The first paragraph of the order being sought demands that the Defendant disclose those items and having done so, the second paragraph further demands that the Defendant place them in a secure location to be chosen by the 2nd Plaintiff. The third paragraph demands that it is contempt of court to be visited with imprisonment if the Defendant fails to comply with the order. The fourth paragraph demands that service of the order on the Defendant's Solicitor is sufficient without personal service on the Defendant. The fifth paragraph is an undertaking by the 2nd Plaintiff upon which the 2nd Plaintiff be permitted to use the property itemized in the 2nd Plaintiff's affidavit filed on 24th March 2004 being the subject of these proceedings for which full credit will be given at the trial by the 2nd Plaintiff provided notice is given to the Defendant by the 2nd Plaintiff.

Does this Court have the jurisdiction to make the orders sought by the 2nd Plaintiff?

Counsel for the 2nd Plaintiff did not address this court on this issue nor did Counsel for the Defendant. It goes without saying that no authorities were cited on this point. The 2nd Plaintiff came back to Court for another order because the Defendant had not fully complied with the first order. So the issue rather borders on the question of contempt of a court order or applying the slip rule. The problem of the 2nd Plaintiff is that the Defendant nor his agent if any was present when the 2nd Plaintiff entered the Kaibia premises with two police officers to inspect and collect for detention and preservation the alleged items being kept at the Kaibia premises being the residence of the Defendant. As a result, no explanation was forthcoming from the Defendant or his agent for the missing items discovered during the inspection carried out by the 2nd Plaintiff at the Kaibia residence. The 2nd Plaintiff is anxious to establish the whereabouts of such missing items to enable the completion of an inventory ordered by this Court and thus the preservation of the items together with the others already identified and collected by the 2nd Plaintiff. The order being sought is to enable the discovery exercise to be completed properly and to the satisfaction of all parties to the dispute over the ownership of the properties in issue within the spirit of the first order. The 2nd Plaintiff is I think seeking a supplemental order to supplement the first order. (See *Yee Bing Store Limited v. Yvette Miu Pong Yuen as Executrix of the Will of Henry Ta*

Tong Yee (deceased), Civil Case No. 12 of 1997). This Court does have inherent jurisdiction to make a supplemental order where it is appropriate to do so in the interest of justice.

Decision of the Court.

The full intent of the first order was rather frustrated by the absence of the Defendant or his agent when the 2nd Plaintiff visited his premises on 19th May 2004 and discovered that a number of items covered by the order had not been accounted for by the Defendant. Counsel for the Defendant did not oppose the order being sought provided the items allegedly missing were within the knowledge of the Defendant. This is because other persons also had had access to them previously before they came into the possession of the Defendant. The loss of them may not have been the fault of the Defendant in that regard. Other than that rider, paragraphs 1 and 2 of the order are not opposed. Those two paragraphs as part of the order being sought are supplemental in nature and so I grant them accordingly. The Defendant opposed paragraphs 3, 4 and 5 of the order contained in the Defendant's Notice of Motion. I refuse to grant paragraphs 3, 4 and 5 of the order as they are not supplemental in nature. I need say nothing about paragraph 6 of the order. The 2nd Plaintiff's application is therefore successful in part only. The order of the Court is that the order sought is granted in terms of paragraphs 1 and 2 only thereof. There will be no order as to costs.

F.O. Kabui
Puisne Judge