

DEVELOPMENT BANK OF SOLOMON ISLANDS-V-PETER HAIMING TAHANI

HIGH COURT OF SOLOMON ISLANDS
(MWANESALUA, J.)

Civil Case No. 273 of 2001

Date of Hearing: 26th November 2004
Date of Judgment: 10th December 2004

A. Nori for the Plaintiff
B. Titiulu for the Defendant

JUDGMENT

Mwanesalua, J. This is an application by summons filed by the Plaintiff on 21st October 2004 for the following orders –

1. That paragraph 2 of the consent order dated 13th May 2003 and filed on 14th May 2003 be varied so as to allow the Plaintiff to sell the Defendant's property in Parcel Number 191-024-199 situate in Mbokonavera, Honiara, by private treaty; and
2. Costs of this application be paid from proceeds of the sale of the property herein referred.

The orders being sought arise from the consent orders endorsed, perfected, signed and sealed by this court on 13th May 2003. Those orders were:-

1. The Plaintiff have leave to enter judgment herein against the Defendant in the sum of \$223,031.82 with interest thereon at the rate of 16% per annum from August 2001 up to date of payment;
2. The Plaintiff have leave to sell by tender the Defendant's Fixed Term estate in Parcel Number 191-024-199 situate at Mbokonavera I, Central Honiara and 191-039-388 situate at Naha, East Honiara;
3. No tender is to be accepted without the further leave of a judge in Chambers;
4. A Writ of Possession pursuant to O.45 r.5 of the High Court (Civil Procedure) rules 1964 be issued in favour of the Plaintiff in respect of each of the Land in Parcel Number 191-024-199 and 191-039-388;
5. The Defendant, his servants, agents, invitees, licencees or others entering the Land in Parcel Number 191-024-199 and 191-039-388 under the Defendants authority upon notice from the Plaintiff or its Solicitor vacate same and remove their chattels from same;

6. The Defendant, his servants, agents, invitees, licencees or others entering the Land in Parcel Number 191-024-199 and 191-039-388 under the Defendant's authority be permanently restrained from entering the said Land upon vacating the same pursuant to order 4 and 5 herein;
7. The High Court Sheriff or his officers (in lieu of the terms of the preceding orders 4, 5 and 6) shall attend and enforce, as is reasonably necessary, the terms of order 4 above, by giving vacant possession of both properties in Parcel Numbers 191-024-199 and 191-039-388 to the Plaintiff;
8. The Honiara Police commander and/or his officers to assist the Sheriff in his duties in giving vacant possession of these two properties to the Plaintiff.
9. Paragraphs 2-8 above are suspended on condition that the Defendant pays to the Plaintiff during the first 3 months commencing from May 2003, the sum of \$2,000.00 per month and thereafter the sum of \$3,000.00 per month until the loan is fully repaid;
10. In the event of a breach of any conditions in paragraph 9 above, orders 2-8 shall immediately come into force on giving seven days notice to the Defendant;
11. The Defendant pays the costs of the Plaintiff in connection with this application.

The Plaintiff relies on Ms. Qalokale's affidavit filed on 21st October 2004 to support its application. These facts are derived from that affidavit. The Plaintiff and the Defendant filed a Consent Order on 14th May 2003 (see above). The defendant breached paragraph 9 of the Order. First, he failed to pay to the Plaintiff \$2,000.00 per month in May and June 2003. Second, he failed to pay to the Plaintiff \$3,000.00 per month from August 2003 to July 2004. Third, he also failed to pay to the Plaintiff \$3,000.00 per month in September and October 2004. As a result of the breach, the Defendant was in arrears by \$27,750.00 and the Plaintiff only received \$23,250.00 instead of \$51,000.00 in loan repayment by October 2004. The balance of the Defendants loan with the Plaintiff as at November 2004 was \$226,645.80. The Plaintiff seeks to sell the Fixed Term Estate in Parcel Number 191-024-199 to Mr. Kuma by private agreement, rather than by tender in accordance with paragraph 2 of the Order to recover the entire balance of the loan from the Defendant.

The Defendant opposed the Plaintiff's application to vary paragraph 2 of the Order. His Counsel contended that the property be sold by tender in accordance with paragraph 2 of the Order.

This is an application to vary a consent order which has been endorsed, perfected and entered in this court. In other words, it is an order of this court. The Court have an inherent jurisdiction to vary its own orders so as to carry out its own meaning and to make its own meaning clear. However, the power to vary its own orders does not extend to a call to alter its judgment or order in substance. The appropriate remedy is

an appeal. (See *Pearlman (Venner's) S-A. (Pty) Ltd v. Bartels* [1954] All.E.R. 654; *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 1977).

Decision of the Court.

In my view, the order sought in this application by Summons is asking me to alter the substance of paragraph 2 of the order dated 13th May 2003 and filed on 14th May 2003. I do not think that I have power to do that because paragraph 2 of the Order is very clear in its intention. The application is therefore dismissed. The Plaintiff is to pay the costs of the Defendant in connection with this application.

F. Mwanosalua
Judge