

HIGH COURT OF SOLOMON ISLANDS**JACOB SIBIA AND VICTOR SOMA -V- WALTON NAEZON**

Civil Case No. 118 of 2003

Honiara: Brown PJ

Date of Hearing: 21 October 2003

Date of Judgment: 29 January 2004

Debt claim – liquidated demand in money payable by the defendant for failure to meet cheque – no money in account to meet cheque on presentation at Bank – cheque made out to “cash – whether cheque a “cheque” for the purposes of the Bills of Exchange Act (1892) (the Code) U.K and the Cheques Act 1957 U.K (as applicable in the Solomon Islands.)

The defendant gave various personal cheques to a large number of people in about Easter 2003. The plaintiffs were amongst those whose cheques were not met on presentation at the Bank. Despite various attempts to seek payment, the cheques were refused payment on each occasion. In an action to recover the debt in the amount of the cheques, these various plaintiffs joined for the facts were similar.

Held:

1. *The cheque forms were not “cheques” within the meaning of the Code as amended by the Cheques Act 1957 U.K since they were payable to “cash”.*
2. *They were bills of exchange within the meaning of the Code.*
3. *There was no existing debt shown to be due by the defendant personally or in case of quasi contracture liability.*
4. *The value to be ascribed to the bill could not be arrived at, on the evidence.*
5. *There would be a verdict for the defendant.*

Cases cited:

1. North and South Insurance Corp. Ltd –v- National Provincial Bank Ltd (1936) 1 K.B. 328 followed.
2. Orbit Mining and Trading Co. Ltd –v- Westminster Bank Ltd (1963) 1 QB 794 followed.

Legislation

Bills of Exchange Act 1892 (the Code) U.K
 Cheques Act 1957 U.K
 (Applied by Sched. 3 of the Constitution).

Andrew Radclyffe for the Plaintiff
Gabriel Suri for the Defendant

SUMMONS AND STATEMENT OF CLAIMS FOR DEBT FOR DISHONOURED CHEQUE

The Claim

The Plaintiffs by their statement of claim recited that the defendant, Walton Naezon is their Member of Parliament for Central Guadalcanal. The plaintiffs sue as representative of a short list of people given "cheques" by the defendant, drawn on his bank account with the National Bank of Solomon Islands Limited. The "cheques" on presentation for payment, were dishonoured, for there were insufficient funds to meet payment.

The Plaintiffs say they had lodged with their member, applications for Rural Community Development Fund grants totaling some \$35,000.00 On trial the pleading related to the fact of the dishonoured cheques. The Plaintiffs did not seek to prove any legitimate expectation arising out of contract, or statutory obligation for instance, both causes of action of my imagination.

Whatever moneys were paid by the Central Government to the Member of Parliament for Rural Community Development, would, it appears on the evidence, be paid at the absolute discretion of the member irrespective of merit so far as "development" was concerned. Geoffrey Shearer, said, for instance that people who wanted money would approach the member, they may be sick or need to go home, and they would approach Walton Naezon. Other witnesses said they received money because the defendant was a good member.

The Evidence

In April 2003, the defendant gave out cheques drawn to "cash" for various amounts to a large number of people, from his constituency. Some had applied for assistance apparently pursuant to the lure of a Rural Development Fund Scheme administered by the Member of Parliament, and these particular plaintiffs fell within that category. The cheques tendered in evidence were all drawn "Pay Cash or bearer". The claims, then all related to the dishonoured cheque.

Jacob Sibia was one such plaintiff. He had sought funds for a chainsaw and gave the Member a proforma and invoice. He was given a cheque for \$8,000.00 payable to "cash". This was on the 16th April, the Easter weekend, at the Member's home on Lengakiki Ridge. A lot of persons were getting similar cheques. (It was here, at Lengakiki and at the Office of the Minister, that I describe as the convocations, because

of the crowds, confusion and general discussions involving the Minister about the Rural Development Fund.)

The witness said the Member told him to go to the Bank "tomorrow, if not then Tuesday". When Jacob went to the Bank, he was told there was no money in the account to meet the cheque. He checked several times at the bank, and received the same answer. Patrick Kela, also received a cheque on the Tuesday. The cheque became an exhibit (as they all did). It appeared to be drawn on a/c no. 10-200521-0201-6 National Bank of Solomon Islands Ltd. Dated 16th April 2003 by Walton Naezon, and borne a signature. It had no bank markings, consistent with having been negotiated by the bank. I'm satisfied this cheque, and all the other plaintiffs similar cheques were presented for payment as described in evidence; when refused payment, the cheques were taken away until another.

In the course of cross examination, Jacob Sibia said that he had heard some 29 cheques had been taken back by Walton Naezon, and that he had bought back the cheques, for whatever amount, by paying \$1,000.00 each, despite such cheques totaling in excess of \$29,000.00.

The practice, common to all cheque holders, was to present the cheque at the bank periodically, often when the cheque holder was in Honiara, all but one cheque were refused cashing by the bank. All the cheques tendered in evidence were drawn on the account of Walton Naezon. They were not drawn on any account named "Rural Development Fund Trust Account" for instance.

Victor Soma was given a cheque for \$8,000.00 dated 15th April 2003. This followed a convocation at the Minister's office.

Judges Kela was given a cheque for \$5,000.00 dated 14th April, at the Office of the Minister.

Julius Baery was given a cheque dated 15th April 2003 for \$4,000.00. All these plaintiffs said they were told in similar fashion by Walton Naezon "you check on Thursday, if not keep on checking."

A'aron Devesi was given a cheque dated 16th April for \$4,000.00.

Kila Vito was given a cheque dated 16th April 2003 for \$4,000.00.

Amuriah Jeffrey was given a cheque dated 16th April 2003 for \$2,000.00.

All of these people kept checking at the bank to no avail.

Defence Case

The Defence case was that when the cheques were handed over, the recipients were told not to present the cheques until Walton Naezon was able to secure more Development funding to meet the cheques. None of the defense witnesses took much notice of this assertion, for all the witnesses attended at the Bank as soon as possible after receiving their particular cheque, to attempt to cash them.

Walton Naezon was not called to give evidence. All those called by the defense counsel supported the defense assertion that they couldn't expect payment, but should keep checking. Most of the defence witnesses benefited when the cheques were called in and bought back by Walton Naezon for a lower price.

Neither counsel addressed me on the failure of Walton Naezon to give evidence and what I should make of his absence. Since the decision is based strictly on the effect of writing "pay cash" on the face of the cheque, I need not make any comment on the defendants failure to speak in his own cause.

Clearly the money of the Development Fund, if infact paid for a purpose by the Government, changed its nature in the hands of the Member. Nevertheless, the plaintiffs have not proceeded on the basis of some other cause of action, except that of debt by virtue of the dishonoured cheque. In those circumstances, there is little point in addressing the failure of the defendant to give evidence in his cause, for it was never in issue that none of the "cheques" given to the plaintiffs by the defendant were ever cashed, and the reason, "no funds" in the defendant's account.

Quite frankly, having heard the witnesses, one would have to say reference to a payment, if it be so, by the Central Government to local members of "Rural Development Fund" is a misnomer:

So these claims effectively arise out of the refusal of the drawee bank to pay cheque forms made out to "cash", these being no money in the account to meet the presentation.

The Law applicable

I am minded to follow the decisions in *North and South Insurance Corp. Ltd -v- National Provincial Bank Ltd (1936) 1 K B 328* followed in *Orbit Mining and Trading Co. Ltd -v- Westminster Bank Ltd (1963) 1 QB 794* and find consequently the form of cheque drawn payable to "cash" is not a "cheque" in terms of the Bills of Exchange Act 1892 (the Code) as affected by the Cheques Act 1957. Both United Kingdom Acts are applicable as law in the Solomon Islands and the plaintiffs concede this fact. I find against the plaintiffs where they impliedly assert the document are "cheques" within the ambit of

the Cheques Act 1957 for no payment was made by the drawee bank and consequently the documents cannot be deemed to be "cheques".

I agree with the plaintiffs' assertion, however, that they have *indicia as* orders for payment of money, and as such, fall within the definition of a bill of exchange and thus subject to the Code.

My Reasons

It should be remembered that a cheque is a form of bill of exchange, normally intended for the immediate discharge of a single debt.

Two things arise from that statement. There was no debt due by the defendant, rather an offer to pay money to the defendant's constituents who petitioned the defendant, seems to have been common. Having heard the various plaintiffs and witnesses for the defendant, any terms of offer are impossible to fix.

Quite frankly, there is no need to enter upon any exhaustive enquiry about terms for nothing has been presented to me. That raises the suggestion of a personal debt or obligation by Walton Naezon to these two plaintiffs. The fact that large sums of money have been given to Walton Naezon by the Government for "rural development", suggestive as it is when the plaintiffs were seeking funds for that purpose, does not, of itself, create a debt in this individual to these plaintiffs.

The second thing that arises, since the documents relied upon are not cheques, is that, as a bill of exchange, the drawer of the bill, Walton Naezon, may impose conditions on the bill to include the time of payment. Having heard all the witnesses, including those of the plaintiffs, I am not satisfied the plaintiffs had an immediate expectation of payment upon presentation of the bill for payment at the bank. Everybody continually went to the Bank on the off chance some would be lucky. In fact, one witness said his cheque was met on presentation. So impliedly there was a condition as to time, and that time was indeterminate.

In fact, I am satisfied that the plaintiffs may reasonably have expected delay in payment and consequently the defendant argument about meeting the bill at an indeterminate future time is made out. That time was when further funds would be credited to his account, although no specific period or dates were ever proposed. Rather the evidence supported a vague expectation in future, bearing in mind that the documents were only good for a year from their date. There is evidence that Walton Naezon bought back some bills in that year, supporting my finding they were bills of exchange.

While indeterminate future time obviously called for a discount if one fortunately held such a bill, (and the defendant actually bought back bills for far less than their face value), I am unable to find the case for the plaintiffs made out.

In the circumstances of these convocations, (in the absence of debt) the paper document not being a cheque, there cannot attach an exact point in time when the value ascribed on the bill would be met. It may have had some value to someone but not the value which the plaintiff seeks to attribute to it. Since I cannot find a value on the evidence, the plaintiffs must fail.

Finding

I order the entry of a verdict for the defendant. Costs shall follow the event.

J.R. Brown
Judge