

**JOSHUA GIVAIKA-v-TONY KAGOVAI, LENCY TAGO AND  
GEORGE WU AND COMPANY STORE LIMITED**

HIGH COURT OF SOLOMON ISLANDS  
(Mwanosalua, J.)

Civil Case No. 431 of 2004

**Hearing:** 3<sup>rd</sup> December 2004

**Ruling:** 5<sup>th</sup> December 2005

*Ms. S Lawrence for the Plaintiff*

*Mr. J Apaniai for the 3<sup>rd</sup> Defendant*

*No appearance for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants*

**RULING**

**Mwanosalua, J:** This is an application by the 3<sup>rd</sup> Defendant by Notice of Motion filed on 7<sup>th</sup> October 2004 seeking the following orders -

1. That the Writ of Summons filed herein by the Plaintiff on 21<sup>st</sup> September 2004 be struck out as against the 3<sup>rd</sup> Defendant under Order 27 Rule 4 on the grounds that it discloses no reasonable Cause of Action against the third Defendant.
2. That the Plaintiff pays the Third Defendant's costs of and connected with this application.

**Facts**

The Plaintiff had a store on Rennell Island in 2003. He came to Honiara and bought goods worth \$573.30 from the 3<sup>rd</sup> Defendant for his store on 8<sup>th</sup> and 18<sup>th</sup> December 2003. He left the goods with the 3<sup>rd</sup> Defendant while he waited for transport to return to Rennell. The 1<sup>st</sup> Defendant went to the 3<sup>rd</sup> Defendant on 22<sup>nd</sup> December 2003 and collected the goods, after he wrote his name on the top of the Plaintiff's receipt for the goods held by the 3<sup>rd</sup> Defendant and signed the delivery receipts for the goods. The delivery receipts showed that the 1<sup>st</sup> Defendant sent the Goods to Rennell on M.V. Tai Jin on 22<sup>nd</sup> December 2003. The Plaintiff discovered all that the 1<sup>st</sup> Defendant did to his receipts and goods, when he came to the 3<sup>rd</sup> Defendant to collect the goods on 23<sup>rd</sup> December 2003.

The Point to be considered in this application is whether the Statement of Claim filed on 21<sup>st</sup> September 2004 together with the Writ of Summons discloses no reasonable Cause of action against the 3<sup>rd</sup> Defendant.

### **Decision**

The Plaintiff seeks payment of \$13,178.00 damages from the 3<sup>rd</sup> Defendant. These damages cover the value of the goods, the loss of profit on the goods, the loss of profits due to the Plaintiff's inability to re-invest the profits from the sale of goods into further purchases and sale of similar goods, and the expenses incurred by he Plaintiff in pursuing this action.

The Plaintiff did not particularize the wrongful acts of the 3<sup>rd</sup> Defendant which caused him to suffer losses and upon which he seeks damages. The 3<sup>rd</sup> Defendant is entitled to know the nature of the wrongful acts alleged against it so that it is not taken by surprise at the trial. There is another matter I would like to mention. That is, that damages are usually awarded to successful litigants in Civil suits grounded on laws of bailment, contract and tort. In this case, there is uncertainty about the law under which the Plaintiff sought damages against the 3<sup>rd</sup> Defendant. For these reasons, I consider that there is no reasonable cause of action disclosed in the Plaintiff's Statement of Claim against the 3<sup>rd</sup> Defendant. I would order that the Writ of Summons and the Statement of Claim be struck out against the 3<sup>rd</sup> Defendant. I order accordingly. I make no order as to costs.

### **The Court**