IN THE COURT OF APPEAL OF SOLOMON ISLANDS

NATURE OF JURISDICTION	Appeal against the decision of Justice Palmer, delivered on 10 May 1999.
COURT FILE NO.	Civil Appeal Case No. 003 of 1999 (an appeal from Civil Case No. 100 & 231 of 1997)
DATE AND PLACE : OF HEARING:	Tuesday 6, February 2001, at Honiara
DATE OF JUDGMENT:	Friday 9th February 2001.
THE COURT:	Lord Slynn of Hadley, P., Los JA., Ward, JA.,
BETWEEN:	MBAEROKO TIMBERS COMPANY LIMITED AND RONALD ZIRU — *Appellant*
	-V-
AND:	ISLAND CONSTRUCTION MANAGEMENT LIMITED — *First Respondent*
	NATIONAL BANK OF SOLOMON ISLANDS — *Second Respondent*
ADVOCATES:	
Appellant	C. Ashley
Respondent	J. Sullivan
KEY WORDS:	
EX TEMPORE/RESERVED:	
ALLOWED/DISMISSED:	
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IN THE SOLOMON ISLANDS
COURT OF APPEAL

Civil Appeal Case No. 003 of 1999

(High Court Civil Case Nos. 100 & 231 of 1997)

Slynn, P.
Ward, J.A
Los, J.A

Date and Place of hearing: February 2001, Honiara.
Date of delivery of Judgment: 2001.

BETWEEN

MBAEROKO TIMBERS COMPANY LIMITED AND RONALD ZIRU
(Appellants)

AND

ISLAND CONSTRUCTION MANAGEMENT LIMITED

NATIONAL BANK OF SOLOMON ISLANDS

(Respondents)

JUDGMENT

THE COURT:

The appellant is a local company incorporated in May 1996 to conduct business in the logging industry. The man described by the learned trial judge as the driving force behind the company was Ronald Ziru and, prior to incorporation of the company, he had traded in the same field as Mbaeroko Timbers.

In late 1995 Ziru entered into a management agreement with Island Construction Management Ltd (ICML), which provided, inter alia, that ICML would be responsible for the logging operation on Ziru's concession area, Mbaeroko, Enoghae. The managing director of ICML at the time was

Delbert Lennea. Two shipments of logs were eventually shipped from Enoghae as a result of this agreement and it is the second of these that gives rise to this appeal.

The respondent is a commercial bank in Solomon Islands and both Mbaeroko Timbers and ICML were customers of the bank although the Mbaeroko Timber Company was not. It was the advising bank for a number of letters of credit set up by the parties in their business of exporting logs.

This case involves a claim brought by the appellant against ICML and the respondent bank alleging conspiracy between them to defraud the appellant in relation to the various transactions and the letters of credit involved. After a lengthy hearing, Palmer J found the allegations of fraudulent dealing proved against ICML but found there was no evidence to support the allegations against the Bank.

This appeal is against the finding in favour of the bank but limited to a single allegation of conspiracy namely that in relation to a letter of credit issued to obtain the clearance of the second shipment of logs from Enoghae.

The evidence was extensive and included operations, not involving Mbaeroko, by ICML prior to and after the management agreement with Mbaeroko and the letter of credit issued to facilitate the sale of the logs that it was hoped would come from those operations. It is not necessary to go into these in any detail save to state that ICML had tried unsuccessfully to log an area on Mono Island and had negotiated with a Hong Kong company, Pacific Ocean Timbers Company Limited (POTCL), to buy the logs. The Hang Seng Bank of Hong Kong issued a letter of credit, referred to in the trial as the Mono LC. The beneficiary was ICML and the advising bank the respondent. That letter of credit was extended and amended a number of times before and after ICML abandoned the Mono operation in late January 1996 having failed to extract any logs.

As a result of the unsuccessful Mono operation, ICML had incurred a substantial debt to POTCL for dead freight and demurrage and for a red clause advance on the Mono letter of credit that had been made to cover the initial costs of arranging a Skycrane helicopter. Although much of the sum paid to the helicopter company had been repaid, the money had been utilised by ICML to establish its operation in Enoghae under the agreement with Mbaeroko. As the trial judge found, at the time ICML moved operations to Enoghae, the pressure was beginning to mount to have these debts cleared.

The first shipment of logs from Enoghae took place. There was a duplication of sale negotiations and, consequently, of letters of credit because of ICML's failure to advise the appellant of its actions as it should have done under their agreement. ICML also felt the distribution of the profits was unfair and, prior to the second shipment, took Mbaeroko to court in an action separate from this. The ultimate result of that action

from the point of view of this appeal was that it led to an interlocutory order, finally made on 28 October 1996, that the logs for the second shipment were to be sold by ICML and the proceeds paid into a joint solicitors' trust account.

It should be mentioned that the logs for the second shipment were of a type that would deteriorate rapidly if not exported and so there was some pressure to move them quickly. ICML responded promptly. The learned judge described the steps;

"On 29 October 1996, ICML applied as agents of Mbaeroko for a market price certificate and an authority to export. On 30 October 1996, Lennea entered into an agreement with POTCL for the sale of those logs on behalf of Mbaeroko. So far so good. Lennea had been authorised by court order to effect sale of those logs. There was nothing wrong on the surface with the contract for sale entered into with POTCL. Unfortunately, on closer analysis there was something drastically wrong with how it was to be financed. This in my view turned that contract into a sham from the beginning."

The manner of financing the deal that he refers to was the use of the Mono LC as the documentary letter of credit. The manner in which ICML used that letter of credit formed a substantial part of the basis of the learned judge's finding against ICML of fraudulent dealing. His reasoning in coming to that conclusion is clearly and correctly set out in the judgment. It is not necessary to deal with it here. He found no evidence to support the claim that the bank had been involved in any dishonest way.

The Mono letter of credit expired on 15 February 1996 and the respondent pursued its right to reimbursement of the red clause advance from Hang Seng. However, POTCL in the meantime managed to negotiate an extension with Hang Seng despite a warning by the respondent that such an extension was inappropriate when the operation in Mono had ceased.

Hang Seng had not been put in funds by POTCL and, despite their clear liability to the respondent, delayed payment. Following further extensions which were reluctantly agreed by the respondent, the money was eventually paid in September 1996. This meant that ICML was indebted to POTCL in the total sum of US$709,853.94. As the learned judge pointed out, that debt was nothing to do with Mbaeroko or Ziru but its effect was that the Mono letter of credit would be worth substantially less and POTCL would no doubt use the money from the sale of the logs in the second shipment to pay off ICML's debt.

The issue before this court is the significance of the bank's involvement in facilitating the release of that second shipment by an arrangement to cover the customs duties.

The arrangements for the second shipment from Enoghae went ahead and loading was completed on 15 December 1996 on which date the vessel went to the port of Noro for clearance. On arrival, Customs refused to clear the ship unless payment of duty was secured.

Lennea and a representative of POTCL, a Mr Ng, arranged a meeting with the Manager International of the respondent, Peter Wyatt, to ask if the bank would provide a guarantee for the duty. Wyatt declined but suggested possible alternative arrangements one of which was that the buyer should establish a stand by letter of credit in favour of the respondent. This was accepted by Lennea and a letter of credit was issued in the amount of US$147,000.00. Mr Sullivan for the respondent, suggests this was perfectly proper advice for the bank to give. The appellant suggests that it was, in fact, a step in the conspiracy to defraud the appellant.

The effect of this letter of credit was to provide sufficient security for the bank to be reimbursed should it have to pay if there turned out to be no payment received from the sale of the shipment of logs.

On receipt of the standby letter of credit, the bank wrote to Customs on 19 December 1996:

"As requested, we confirm having advised the Documentary Credit (approximate FOB value SBD533,188.25) and noted our records to issue for export duty payable, as calculated by the company on the export of Solomon Islands Round Logs proposed for shipment aboard MV Arktis Venture upon negotiation of document presented to the bank in terms of the Credit."

The evidence showed that the Customs interpreted this as a guarantee by the bank, which it was not, but in any event it resulted in the ship being cleared by Customs.

It is this action by the bank in relation to the standby letter of credit that the appellant suggests showed collusion between the bank and ICML with intent to defraud it of the proceeds of the sale of its logs.

Mr Ashley, for the appellants, points out that the respondent bank knew that, by the terms of the Court order, the money from the sale had to be paid into the trust account. By issuing the standby letter of credit, the bank enabled the ship to leave containing the appellant's logs. It also knew that the buyer was POTCL to whom ICML was heavily indebted independently of Mbaeroko, the Mono letter of credit was being used for this shipment, the value of that letter of credit was reduced to a sum totally insufficient for the transaction and that ICML was still negotiating to amend the value.

Mr Sullivan, for the respondent, suggests that the actions of the bank at the time demonstrate clearly that there was no collusion. On the contrary, it shows the bank acted openly and transparently.

In a long and carefully reasoned judgment, the learned trial judge dealt with all the allegations of fraud against the respondent and rejected the allegations in each case.

He found that the bank was not a party to the court action that resulted in the interlocutory order and owed no duty under it. The bank's involvement under the Mono letter of credit was confined to a documents only relationship with ICML and Hang Seng and that it owed little or no duty to the appellant. He found little in support of this submission of fraud against the bank.

In relation to the Mono letter of credit, he put it in the following terms:

"The first question that must be asked is whether there is evidence to support any suggestion that both defendants had conspired together to ship the second shipment in accordance with the Mono LC. The bank does not deny the fact it was aware as early as 26 November 1996, that [ICML] was to ship the second shipment in accordance with the Mono LC. What it denies stringently is the suggestion that it had anything to do with the decision to ship the second shipment in accordance with the terms of the Mono LC. Respectfully I must rule in favour of the [bank]. There is simply no evidence of any collusion between ICML/Lennea on the one hand and the [bank] or any of its officers on the other. The plaintiffs have simply not been able to point to any evidence (document or otherwise) that supports the collusive allegation."

He went on to reach the same conclusion about the evidence that the defendants had conspired to have the Mono LC amended to the value of the second shipment or that they had conspired in relation to the reduced value of that letter of credit.

We do not need to set out the learned judge's reasoning. He went into these matters in careful and extensive detail.

We have considered the aspects of the evidence Mr Ashley suggests should have lead him to conclude that the bank was involved with ICML in the conspiracy to defraud the appellant but, having done so, we agree with the trial judge's conclusion.

There is no challenge that he correctly stated the law in relation to fraud and we find he applied it correctly to his findings on the evidence before him. Having done so, his conclusion was that the bank was not involved in any dealings with ICML to defraud the appellant.

We consider his decision on this was impeccable and the appeal is dismissed with costs to the respondent.

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Lord Slynn of Hadley, P.

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Los, JA.

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Ward, JA.