

IN THE COURT OF APPEAL
OF SOLOMON ISLANDS

NATURE OF JURISDICTION: Appeal from a judgment of the High Court of Solomon Islands (Muria, Chief Justice).

COURT FILE NO.: Civil Appeal Case No. 17 of 1995

DATE OF HEARING: Wednesday 7th February 2001

DATE OF DELIVERY OF JUDGMENT: Friday 9th February 2001

THE COURT: Lord Slynn of Hadley, P., Los J.A, Ward, JA.

PARTIES: Austin Yam

-v-

Maria Wong

ADVOCATES:

Appellant John Sullivan
Respondent Andrew Nori

KEY WORDS:

RESERVED:

ALLOWED:

PAGES:

6

IN THE SOLOMON ISLANDS
COURT OF APPEAL

Civil Appeal Case No. 17 of 1999
(High Court Civil Case No. 260 of 1998)

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

Date and Place of hearing: 7th February 2001, Honiara.
Date of delivery of Judgment: 9th February 2001.

BETWEEN

AUSTIN YAM
(Appellant)

AND

MARIA WONG
(Respondent)

JUDGMENT

THE COURT:

Before the High Court was notice of motion by Maria Wong the plaintiff, now the Respondent, to strike out the Defence filed by the First Defendant, now the Appellant, on the grounds that it failed to disclose any reasonable defence. The motion also sought to enter default judgment against the second Defendant in the proceeding in default of filing defence, in the alternative, on the basis that there was no defence to the action. The dispute arose from dealings with certain portions of land in Honiara being portions 781, 785 and 786. In the statement of claim she says that in early 1995 and the beginning of 1996 the Appellant

had represented to her that he had title to those portions of land and she had organised to purchase the land. She paid a sum of USD1,000 in October 1995 to secure the transaction. By March 1996 she had paid SBD145,000. She also claimed that the Appellant was to pay all the requisite fees to the Commissioner of Land to secure the transfer the title of the land to her. This did not happen and the land was sold or transferred to different persons. She therefore issued the proceedings against the Appellant for damages on the grounds of negligence, or in the alternative, damages for breach of contract, and for a refund of the money, against the Commissioner. The motion came before the learned Chief Justice on the 4th November 1999 and on the following day he granted orders to the Respondent. The orders were:-

- 1) as against the Appellant damages of SD\$110,000.00
- 2) as against the Commissioner for land damages of US\$7,807.56 and ;
- 3) in relation to the case between the Respondent and the Appellant in respect of the remaining balance of SD\$35,000, that case was listed for hearing.

The Appellant has appealed against the decision and through Mr Sullivan has sought to set aside the judgment and sought to have leave to defend against the whole proceedings. The argument turned on whether his

Lordship Muria CJ had made an error in granting the orders as though he had before him an application for summary judgment under Order 14 r 1 (a) of The High Court (Civil Procedure) Rules 1964, whereas the application before him was for striking out the pleadings under Order 27 Rule 4. The difference being that under Order 14 Rule 1 (a) an application for summary judgment must be supported by an affidavit verifying that in the deponents belief that there is no defence. On the other hand, under order 27 Rule 4, a pleading should be struck out in a plain and obvious case.

Mr Nori, in the synopsis of submissions on behalf of the Respondent, addressed various issues advanced by the Appellant. In particular he submitted that when the Court applied Order 27 Rule 4 of the High Court Procedure Rule Rules:

“The Court may order any pleading to be struck out, on the ground that it discloses no reasonable cause of action or answer, and in any such case or in case of the action or defence being shown by the pleadings to be frivolous or vexatious, the Court may order the action to be stayed or dismissed, or judgment to be entered accordingly, as may be just.”

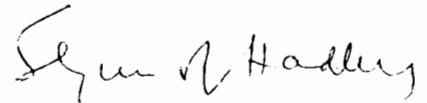
Counsel submitted that the trial judge, in his judgment at page 2, clearly indicated that he was looking at the defence from the perspective of Order 27 Rule 4 where he said ;

“Whilst I can accept that there may be some room for contest in so far as the claim against the first defendant is concerned, it would appear to me to be on very limited basis which I feel comes down to the question of the balance between the sum claimed (\$145,000) and sum admitted (\$110,000). There can be no room for argument on the question of not having title to the land and selling the said land to which he had no title. KK Real Estate had no title to the land in the first place and so it could not possibly pass on any title to the first defendant who in turn could not pass on any title to the plaintiff.”

We have taken into account counsel’s reference to other matters including the fact that the titles to the land were transferred but not registered. We consider that, for the purposes of Order 27 Rule 4, his Lordship must be satisfied on the pleadings before him that they showed no reasonable answer to the claim by the Appellant. The Appellant’s defence was before the court. There was also a document showing that Respondent had a grant over the three portions of land though not registered. She had also placed a caveat on those portions of land. With

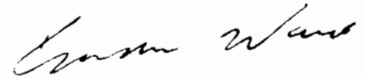
all these elements we do not consider, with respect, that his Lordship should have been satisfied at that point in time that it was plain and obvious that Appellant had “no good defence” or answer to the claim.

In those circumstances and without commenting on the merits of the defences advanced we uphold the appeal with costs against the Respondent.



.....
Lord Slynn of Hadley, P.

.....
Los, JA.



.....
Ward, JA.