

IN THE SOLOMON ISLANDS COURT OF APPEAL

NATURE OF JURISDICTION:	Appeal from Judgment of the High Court of Solomon Islands (Chetwynd J)	
COURT FILE NUMBER:	Civil Appeal Case No. 12/2012	
DATE OF HEARING:	25 th October 2012	
DATE OF JUDGMENT:	2 nd November 2012	
THE COURT:	Palmer CJ, Williams JA, and Apaniai JA	
PARTIES:	Pamela Kimberly	First Applicant/First Respondent
	Island Gold Limited	Second Applicant/Second Respondent
	Tavanipupu Island Resort Limited	Third Applicant/Third Respondent
	-V-	
	William Frederick Olsson	First Respondent/First Enforcement Creditor
	Gloria Elizabeth Olsson	Second Respondent/Second Enforcement Creditor
	Solomon Time Limited	Third Respondent/Defendant/Enforcement Debtor
Advocates:		
Applicant:	K.N. Wilson and D. Marahare	
Respondent:	G. Suri	
EX TEMPORE/RESERVED:	RESERVED	

ALLOWED/DISMISSED	ALLOWED
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JUDGMENT OF THE COURT

Introduction

1. The High Court by order perfected on 9 December 2011 made the following orders on the application of the Enforcement Creditors:

- (i) The Enforcement Creditors are granted leave to continue enforcement proceedings against the Enforcement Debtor;
- (ii) Island Gold and Tavanipupu Island Resort Ltd are hereby joined as Second and Third Respondents to the enforcement proceedings, and the application pursuant to sections 21 and 22 of the Companies (Insolvency and Receivership) Act 2009 be served on both together with any sworn statements in support;
- (iii) The Liquidator of Solomon Time Ltd is to be served with a copy of the application and supporting documents referred to in paragraph 2;
- (iv) Any sworn statements in response are to be filed and served within 28 days of service of the documents referred to in paragraphs 2 and 3.

2. On 19 April 2012 the High Court dismissed an application by the parties joined as Second and Third Respondents to the enforcement proceedings for vacation of part of the order of 9 December 2011. On 19 April 2012 the Court ordered:

- (i) That the application by Second and Third Respondents for recusal is refused;
- (ii) That the application by the Second and Third Respondents for vacation of order 4 of the Orders perfected on 9th December 2011 is misconceived; and is, therefore, refused;

- (iii) Costs of Enforcement Creditors to be paid by the Second and Third Respondents to be assessed by the Registrar, if not agreed.
3. The Second and Third respondents, together with Pamela Kimberley who had been joined as a respondent to the Enforcement proceedings by order of 27 August 2010 sought leave to appeal against the orders of 19 April 2011 by Notice of Appeal dated 30 April 2012.
 4. On the hearing of that application for leave to appeal the applicants sought to amend the Notice of Appeal to include an application for leave to appeal against the Order of 9 December 2011. The Court intimated that such leave would be granted and argument proceeded on that basis.

The Background Facts

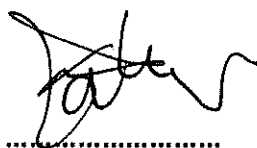
5. Mr. and Mrs Olsson, first and second Respondents to the application for leave to appeal, had obtained judgement against Solomon Time Limited on 6th November 2009 which on appeal had been upheld. On 6th July 2010 they obtained an Enforcement Order for the recovery of the sum of \$995,000.00 plus interest and costs. On 25th August 2010 an oral examination was conducted of Pamela Kimberley, a director, of Solomon Time Limited.
6. On 18 November 2011, his Lordship, Chetwynd J. heard application for leave to exercise or enforce the right to recover the judgement debt against Solomon Time Ltd ("STL"). He also heard application to join two other companies, Island Gold Limited and Tavanipupu Island Resort Limited, who were not parties to the dispute. The only connection was that Pamela Kimberley was a director in both as in STL. There had been allegations raised in two sworn statements by Mrs. Olsson that funds and assets may have been transferred into those two companies to avoid the judgement sum in this case. That application was made pursuant to section 6(1) to Schedule 5 of the

Companies (Insolvency and Receivership) Act 2009 as read with sections 21(1) and 22(1)(a) to Schedule 7 of the Companies (Insolvency and Receivership) Act 2009. It was in relation to that application that the order was perfected on 9 December 2011.

Issue 1 – Expiry of the Enforcement Order

7. A procedural hurdle in the case before the presiding judge which we think he may not have been aware of was the fact that the Enforcement Order obtained in respect of this case had lapsed by 7th July 2011, one year after it was made. Rule 21.11 of the Solomon Islands Courts (Civil Procedure) Rules 2007 provides that such an order remains in force for one year after it is made unless it shall state that it ends at an earlier date. The critical rule in this matter is rule 21.13, which provides that an application for renewal must be made before the order ends. That obviously was not done in this matter.
8. We find therefore that the presiding Judge on 18 November 2011 lacked jurisdiction to make an order adding respondents to the enforcement proceedings.
9. The application was further compounded by reliance on the provisions of the Companies (Insolvency and Receivership) Act 2009. We are of the view that could only be done in fresh pleadings commenced under the said legislation. His Lordship was under the mistaken belief he had jurisdiction to grant leave to the Respondents under the said Act when no application had been initiated and leave obtained pursuant to the Act.
10. Accordingly we are satisfied the orders sought in this appeal should be granted as follows:

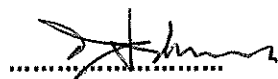
- (i) The Applicants have leave to amend their application for leave to appeal of 30 April 2012 to add an application for leave to appeal against the orders of 9 December 2011;
- (ii) That the Applicants be granted leave to appeal orders of 9 December 2011 and 19 April 2011;
- (iii) The appeal is allowed and orders of 9 December 2011 and 19 April 2011 are set aside;
- (iv) That the respondents pay the applicant-appellants costs of and incidental to the appeal to be assessed if not agreed.



Sir Albert R. Palmer
Chief Justice



Justice Glen Williams JA
Member



Justice James Apaniai JA
Member