

NANO, WATTS, SAMUEL & KATALAENA KITU AS REEF OWNERS -v- PAO YANG  
MARINE PRODUCTS CO. LTD & THE ATTORNEY GENERAL (In respect of the  
Ministry of Natural Resources)

High Court of Solomon Islands

(Palmer J.)

Civil Case No. 228 of 1991

Hearing: 8 October 1992

Judgment: 8 October 1992

M. B. Samuel for the Applicants

F. S. Waleilia for the Respondents

**PALMER J:** This is an application under summons by the First, Second and Third Defendants to have the action struck out or dismissed on the following grounds:

- (i) that the Writ of Summons does not disclose a reasonable cause of action against the Defendants
- (ii) that the Plaintiffs do not have locus standi in respect of the alleged breach
- (iii) that the damages claimed in the Statement of Claim are not liquidated and as such were wrongly endorsed in this action.

Mr Waleilia, counsel for the Defendants has submitted that the endorsement on the Statement of Claim does not disclose a recognised cause of action.

The endorsement reads at page 2 of the Writ of Summons:

*"The Plaintiffs' claim is for damages on the ground that the First Defendant had breached the conditions set out by the Investment Board of the Ministry of Commerce and Primary Industries."*

Mr Waleilia submits that the wording of the Statement of Claim raises a cause of action in contract; that there has been a breach of the terms of contract.

However, he points out that the locus standi of the Plaintiffs then is questionable as they are not parties to any agreement or contract with the company. The Plaintiffs can only sue for breach of the conditions of an agreement or contract if

he is a party to such an agreement or contract with the Defendant. He submits that there is no such agreement or contract with the Plaintiffs.

The conditions that have been alleged to have been breached are contained in a letter of approval dated 20 March 1991 addressed to the First Defendant and written on behalf of the Investment Board of the Ministry of Commerce and Primary Industries.

He submits that the appropriate person or authority to take up an action under that letter is the Investment Board and not the Plaintiffs. The Plaintiffs can report the breach to the Investment Board who in turn should then take the matter up with the First Defendant.

I agree with this submission.

The Certificate of Approval provides a guideline or a framework within which the company is to carry out its business activities. It places an obligation on the company to seek and obtain permission from customary reef owners before doing any fishing or other activities within those reefs.

It appears that the First Defendant had obtained approval from persons who claim to be the customary reef owners. The Plaintiffs on the other hand are challenging that, and saying that they are the true customary reef owners and that no permission has been obtained from them.

The proper claim would be one in trespass. This has not been specifically pleaded however.

The cause of action on the Statement of Claim as it stands does not in my view show a cause of action actionable in a court of law.

There must be forethought given to a claim before it is filed. To apply to amend the Statement of Claim when it does not disclose on the face of it a reasonable cause of action is not in the interests of justice. It would have been different if a reasonable cause of action had been established and an amendment is then sought to clarify what the issues are that have been raised.

The term "*cause of action*" has been defined in *Hernaman -v- Smith (1855) 10 Exch. 659, at 666* by Parke B. as:

"..... all those things necessary to give a right of action, whether they are to be done by the Plaintiff or a third person."

In *Cooke -v-Gill* (1873) LR 8 CP 107 at 116 Brett J. stated:

*"Cause of action' has been held from the earliest time to mean every fact which is material to be proved to entitle the plaintiff to succeed - every fact which the defendant would have right to traverse."*

In *Read -v-Brown* 22 QBD 128, Esher MR stated:

*"A 'cause of action' is the entire set of facts that give rise to an enforceable claim, the phrase comprises every fact which, if traversed, the plaintiff must prove in order to obtain judgment."*

And in *Sugden -v-Sugden* [1957] 1 All ER 300 at p. 302 paragraph D, Denning LJ said:

*"Causes of action' ..... means, I think, rights which can be enforced, or liabilities which can be redressed, by legal proceedings in the Queen's Courts."*

The question that can be asked is whether the Statement of Claim reveals a right of action, a right to institute proceedings against the First, Second and Third Defendants?

Unfortunately, from the way the pleadings have been worded the answer will have to be in the negative.

There is no claim in contract against the First Defendant, Second Defendant or Third Defendant. The letter of approval specifying the terms and conditions under which the licence of the First Defendant is to operate have been set by the Investment Board. The Investment Board therefore may take action against the First Defendant for breach of any of the conditions in the letter of approval, but not the Plaintiffs.

Accordingly, the Plaintiffs do not have locus standi.

There may be a cause of action in trespass but that must be specifically pleaded. I do not consider it appropriate to grant an amendment or to allow time under Order 30 of the High Court (Civil Procedure) Rules.

If the Plaintiffs wish to institute an action under trespass then they must file a new claim. It is essential that forethought is given to the filing of claims as a defendant has no choice in the matter once he/she is served with a summons, and unless it clearly specifies what the cause of action is, it would be quite embarrassing and intimidating for defendants to have to plead to an action which is vague and uncertain.

Further, Mr Waleilia has correctly pointed out that the specially indorsed form of writ used for the pleadings is incorrect as it is a claim for unliquidated damages.

This however, is a minor procedural defect which could have been corrected.

This action as I have stated cannot be allowed to stand and accordingly I order that it be dismissed, with costs to the Defendants.

(A. R. Palmer)

JUDGE