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LIBORIO IDUFANOVA -v- LIVESTOCK DEVELOPMENT AUTHORITY

High Court of Solomon Islands

(Palmer J.)

Civil Case No. 284 of 1992

Hearing: 14 December 1992

Judgment: 15 December 1992

J.C. Corrin for Appellant

P. Tegavota for the Respondent

PALMER J: This is an application by summons filed on the 20 November 1992 to set aside a default judgment and for leave to file a defence out of time.

The statement of claim under a Writ of Summons was filed on the 15 September 1992. It was served by registered post, due date of posting being on the 22 September 1992.

On the 8 October 1992 a notice of motion for judgment was filed. The motion was heard on the 5 November 1992 and judgment made against the Defendant.

The application is made pursuant to Order 29 Rule 12 of the High Court Civil Procedure Rules.

The Head of Mamara Industry, Luke Maenia gave sworn evidence as to the merits of the application. He stated that on the 28 September 1992 he duly instructed his first Solicitor for the Defendant Company. He did not hear anything further until he was served with a copy of the judgment dated the 5 November 1992. He then instructed Mr. Tegavota who now appears in this action on behalf of the Defendant.

The blame for the failure to enter an appearance and to file a defence is attributed wholly on the Defendant's first Solicitor.

Ms Corrin in response to the application referred to the case of *Kayuken Pacific Limited v Harper* SILR 1987, 54 in which it was pointed out that the English Courts have taken a more stringent approach against Solicitors who do not "get on" with their

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perpetrated if the judgment is not set aside. The defendant cannot be blamed for the Solicitors lack of action and negligence.

The courts must be careful in my view when considering such applications against a defendant whose Solicitor has been negligent and inactive. The over-riding consideration must always be the balance of justice.

In this case I am satisfied that judgment should be set aside. Accordingly the judgment dated the 5th of November is hereby set aside. I give leave to the defendant to file a defence within 14 days. No more extensions of time will be allowed.

All costs in the default proceedings to be borne by the Defendants.

(A. R. Palmer)
JUDGE