

**NATIONAL BANK OF SOLOMON ISLANDS-v-VALBROS LIMITED and SEBASTIAN
HARRY WALE and ROSE WALELULUA and PARTNERS PACIFIC BUSINESS**

HIGH COURT OF SOLOMON ISLANDS
(Mwanesalua, J.)

Civil Case No: 179 of 2000

Hearing: 8th July 2005

Judgment: 24th November 2006

C. Levo for the Plaintiff

M. Tagini for the Second and Third Defendants

W. Rano for the Fourth Defendant

JUDGMENT

Mwanesalua, J: The Plaintiff in this case is the National Bank of Solomon Islands Limited. Valbros Limited is the First Defendant, Sebastian Harry Wale is the Second Defendant, Rose Walelulua is the Third Defendant and Partners Pacific Business is the Fourth Defendant.

The First Defendant is a Company formed under Solomon Islands Law. It is a local company. The Second and Third Defendants are the Directors of the First Defendant. The First Defendant is the registered owner of a Fixed-Term Estate in Parcel Number 191-003-82. The First Defendant borrowed money (the loan) from the Plaintiff. The Plaintiff registered a second charge over Parcel Number 191-003-82 in its name as Security for the repayment of the loan. The Second and the third Defendants were guarantors for the repayment of the loan. The First, Second and Third Defendants failed to make loan repayments. The Plaintiff filed a civil suit against the First, Second and Third Defendants on 8 June 2000 to recover the loan. There being no appearance to the writ of summons by all three Defendants, final judgment was entered against the First Defendant on 5 April 2001 and an order was made against the First Defendant.

THE TERMS OF THIS ORDER WERE:

- "1. The Plaintiff have leave in default of appearance to enter judgment herein against the First Defendant in the sum of SBD305,585.33 together with interest thereon at the rate of 18% per annum from 26 April 2000 up to and including date of payment;**

2. **The Plaintiff have leave to sell the First Defendant's Fixed-Term Estate in Parcel Number 191-003-82 and any other lands and assets of the First Defendant with directions in respect of such side;**
3. **The First Defendant immediately deliver vacant possession of Parcel Number 191-003-82 and any other lands or assets of the First Defendant to the Plaintiff;**
4. **The First Defendant, its servants, agents, invitees, licences or others entering Parcel Number 191-003-82 or any other lands of the First Defendant under the authority of the First Defendant vacate same and remove all their chattels from the same;**
5. **The Police Commander at Honiara and all Police Officers under his direction immediately upon receipt of these orders attend and enforce orders 3 and 4 hereof using such force as is reasonably necessary for such purpose;**
6. **The First Defendant pay the Plaintiff's costs of and in connection with this action."**

In compliance with this Order, the Plaintiff advertised Parcel Number 191-003-82 on public tender for sale on five occasions in the Solomon Star. The fifth occasion on which it was advertised for sale was on 16 and 21 of July 2004. The Plaintiff received the following bids:

(i)	Victory Company Limited	-	\$430,000.00
(ii)	Jedok Trading Limited	-	\$650,000.00
(iii)	Oceania Trading Company	-	\$663,000.00
(iv)	Partnership Pacific Business	-	\$1,013,000.00

The Plaintiff selected Oceania Trading Company as the winning bidder to purchase Parcel Number 191-003-82 for \$663,000.00.

On 4 November 2004, the Plaintiff filed an inter parte summons for the following orders:

- "1. **That the Plaintiff have leave to accept the bid of \$663,000.00 by Oceania Trading Company to purchase Valbros Limited's Fixed-Term Estate in Parcel Number 191-003-82;**
2. **The Registrar of the High Court of Solomon Islands be authorized to execute transfer documents by order of the Court pursuant to Section 171(2)(a) of the Lands and Titles Act (Cap. 113) to transfer the Fixed-Term Estate in Parcel Number 191-003-82 to Oceania Trading Company;**

3. **The Commissioner of Lands to effect the transfer of Fixed-Term Estate in Parcel Number 191-003-82 to Oceania Trading Company;**
4. **The Defendant's pay the Plaintiff's cost and in connection with this application. "**

This inter parte summons was heard on 8 July 2005 after written submissions and affidavits were filed on behalf of the Plaintiff and the Defendants. The case for the Plaintiff is that it be granted the orders sought in its summons filed on 4 November 2004 above.

The Second and the Third Defendants assert that the Plaintiff failed to exercise its power to sell Parcel Number 191-003-82 to Oceania Trading Company in good faith. They thus seek relief, inter alia, that the Plaintiff's application be struck out; that an order be made to restrain the Plaintiff from exercising its power to sell Parcel Number 191-003-82 to Oceania Trading Company; that an order be made to declare the Plaintiff's acceptance of Oceania Trading Company as the winning bidder null and void; and, for an order declaring that the Fourth Defendant be the winning bidder in place of Oceania Trading Company.

The case for the Fourth Defendant is that the Orders sought by the Plaintiff be refused and that the Fourth Defendant be allowed the first option to purchase Parcel Number 191-003-82. The Fourth Defendant was not a party in this case when the Plaintiff commenced its action against the First, Second and Third Defendants. It became the Fourth Defendant by leave of the Court.

The Fourth Defendant lodged its bid to purchase Parcel Number 191-003-82 on 9 August 2004 for the sum of \$1,013,000.00. Upon receipt of this bid, the Plaintiff sought additional information from the Fourth Defendant before making any decision on its bid. The Fourth Defendant was asked to provide: three years statement of its business; interim statement for 2004; two years cash flow projection (including assumptions); statement of position from each partner; additional collateral and recent valuation reports on other properties to be effected as security; and evidence of cash equity of 30% plus costs. When the Plaintiff received no response from the Fourth Defendant, it decided to sell Parcel Number 191-003-82 to the Second highest bidder, Ocean Trading Company, on 12 October 2004.

The Second and the Third Defendants are the Directors of the First Defendant. They were the guarantors for the repayment of the loan to the Plaintiff. The First, the Second and the Third Defendants have failed, refused or neglected to repay the loan. By 26 April 2000, they became indebted to the Plaintiff in the sum of \$305,585.33. A written demand by the Solicitor for the Plaintiff for them to pay up this debt achieved no result. As alluded to above, there is a court order in place for the Plaintiff to sell Parcel Number 191-003-82 to recover the debt together with an

interest of 18% per annum from 26 April 2000. This debt keeps on increasing every month to date.

The Plaintiff selected the second highest bidder to purchase Parcel Number 191-003-82 because the highest bidder made no response to the information required of it by the Plaintiff. There is no evidence to suggest that the Plaintiff took no reasonable care to obtain a proper price nor acted in bad faith to the detriment of the First, Second and Third Defendants. They have not suffered any damage as a result of any negligence on the part of the Plaintiff.

The Second and the Third Defendants principally seek to stay the Plaintiff from selling Parcel Number 191-003-82 to Oceania Trading Company. I do not think I can grant a stay of the sale of the property. The principle is that the right of a mortgagee to exercise the right of sale cannot be extinguished by anything short of actual payment regarded as sufficient to extinguish a mortgage debt.¹ The First, Second and the Third Defendants have not paid any money sufficient to extinguish the Plaintiff's debt in this case. I will not grant a stay of sale of the property to Oceania Trading Company by the Plaintiff.

I allow the Plaintiff's inter parte summons filed on 4 November 2004 and grant the orders sought therein. I order accordingly.

Francis Mwanosalua
Pulsne Judge

¹ See *Tensly Laki-v-Robert Pitahage and Solomon Islands Home Finance Limited*
- HC - Civil Case No. 249 of 2004 and the two cases referred to therein by Kabul J.