

IN THE HIGH COURT OF SOLOMON ISLANDS
Civil Jurisdiction
(Bird J)

Civil Case No. 201 of 2022

BETWEEN: SOLOMON ISLANDS NATIONAL UNIVERSITY
Claimant

AND: DENIS HABU First Defendant

AND: SOLOMON ENERGY & LOGISTICS LTD
Second Defendants

Date of Hearing: 5th December 2023
Date of Decision: 10th September 2024

Mr Andrew Radclyffe for the Claimant/First Respondent
Ms Sylvia Avicks for the First Defendant/Applicant
Mr Gabriel Suri for the Second Defendant/Second Respondent (No submission filed)

RULING

Bird PJ:

1. Solomon Islands National University (SINU) commenced this proceeding against Mr Dennis Habu and Solomon Energy & Logistics Limited (SE&LL). Mr Habu was a former employee of SINU. His employment was terminated by SINU after he sold 30 bunk beds and 60 mattresses to SE&LL without SINU's knowledge and consent. The value of the goods was SBD 61,450.00. SINU seeks orders for damages for conversion of the bunk beds and mattresses, a further order for the Defendants to pay the proceeds of sale to them and cost.
2. Mr Habu admits the issue of conversion. He also state that SE&LL and himself are both liable to pay the sum of SBD 61,450.00 because SE&LL is not an innocent victim as alleged.
3. The position of SE&LL is they deny converting the bunk beds and mattresses. They also deny that they are liable to pay for the value of the goods sold to them by Mr Habu. They claim to be a bona fide purchaser for value.

The application/issue

4. The application now before me for determination is the application of Mr Habu seeking leave of the court to allow him time to file his defence to SINU's Claim and SE&LL's Counter-Claim. Mr Habu's application and supporting sworn statement was filed on 31 October 2023. When the application was listed before me for hearing on 5 December 2023,

all parties consented to have the hearing vacated and written submissions to be filed. I shall rule on Mr Habu's application for leave on paper thereafter.

5. Mr Habu filed written submissions on 6 December 2023. SINU filed submission on 7 December 2023. SE&LL did not file any written submission even to this date to assist the court.
6. The only issue for me to determine in Mr Habu's application is, *'Could I use my discretion to grant leave in his favour upon the particular circumstances of this case?'*

Mr Habu's argument

7. The basis of Mr Habu's application is that he has a viable defence in his draft Defence and Defence to Counter-Claim attached as exhibit 'DH-4' to his sworn statement filed on 31 October 2023. I have perused his draft Defence to SINU's Claim. He admits the issue of conversion in paragraph 11 (a) of his draft.
8. In relation to his Defence to Counter-Claim, he denies the assertion by SE&LL. He says that they are not a bona fide purchaser for value. They are not an innocent party to the transaction between them. He says that both him and SE&LL are liable to pay the sum of SBD 61,450.00.

SE&LL's argument

9. In their counter-claim against Mr Habu, SE&LL denies committing conversion at all. In fact they claim to be an innocent victim of the transaction. They are a bona fide purchaser for value.
10. Mr Suri of counsel did not file any written submission on behalf of SE&LL to raise issues about Mr Habu's application for leave to extend time to file his defence to their counter-claim.

SINU's argument

11. SINU objects to Mr Habu's application for leave to extend time to file his defence to their Claim. They do not raise any issue on Mr Habu's application for leave to file his defence to SE&LL's counter-claim.
12. SINU says that Mr Habu admits the issue of conversion in paragraph 9 (a) of his application and paragraph 10 (a) of his draft defence. There is no longer any issue between them and Mr Habu. The issue of quantum of damages is between Mr Habu and SE&LL alone. Upon that basis, judgment should be entered against Mr Habu in favour of SINU.

Discussion

13. The Claim by SINU was filed on 24 May 2022. SE&LL's Defence and Counter-claim was filed on 25 August 2022. Request for further and better particulars was filed by Mr Habu on 26 June 2022. An amended request was filed on 15 August 2022. Further and Better Particulars was filed by SINU on 1 September 2022. By direction order dated 25 November 2022, Mr Habu was required to file his Defence to the Claim and a Defence to the Counter-Claim by 8 December 2022. By consent order dated 4 July 2023, and having noted that Mr

Habu had not complied with the orders of 25 November 2022, pleading was closed. SINU and SE&LL had since then complied with paragraph 2 of the orders of 4 July 2023. Mr Habu has not complied to this day. He had nonetheless filed this application which is now before me. It must be noted that the orders of 4 July 2023 are consent orders to the effect that pleading is closed. Having noted that, I shall not dwell further into that issue because it was not raised in this application, except to say that this attitude and the manner and attitude of counsel in dealing with this particular case is unbecoming of the legal practitioner. In fact, it is appalling to say the very least.

Mr Habu's application for leave to file his Defence to SINU's Claim

14. In respect of Mr Habu's application, I will firstly deal with his application for leave to extend time to file his defence to SINU's claim. It is obvious that Mr Habu's draft defence that he has exhibited do not disclose any defence in law. His draft defence has in fact showed he admits the conversion as alleged by SINU which is the main issue between them. Having noted that. There is no other outstanding issue between them.
15. In paragraph 1 of the orders sought by SINU, they are seeking damages for conversion of bunk beds and mattresses. Paragraph 2 seeks an order that the Defendants pay the proceeds of sale to them plus interest and cost.
16. In paragraph 11 of their statement of case, SINU says that they suffered loss and damage in the sum of SBD 61,450.00 as a result of the conversion. In submission, the same sum is claimed by SINU from Mr Habu with interest and cost.
17. Having discussed the circumstances surrounding Mr Habu's application in respect of SINU's Claim, I have seen no valid reason in law to entitle me to use my discretion in his favour. He has not disclosed any viable Defence against SINU's Claim. I refuse this part of his application with cost.
18. Consequently, after having noted that Mr Habu does not have any viable defence to SINU's Claim, I hereby enter judgement against him, in favour of SINU in the sum of SBD 61,450.00 with interest and cost.

Mr Habu's application for leave to extend time to file his Defence to SE&LL's Counter-Claim

19. In respect of the second part of Mr Habu's application for leave to extend time for him to file a defence to SE&LL's Counter-Claim, SE&LL had filed the sworn statement of Kingsford Kali on 15 December 2023. I have perused the sworn statement and further noted that the facts stated therein are matters between themselves and Mr Habu. They can only be properly dealt with by the court by way of pleadings.
20. I have made direction orders on 5 December 2023 for all counsel to file written submission to assist the court to determine the application on paper. Counsel for SE&LL has not complied with my orders to date. I am uncertain as to the exact position of SE&LL in relation to Mr Habu's application for leave.

21. In the absence of any submission and or stating their position to the court, I am unable to say anything further. I can only take the view that Mr Habu's application for leave to extend time for him to file a Defence to SE&LL's Counter-Claim is not disputed.
22. Upon that basis and in the interest of justice and public policy, I would allow the application by Mr Habu. Consequently, Mr Habu is directed to file and serve his Defence to SE&LL's Counter-Claim by 20 September 2024. SE&LL to file and serve their Reply by 4 October 2024. That should end the pleading as between SE&LL and Mr Habu. Cost is in the cause. I hereby order accordingly.



Justice Maetyn Bird

Puisne Judge