IN THE FIJI COURT OF APPEAL

Civil Appeal No. 2 of 1988

Between:

RAGHWAN CONSTRUCTION CO LTD Appellant

- and -

WORMALD SECURITY SERVICES LTD Respondent

Mr V Parmanandam for the Appellant

Mr Ram Chand for the Respondent

Date of Hearing: 21.11.88
Delivery of Judgment: 3.3.89

JUDGMENT OF THE COURT

This is an Appeal against a judgment given on the 21st September 1987 by the Supreme Court of Fiji (now renamed the High Court) in which there was a verdict for the Plaintiff for the sum of $2,697.30 plus interest at the rate of 10% from the 19th June 1985 to judgment, and costs to be taxed.

The pleadings were amended a number of times but essentially the Plaintiff, who is a firm supplying security services, claimed the sum eventually awarded as the balance contract price for supplying the materials and labour necessary to install a "Visiphone" Security System at a block of apartments in Suva owned by the defendant.

The total of the various accounts was $13,197.30. The defendant had paid $10,500 of this, leaving the balance claimed in the action.

The defendants claimed that the system installed was different from the one ordered, that it proved unsatisfactory, and that a camera which was to have been part of the system was not supplied. The defence also alleges that the defendant at the request of the plaintiff did certain work in connection with the installation to the value of $1,150. However, no set-off or counter claim was pleaded.

The defendant appeals on two grounds as follows:-

1) That the learned Trial Judge erred in law and fact when he held that the defendant had proved its claim having failed to analyse the evidence as to the installation of the equipment and as to its adequacy or fault;

2) The learned Trial Judge erred in failing to make a finding as to whether the security system was in fact secure, it being a requirement of the contract.

We were told by counsel for the appellant that he is seeking a retrial.

The principal complaint of the appellant is that the learned Trial Judge gave an extremely brief Judgment, that he failed to analyse the evidence and failed to make specific findings on the various issues raised in the evidence. Counsel also claims that the Learned Trial Judge reversed the onus of proof.

The Judgment is certainly very brief. The essential portion reads as follows:-

> "I am satisfied on the evidence before me that the plaintiff company has proved its claim. I do not accept the evidence of Mr Raghwan, I found it specious and not in accord with the obvious facts or proper business management or arrangements. In short I do not think he was telling the whole truth. I find for the plaintiff in the sum of $2,697.30."

The factual issues were within a fairly small compass. There appears no dispute that the plaintiff gave a written quote on the 20th June 1984 to provide one 20 call button type outdoor unit TD 20S and some associated equipment for a price of some $15,000 odd and that two days later the defendant placed a written Order to the plaintiff "to provide complete work to provide all visiphone TD system quoted $13,000." The written quote has in handwriting "$13,000 net" at the bottom, and there is no dispute that $13,000 was the amount agreed upon between the parties between the time of the quote and the placing of the order. The issues raised at the trial appeared to be 4 in number:-

1) The plaintiff claims that the contract was for 1 (20) button system while the defendant says that the quote was changed to (2) 10 button systems instead;

2) The defendant claims that the installation of a camera was part of the equipment to be provided and this is denied by the plaintiff;

3) The defendant claims that the system was not working satisfactorily and required the installation of a camera;

4) the defendant claims that his company did some work, namely chipping for the laying of cables, at the plaintiff's request and at an expense to it of $1,150.00.

It is clear from the Judgment that the Learned Trial Judge although not recording any specific findings as to each of these issues preferred in respect of each of them where there was a conflict the evidence of the plaintiff to that of the defendant. This is a plain inference from the reasons given. In other words he determined the matter on the basis of credibility.

As to the first issue, the quote refers to 1 (20) call system. The evidence of the plaintiff's witnesses was to the effect that there was no change in this. The defendant claims that during the discussion in which the quote was reduced the plaintiff had agreed to put in 2 (10) button systems instead. However, there is no written order or other documentation to evidence this supposed change.

As to issue No.2, the plaintiff's evidence is that a camera was installed on a trial basis but no order for the same having being received from the defendant it was removed again. The plaintiff's evidence was also to the effect that the defendant never made any request for the camera to be returned, nor, when it failed, to have it repaired.

As to issue (3), there is no plea in the defence that there was a term whether express, implied or

statutory that the system would perform satisfactorily.

However, be that as it may, the plaintiff's evidence which included that from the installing technician, was to the effect that the defendant did not complain of any failure of the equipment to work satisfactorily.

As to issue (4), as already noticed, there is no set-off or counter claim pleaded in respect of this. The allegation is denied in the evidence of the plaintiff.

The case raises the question of the extent of a Trial Judge's duty to make detailed findings of fact. This matter was discussed extensively by the Court of Appeal of New South Wales in Pettitt v Dunkley, 1971, 1 NSW Law Reports 376 in which the authorities on the point are reviewed. That was a case in which the Trial Judge refused, for reasons he deemed sufficient, to give reasons for his verdict. The Judgment and the cases referred to therein confirm the well known general proposition that a Judge at first instance should give reasons for his decision.

This Court is of course aware of the principles restated in Pettitt v Dunkley.

It is to be noted that Pettitt v Dunkley deals substantially with cases where no reasons were given for the verdict. That is not the case here. The brevity of the learned Trial Judge's reasons has not disabled us - to use the words of Asprey, J.A. in Pettitt v Dunkley - from "a proper understanding of the basis upon which the verdict entered has been reached."

Counsel for the appellant cited to us Benmax v Austin Motor Co., Ltd., 1955 AER 326 (HL) for the proposition stated by Viscount Simonds on page 327:-

"A judge sitting without a jury would fall short of his duty if he did not first find the facts and then draw from them the inference of fact whether or not the defendant had been negligent."

However, a reading of the case shows that this proposition is addressed to a case where the question is not one of credibility, as Viscount Simonds says on page 327, after referring to the power of the Court of Appeal to draw inferences of fact and to give any judgment and make any order which ought to have been made:-

"This does not mean that an appellate court should lightly differ from the finding of a trial judge on a question of fact, and I would say that it would be difficult for it to do so where the finding turned solely on the credibility of a witness."

Lord Reid on page 328 said this:-

"Apart from cases where appeal is expressly limited to questions of law, an appellant is entitled to appeal against any finding of the trial judge, whether it be a finding of law, a finding of fact or a finding involving both law and fact. But the trial judge has seen and heard the witnesses, whereas the appeal court is denied that advantage and only has before it a written transcript of their evidence. No one would seek to minimise the advantage enjoyed by the trial judge in determining any question whether a witness is, or is not, trying to tell what he believes to be the truth, and it is only in rare cases that an appeal court could be

> satisfied that the trial judge has reached a wrong decision about the crdibility of a witness. But the advantage of seeing and hearing a witness goes beyond that. The trial judge may be led to a conclusion about the reliability of a witness's memory or his powers of observation by material not available to an appeal court. Evidence may read well in print but may be rightly discounted by the trial judge or, on the other hand, he may rightly attach importance to evidence which reads badly in print. Of course, the weight of the other evidence may be such as to show that the judge must have formed a wrong impression but an appeal court is, and should be slow to reverse any finding which appears to be based on any such considerations."

In this case, and as already noticed, the judge having seen and heard the witnesses gave his reason, for his verdict by reference to credibility. We are unable to say that he was not entitled on the evidence to come to the view he did, nor that his failure to make findings on individual issues vitiates his judgment or that such a failure hampers this court from dealing with the appeal.

We were also urged to consider the fact that the trial concluded in February 1987 and the judgment was written in September, 1987. There is nothing whatsoever to suggest that the learned trial judge - who took a full note of the evidence - suffered such a lapse of memory as to make it unsafe to uphold his judgment. Finally it was urged by counsel for the appellant that it would be dangerous to leave so brief a judgment without more detailed findings and reasons as a precdent for the future. We do not share this apprehension. We agree that the judgment is short. We note that it was given in September 1987 when exigent circumstances which had

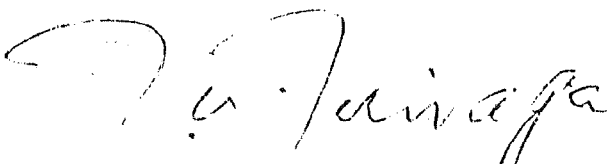
prevailed at the time may have exerted certain time pressures upon the learned trial judge. However, we see no danger in setting a precedent in that we are determining this appeal on the facts of this particular case, and without derogating from the principles stated in Pettitt v Dunkley.

Sometime was devoted in argument to the question of interest. We note that the order as to interest was not appealed against. As a matter of fact Mr Raghwan who gave evidence for the defendant was asked on page 35:-

> Q: "You note that all Wormalds accounts stipulate interest on non payment of cash."
>
> A: "I have been seeing those accounts for the past 20 years. It has never been exercised."

A letter of demand from the Plaintiff's Solicitors demanding payment of the outstanding amount and interest was put in at the trial. It was dated 19th June, 1985. This is the date from which the learned trial judge ordered interest to run. In the circumstances, we are not prepared to interfere with that part of the judgment.

For the reasons stated the appeal is dismissed. The Appellant must pay the Respondent's costs to be taxed, if not agreed.



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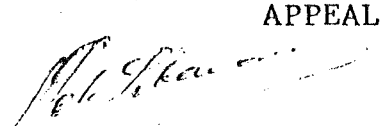

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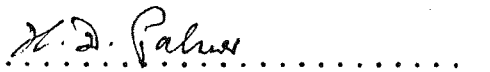

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