

IN THE FIJI COURT OF APPEAL

At Suva

Civil Jurisdiction

CIVIL APPEAL NO. 39 OF 1990

(Civil Action No. 384 of 1982)

BETWEEN:

RAVINDRA SINGH

APPELLANT

-and-

CARPENTERS FIJI LIMITED

RESPONDENT

Mr. S. Parshotam for the Appellant

Mr. H. Lateef for the Respondent

Date of Hearing : 3rd August, 1992

Date of Delivery of Judgment : 11th August, 1992

J U D G M E N T

This is an appeal against a decision of Mr Justice Saunders dated the 25th May, 1990.

The respondent sued for a sum of \$5193.28 for building materials sold and delivered to the appellant between January and February, 1980. The statement of claim was amended at the trial to include a further sum of money for building materials sold and delivered to the appellant in December 1979. The amended figures are as follows:

December 1979	-	\$2510.66
January 1980	-	\$2271.75
February 1980	-	<u>\$2038.15</u>

253

Total		\$6820.56
Less credit payment	-	<u>\$1136.96</u>
		\$5683.96

The respondent claimed a sum of \$5683.96. The respondent in addition claimed interest at the rate of 10% per annum as charged in the manner customary between the respondent and its customers.

The trial Judge gave judgment for the respondent for the amount claimed and dismissed the claim for interest.

The appellant has appealed against the judgment and the respondent has cross-appealed against the dismissal of claim for interest.

First, we deal with the appellant's appeal.

The appellant denied liability in his defence in the following paragraphs.

- "2. The defendant denied that the plaintiff sold and delivered to him any building materials as alleged in the statements of claim.
3. The defendant denies that any dockets for the building materials were given to him or his servants as alleged in the statement of claim."

The onus was on the respondent to prove that the purchases were in fact made and the building materials delivered to the appellant or his agents.

It is not disputed that the evidence at the trial established that the building materials were supplied to a Mr Raj Reddy and the purchases were charged on the appellant's account.

The critical issue at the trial was whether the appellant authorised Mr Reddy to make these purchases on his account.

The appellant entered into a business arrangement with Mr Raj Reddy whereby the appellant purchased building materials from the respondent and another company and supplied Raj Reddy on a 10% commission. In this arrangement, the appellant gave signed orders on behalf of Mr Raj Reddy. This is confirmed by the evidence of Narayan Mudaliar (PW3) a salesman with Morris Hedstrom.

Did the appellant give orders or authorised the purchases that appear in statements for December, 1979, January and February 1980?

The respondent was unable to lead any documentary evidence at the trial as the records were destroyed in a fire in 1985.

Mr Raj Reddy was not called as a witness because he has migrated overseas. The appellant was the only person who could give evidence of whether or not he made any orders or whether he authorised Mr Reddy to make the purchases. He gave evidence on his own behalf.

We will deal with the monthly statements separately.

With respect to the December 1979 statement, the only evidence against the appellant is a letter dated 30.1.80 (Exh 3) written by the appellant to the respondent in which he acknowledged the debt and offered to settle the amount of \$2510.66. In examination in chief, the appellant confirmed that the letter was correct. At no stage did he subsequently dispute the December statement. In a subsequent letter (Exh 4) dated 17.3.80 the appellant disputed the January and February 1980 statements but he did not dispute the December 1979 statement. At the trial, the appellant whilst denying the January and February 1980 statements, did not deny the December 1979 statement. It was open on this evidence for the trial Judge to come to the conclusion that the appellant authorised the purchases that appear in December 1979 statement. We would not disturb the finding of the trial Judge with respect to the December 1979 statement.

We will deal with January and February 1980 statements together. The trial Judge in dealing with these statements concluded:

*"Now, if Reddy was giving order numbers without orders, it is clear to this Court why orders 50 to 60 remain blank in the order book, Ex5. Reddy knew the numbers (they ran from 40 to 60, with the exception of 48) and the Court is satisfied that defendants must have been fully aware of this arrangement. He must have authorised Reddy to collect the materials from Morris Hedstrom and give the order number to the salesman without producing the order."*

Counsel for the appellant has submitted that there is absolutely no basis for coming to the conclusion that the appellant was aware and authorised Mr Reddy to make these purchases.

The appellant in a letter dated 17.3.80 (Ex4) denied any knowledge of authorising any purchases in January and February 1980. At the trial, the appellant denied that he had anything to do with Mr Reddy in January and February 1980. In fact he gave evidence that an investigation in this matter was carried out by a team from the respondent company which included:

Shankar Ali

Vono, Security

Permal Reddy

Sharma

Chief Security

Sohan Lal

Raj Reddy

At this meeting, Raj Reddy admitted that he had purchased these goods without the consent of the appellant. As a consequence of this investigation, the employment of Sohan Lal, the salesman who sold the building materials to Mr Raj Reddy, was terminated by the respondent. In his termination letter (Exh 9) dated 8th April 1980, the Manager stated:

*"After looking into the above subject it is understood that you have deliberately and intentionally used these transactions without obtaining Credit Controller's approval and above all, without the authority or knowledge of the proprietor of Waiyavi Store."*

It is clear from this evidence that the trial Judge fell into error in concluding that the appellant was aware of purchases made by Raj Reddy in January and February 1980.

The trial Judge further relied upon the letter written on 30.1.80 (Exh 3) by the appellant as a clear admission of debt for January and February statements. We have already concluded that on the basis of this letter, it was open for the trial Judge to find that this was an admission of debt in the December 1979 statement. However, this letter cannot be taken as admission of debts for January and February statements. The appellant subsequently disputed the January and February 1980 statements in his letter dated 17.3.80 (Exh 4). The trial Judge clearly erred in this regard.

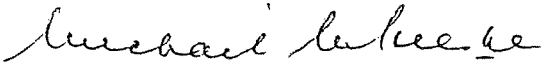
It is clear that the appellant made credit payments totalling \$1136.60. The question is whether these payments were credited to the December 1979 statement. The evidence is not clear on this. The appellant under cross examination stated that he may have made personal purchases from Morris Hedstrom in December 1979, January and February 1980. He further stated that payment of \$1,000 was for official orders and personal purchases. It can be inferred from this that the payment of \$1,000 had nothing to do with the December 1979 statement.

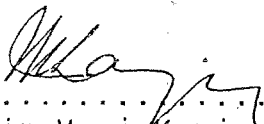
As to the other credit payments, the respondent proceeded at the trial on the basis that they were payments made towards the debt. The appellant did not contest these payments at the trial. In the circumstances, it is only fair that these credits should be subtracted from the December 1979 statement. The respondent would be entitled to the amount in the statement for December 1979 less credit of \$136.60.

We now deal with the respondent's cross appeal. The onus was on the respondent to prove the claim for 10% interest as charged in the manner customary between plaintiff and its customers. The respondent omitted to lead any evidence at all on the question of interest. The trial Judge rightly dismissed this claim.

The formal order of the Court will be: Appeal allowed in part, we set aside the judgment of Mr Justice Saunders dated 25th May 1990 and in lieu thereof enter judgment for the respondent for a sum of \$2,374.06.

We dismiss the cross appeal.

  
.....  
Mr Justice Michael M Helsham  
President, Fiji Court of Appeal

  
.....  
Sir Mari Kapi  
Judge of Appeal