

IN THE COURT OF APPEAL, FIJI ISLANDS
ON APPEAL FROM THE HIGH COURT OF FIJI ISLANDS

CIVIL APPEAL NO. ABU0073 OF 1998S
(High Court Civil Appeal No.018 of 1998)

BETWEEN:

KEWAL INVESTMENT LIMITED

Appellant

AND:

PIONEER SUPPLIES LIMITED

Respondent

Coram:

The Hon. Mr Justice Jai Ram Reddy, President
The Rt. Hon. Sir Maurice Casey, Justice of Appeal
The Hon. Mr Justice Ian Thompson, Justice of Appeal

Hearing:

Friday, 5 May 2000, Suva

Counsel:

Ms P. Narayan for the Appellant
Mr. S. Chandra for the Respondent

Date of Judgment:

Friday, 12 May 2000

JUDGMENT OF THE COURT

This is an appeal against a judgment of the High Court in its appellate jurisdiction. Accordingly, this Court cannot entertain an appeal except on a ground which involves a question of law only (Court of Appeal Act (Cap.12) s.12(1)(c)).

The respondent ("Pioneer") sued the appellant ("Kewal") in Suva Magistrates' Court for \$4,565.73 said to be due and owing for the supply of a roller shutter door. The defence pleaded was a denial of indebtedness and of any contract between the parties for the supply of the door. After hearing several witnesses and receiving documentary evidence, the learned magistrate found that Pioneer had supplied the door pursuant to a contract between itself and a builder with whom Kewal had entered into a contract for the building of a house, and that there was no privity of contract between the parties. She, therefore, gave judgment for Kewal.

Although not pleaded in the defence, failure by Pioneer to perform the alleged contract between itself and Kewal was put in issue at the hearing. The learned magistrate found that the door, as installed by the respondent, was seriously defective and that Kewal had found it necessary to have it removed and replaced by another roller door.

In the High Court the learned judge made findings of fact which differed from those made by the magistrate. In particular he found that there was privity of contract between the parties in respect of the supply and installation of the door. However, he did not disagree with her finding that Pioneer's performance of the contract was "seriously 'incomplete' in several respects and indeed the roller door had to be completely removed and replaced" at a cost to Kewal of \$4,060. He allowed Kewal's appeal, set aside the Magistrates' Court's judgment and substituted for it judgment for Pioneer for \$505.75, calculated by deducting \$4,060 from \$4,565.75. He ordered Kewal to pay the costs of the action and of the appeal, which he fixed as \$250.

In its appeal to this Court Kewal sought to rely on five grounds of appeal; all but two of the grounds involved questions of fact alone or of mixed fact and law. So they could not be entertained. The remaining two raised essentially the same question of law only, namely whether the learned judge, having accepted the magistrate's finding that Pioneer's performance of the contract was seriously incomplete, could lawfully then give judgment for Pioneer. We have come to the conclusion that the appeal must be upheld on those two grounds. Pioneer was entitled to be paid for the goods it supplied and the work it did only if they met its obligations under the contract. If, as the learned judge found, the performance was seriously incomplete, Pioneer had failed to discharge its obligations and was not entitled to be paid the contract price. Nor, as the door had to be replaced, was it entitled to be paid anything on a quantum meruit.

It was not entitled to be paid anything. His Lordship, therefore, erred in law in setting aside the judgment of the Magistrates' Court and in giving judgment in Pioneer's favour.

Pioneer cross-appealed to this Court but none of its grounds of appeal involved a question of law only. Consequently the cross-appeal could not be entertained.

Accordingly, the judgment of the High Court must be set aside and that of the Magistrates' Court reinstated.

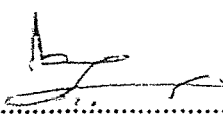
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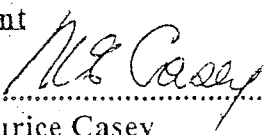
The judgment of the High Court is set aside.

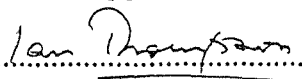
The judgment of the Magistrates' Court dismissing the plaintiff's (respondent's) claim is reinstated.

The respondent is to pay the appellant its costs in this Court and the High Court, which are fixed as \$500 inclusive of disbursements in total.




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Mr Justice Jai Ram Reddy
President


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Sir Maurice Casey
Justice of Appeal


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Mr Justice Ian Thompson
Justice of Appeal

Solicitors:

Messrs. Sherani and Company, Suva for the Appellant
Messrs. Maharaj, Chandra and Associates, Suva for the Respondent