IN THE HIGH COURT
AT SUVA
APPELLATE JURISDICTION

Civil Appeal No: HBA 11 of 2015
(Civil Action No: 404 of 2009)

BETWEEN : Pacific Coatings Limited

Appellant

AND : International Paints (Fiji) Limited

Respondent

Before : The Hon. Mr Justice David Alfred

Counsel : Mr A Chand and Ms K Singh for the Appellant
Ms M Rakai for the Respondent

Date of Hearing : 21 May 2015
Date of Judgment : 5 February 2016

JUDGMENT

1. This is an Appeal from the decision of the learned Magistrate at Suva given on 8 October 2014 wherein he ordered the Plaintiff to pay the Defendant the sum of $10,981.07 and costs of $500.00 and dismissed the Defendant's claim for general damages.

2. The Appellant (the Plaintiff in the Court below) filed its Grounds of Appeal which, inter-alia, stated the following:
   (1) The Magistrate erred in law and in fact when he ordered the Appellant to pay the Respondent (the Defendant in the Court below) the aforementioned

sum, when the evidence was that the Respondent owed the Appellant monies.

(2) The Magistrate erred in law when he failed to properly assess the Appellant's evidence that the Respondent's account went into arrears and the Respondent failed to pay the monies still owed to the Appellant.

(3) The Magistrate erred in law and in fact when he considered the Supply Agreement between the parties was still valid when it had expired.

(4) The Magistrate erred in law when he stated the Respondent was entitled to rebate for 2007 and failed to consider it was in arrears with the Appellant.

(5) The Magistrate erred in law when he failed to consider the Respondent's negligence in breaching its trading terms.

3. The Statement of Claim contends that between 13 May and 25 October 2008 the Respondent purchased products from the Plaintiff totaling $11,400.83, and that inspite of numerous requests, had failed to pay the said sum. The Appellant therefore claimed the said sum, interest and costs.

4. The Amended Statement of Defence of the Respondent consists of a couple of admissions, a couple of bare denials and a contention that the Appellant's claim is frivolous and fabricated and should be struck out. It continues with a Counter-Claim in the sum of $12,018.79 which it contends the Appellant owes it for a rebate, for a non-refund of overpayment, for short credit notes and for non-issue of a credit note.

5. The Counter-Claim also claims general damages. Because this has been dismissed by the Magistrate and there is no appeal by the Respondent, I therefore do not need to consider this head of damages.

6. The Appellant in its Reply to Defence and Defence to Counter-Claim denies their contents and avers the Supply Agreement was only valid for 3 years and expired on 24 February 2006 and therefore there was no agreement to cover 2007.

7. The Pre-Trial Conference was held on 9 July 2012 and the Minutes included, inter alia, the following:

Among the Agreed Facts:

3. Between 13 May and 25 October 2008, the Respondent purchased $11, 400.83 of products from the Plaintiff (the sum).

Disputed Issues:

1. Whether the Respondent owes the Appellant the sum.
2. Whether the Appellant owes the Respondent rebates worth $20,501.55
3. Whether the Appellant was overpaid $1,164.10 in 2008, by the Respondent.
4. Whether the Appellant owes the Respondent $716.25 for short credit notes.
5. Whether the Appellant failed to issue credit notes for the sum of $1,036.89 for 2008 to the Respondent.

Among the Issues to be Determined:

1. Whether the Respondent owed the Appellant the sum.
2. Whether the Appellant owes the Respondent the sums stated in 2, 3, 4 and 5 of the Disputed Issues.

8. The Appeal came up before me for hearing on 21 May 2015. Counsel for the Appellant stated their appeal was only against the counter claim of the Respondent. He submitted that the sum of $10,981.07 awarded by the Magistrate was not owed to the Respondent.

9. The payment rebate could only be made after the arrears were cleared. The Respondent was only entitled to a rebate of $6,174.94 but it refused to accept this, contending it was entitled to a rebate of $22,381.90. The Magistrate failed to consider the fresh agreement. He erred in giving the Respondent a higher rebate than it was entitled to. If the Magistrate had done it correctly, then no sum would be owing to the Respondent.

10. Counsel for the Respondent now submitted. Her starting point was the supply agreement dated 23 February 2003. She said the Appellant failed to show the

Magistrate evidence of the termination of the supply agreement. The Respondent's witness, Mahend Singh (a director of the Respondent) in his evidence was referring to the current supply agreement which Counsel said was the 2003 agreement. The Magistrate only allowed the claims up to 2007.

11. As there was no reply by Counsel for the Appellant the hearing concluded with my stating I would deliver my judgment on a date to be announced.

12. In the course of reaching my decision, I have perused:
(1) The Record of the Magistrates Court (AR).
(2) The Plaintiff's List of Exhibits.
(3) The Defendant's Bundle of Documents.
(4) The Appellant's Skeleton Argument.
(5) The Respondent's Skelton Argument.

13. I now proceed to deliver my judgment. The starting point is the fact that the Magistrate has allowed the Appellant's claim for $11,400.83. This is expressed in para 10 of his Ruling (pages 258 and 259 of the AR) where he states: "The fact that the Defendant has attempted to offset the Plaintiff's claim against its own claim is compelling admission that he does owe the Plaintiff the sum of $11,400.83 and he did admit that in court."

14. Therefore the nub of the appeal is the order that the Appellant is to pay the Respondent the sum of $10,981.07 (the judgment sum). This is the amount the Magistrate found the Appellant owed to the Respondent after offsetting the Appellant's claim of $11,400.83. The amount the Magistrate had found the Appellant owed the Respondent for the rebate in 2007 is the sum of $22,381.90. This is the crux of the Appeal.

15. The Appellant is patently only questioning the amount of the rebate, not whether the Respondent was entitled to a rebate (see para 9). The Magistrate came to his conclusion regarding the amount of the rebate after hearing the

evidence of the witnesses and the documentary evidence produced at the hearing. Nothing has been shown to me in this Appeal to suggest that the amount he arrived at ($22, 381.90) was erroneous. It will therefore stand. Consequently the only issue for the appellate court to consider is whether the trial court had come to a correct conclusion that the supply agreement was still in existence at the material time and that therefore the Respondent was entitled to its rebate.

16. The agreement was made between the parties herein and is dated 23 February 2003. It is contained in pages 134 to 138 of the AR.
The relevant clause for our present purposes is clause 1.0 DURATION which reads as: "This supply agreement will run commencing as from 1 November 2002. For the first 3 (three) years of the agreement, notice of termination by either party is to be given 6 (six) months in advance in writing. And thereafter the agreement, the notice period is 3 (three) months."

17. In my view, this is a contract with no definite time limit. As there is no termination date nor agreement end date, it continues in operation until termination after the requisite period of notice in writing. It most certainly is not an agreement lasting only 3 years as contended for by the Appellant. Clause 1.0 only lays down a 6 month's notice period for the first 3 years and thereafter the notice period is 3 months. No document terminating the agreement had been provided to the Magistrate. On the contrary, the Appellant's letter dated 23 January 2008 to the Respondent shows that even after the end of 2007, the Appellant considered the agreement to be extant because it is stating "we will present a revised distribution agreement to replace the existing agreement." This proposed revised agreement is thus a prospective future event. The above contents of the said letter contradict para 22 of the Appellant's skeleton submission that the existing agreement had been replaced and was no longer in place. Not to put too fine a point on it, the agreement was still in existence. Therefore in the absence of any written notice of termination, I find the Magistrate was quite right to hold that the agreement continued in existence in

2007, leading him to the inevitable conclusion that the Respondent was entitled to its rebate. Once I uphold, as I hereby do, his finding that the agreement was extant, the basis for the Appeal collapsed.

18. On a total review of the matter I find the Magistrate committed no error of law or in fact and committed no error of principle in arriving at his Ruling.

19. Therefore, in fine, I uphold the Magistrate's Ruling, dismiss this Appeal and order the Appellant to pay the Respondent costs of the Appeal which I summarily assess at $1,500.00.

Dated at Suva this 5th day of February 2016

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David Alfred
Judge of the High Court of Fiji