

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No.: HBC 370 of 2013

BETWEEN : **AVIEL BAT TZION** also known as **UNISE RANADI** OF Suva,
Domestic Duties.
PLAINTIFF

AND : **GRAPHIC EQUIPMENT LIMITED** a limited liability company
having its registered office in Suva.
1ST DEFENDANT

AND : **MINGS LIMITED** a limited liability company having its registered
office in Suva.
2ND DEFENDANT

Counsel : **Plaintiff: Mr. Lynyon J**
Defendant: Mr. N. Lajendra

Date of Hearing : **1.02.2019**

Date of Judgment : **17.04. 2019**

JUDGMENT

INTRODUCTION

1. The claim of the Plaintiff is struck off, and the Defendants proceeded with the counter claim. The counter claim of the Defendants, is denied by the Plaintiff. In the counter claim Defendants state that the Plaintiff had forged the signatures of the cheques stated in the statement of claim and Plaintiff had also obtained the money for personal benefit, hence Plaintiff owes the Defendants the aggregate sum of the amounts in those cheques. The Plaintiff gave evidence and for the Defendants a Director of both Defendants gave evidence.

EVIDENCE

2. Witness for Defendants, Dennis Fong produced photo copies of cheques and original counterfoils and in his evidence said that signature appeared on the photocopies of the cheques are not his signatures.

3. The counterclaim of the Defendants state that signatures were forged by the Plaintiff while she was employed with Defendants.
4. Plaintiff was a waiter in a restaurant belonging to the Defendants' group of companies and she was later given more responsibilities in the accounts division as a clerk. She did not have any education or training on the accounts prior to the assignment, but had worked with the Defendants from 1986 to 2000.
5. The witness for the Defendant stated that there was a discrepancy about payments to a supplier. He said that he and his wife investigated the matter and asked the Plaintiff to take leave during the said period.
6. According to him the investigation by himself and his wife had made revelation about forged cheques. Details of the cheques from the Account Number 582941 and 585147 with ANZ bank are as follow:

Account Number 582941

Cheque Date	Cheque No.	Amount
6 January 1998	001060	\$1,092.23
24 February 1999	001570	\$952.55
9 June 1999	001707	\$1,981.76
21 June 1999	001721	\$2,477.20
27 July 1999	001766	\$693.56
27 July 1999	001767	\$2,922.54
24 August 1999	001800	\$2,477.20
15 September 1999	001833	\$2,622.25
29 September 1999	001853	\$3,378.76
7 October 1999	001877	\$2,477.20
25 October 1999	001889	\$2,477.20
25 October 1999	001890	\$953.65
3 November 1999	001911	\$2,477.20
10 November 1999	001920	\$2,600.40
17 November 1999	001927	\$2,080.32
23 November 1999	001938	\$1,015.00
23 November 1999	001939	\$2,600.00
3 December 1999	001958	\$3,345.92
14 December 1999	001965	\$2,414.08
14 December 1999	001966	\$1,560.24
20 December 1999	001977	\$2,600.40
27 December 1999	001996	\$2,600.40
24 January 2000	002024	\$2,600.40
27 January 2000	002037	\$2,600.40
7 February 2000	002052	\$2,600.40

22 February 2000	002073	\$2,600.40
24 February 2000	002079	\$3,437.57
29 February 2000	002091	\$2,600.40
29 February 2000	002096	\$1,023.56
29 February 2000	002097	\$2,600.40
<u>TOTAL</u>		<u>\$67,863.59</u>

Account Number 585147

16 March 1998	001812	\$2,380.40
18 May 1998	001925	\$1,981.76
26 May 1998	001949	\$1,486.32
28 February 1999	002495	\$1,981.76
<u>TOTAL</u>		<u>\$7,830.24</u>

7. During trial photo copies of cheques were tendered and original counterfoils of cheques were marked. As for the cheque leaves, since the Defendants did not have the originals, copies of the relevant cheque leaves were submitted to Court which was marked as MFII. The Plaintiff objected to the said photocopies.
8. It should be noted that Plaintiff in her evidence admitted all handwriting in the photocopies of the cheques as well as the relevant counterfoils of the cheques. So there is no issue of proof of existence of the cheques.
9. Accordingly, counsel in his written submission states that photo copies of cheques can be admitted as evidence.
10. The witness for Defendants stated that he with his wife investigated the accounts and found the above cheques as forged ones and they had also complained to the Police. He said that the cheques were drawn "Cash" instead of the name of the supplier and he had inquired from the Plaintiff and she had replied that the instructions were given by the accountant of the supplier.
11. It is admitted fact that Plaintiff was initially charged 12 years after the initial investigation by Defendant's Director and his wife but these charges were subsequently withdrawn, by the Office of Director of Public Prosecution.

12. Plaintiff was involved in preparation of cheques for Defendants. The cheques that were stated in the counterclaim and reproduced above were written as 'Cash' but the counterfoil indicate the name of the supplier.
13. Defendants state that there was no reason to write 'Cash' cheque.
14. Documents and marked as D1 stated that the Supplier did not request for "Cash" cheques.
15. Plaintiff in her evidence, admitted hand writing, of all the cheques and counterfoils of the cheques and said that she was only following instructions given to her and she never forged the signatures on the cheques. She admitted writing 'cash' cheques for debtors.
16. The Plaintiff did not produce any evidence to show as to who obtained cash for the said cheques from the bank.
17. Plaintiff accepted hand writing on the photo copies of all the cheques that were produced. She said she used to cash the cheques on the request of the Directors of the Defendants, and bring money to the office and place the money in the cash box. She said it was not secured and there were others working in the accounts section of the office. She said that there was an accountant but could not name.

ANALYSIS

18. Defendants in the counter claim at paragraph 17 of the Statement of Defence and Counter Claim stated that internal investigation it was discovered that the Plaintiff had 'altered the cheque leaf and cheque butt'
19. There is no proof of alteration by Plaintiff except one cheque. The only cheque that was altered was an alteration of payee's name to 1st Defendant and there was no evidence as to who did that. The name change was countersigned but the signature of witness in that was allegedly forged, and name of the payee was printed on the cheque so there is no proof that alteration was done by the Plaintiff. This cheque counterfoil is written by Plaintiff and there is no alteration on the counterfoil as to name of debtor or cheque. The cheque number was 001060 and dated 6.01.1998 and the cheque is also dated and there is admission as to the hand writing of the cheque and counterleaf except the signatures. So there is no alteration by Plaintiff proved. In any event since it was a company cheque and a crossed cheque it can only be deposited to an account, and no evidence was produced on how it was paged.
20. None of the other alleged forged cheques indicated any alterations on the cheques. But the counterfoils of the cheques indicated that the amount stated in the cheques were paid to debtors, by their names.

21. There was no evidence from Carlton Brewery or other suppliers (i.e. debtors) that relevant cheques were not received by them. The counterfoil only indicated to whom the payment was paid and there is no alteration of that.
22. The Document marked D1 is a fax from Carlton Brewery, and it had indicated that it had not refused cheque payments and their cashier had not made any request to for Cash cheques.
23. According to the Plaintiff she had written cheques as requested by Defendants. Evidence that were not put to Defendant's witness by the Plaintiff's counsel and this is in contravention of the rule in **Brown v Dunn**, (1893) 6 R. 67. The Defendants deny that.
24. There was no written instructions or procedures in regard to payments of the cheques produced. Plaintiff is not a person who had any formal education regarding accounting or any professional qualification in accounts. She said that she just followed the verbal instructions and admitted that there was nothing to support alleged instructions to write 'Cash' cheques for debtors.
25. In London **Joint Stock Bank v Macmillan** [1918] A.C. 77 House of Lords (UK) held that ,
'It is beyond dispute that the customer is bound to exercise reasonable care in drawing the cheque to prevent the banker being misled'
26. Defendants had entrusted writing of cheques to Plaintiff who had no qualification in accounts and had also not supervised and or audited the accounts of the Defendants.
27. Even the investigation of the alleged forgery was conducted by the witness who gave evidence and his wife. In his evidence he failed to produce evidence that debtors' accounts were reconciled through debtors control account. So the alleged forgery had continued for a long period. There was no proof as to the amount not paid to debtors.
28. Plaintiff said there were others in the accounts branch and there was even an accountant employed by the Defendants, but failed to reveal name. If an accountant was employed such person would normally conduct the investigation as to the Plaintiff.
29. The counter claim as prayed by the Defendants are regarding the alleged forgery of the signatures and obtaining money by the Plaintiff.
30. In the paragraph 18 of the Statement of Defence and Counter Claim the Defendants state that the Plaintiff forged the signatures for the cheques but there even Defendants could not state as to who forged the signatures in cheques, where he denied signing.

29. The counter claim as prayed by the Defendants are regarding the alleged forgery of the signatures and obtaining money by the Plaintiff.
30. In the paragraph 18 of the Statement of Defence and Counter Claim the Defendants state that the Plaintiff forged the signatures for the cheques but there even Defendants could not state as to who forged the signatures in cheques, where he denied signing.
31. There was no evidence of Plaintiff's forgery of signatures on the said cheques. So there is no proof of forgery of signatures.
32. There is no proof of Plaintiff obtaining money stated in the cheques relating to counterclaim, for personal benefit as prayed in paragraph 19 of the statement of Defence and Counterclaim.
33. So the Defendants had failed to prove that counterclaim as stated in the pleadings.
34. The Counterclaim as prayed from paragraph 11 and more fully claimed in paragraphs 17, 18, and 19 of the Statement of Defence and Counterclaim is based on the forgery of signatures on the cheques and obtaining money from the said cheques by the Plaintiff for her personal use, thus a debt being created. There is no proof of forgery of signature by the Plaintiff and there is no evidence of who obtained money for the said cheques. So there is no proof of debt to the Defendants from the Plaintiff.

Conclusion

35. The Defendants had failed to prove the claim as prayed in the pleadings. There is no proof that the signature was forged by the Plaintiff and or money for the cheques were obtained by the Plaintiff. Counterclaim is struck off. The cost of this counterclaim is summarily assessed at \$3,000.

FINAL ORDERS

- a. The counterclaim for the Defendants is struck off.
- b. The cost is summarily assessed at \$3,000 summarily assessed to be paid within 21 days by Defendants to the Plaintiff.

Dated at Suva this 17th day of April, 2019.



Justice Deepthi Amaratunga
Justice Deepthi Amaratunga
High Court, Suva