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IN THE SUPREME COURT OF FIJI
Civil Jurisdiction
Civil Action No. 176 of 1979

000069

Between:

HARI PRASAD f/n RAM NATH

and

FLOUR MILLS OF FIJI LIMITED

Mr. F.M.K. Sherani for the Plaintiff
Mr. A. Ali for the Defendant

JUDGMENT

This is an action brought by the plaintiff against the defendant company for the recovery of a sum of \$14,370.03 said to be the amount owing to the plaintiff from the sale and delivery of second-hand jute sacks during the period 19th June 1974 and 31st July 1974 and pursuant to an agreement entered into between the parties on or about 19th of June 1974 whereby the defendant company agreed to buy from the plaintiff 150,000 empty jute sacks to be delivered by the plaintiff to the defendant company in instalments and at regular intervals. The particulars of the claim are as follows:-

11,013 jute sacks at 23 cents each ..	\$2,532.99
31,992 jute sacks at 37 cents each ..	\$11,837.04
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	\$14,370.03
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The plaintiff is also claiming interest at the rate of ten per cent per annum from 1st August 1974 until date of judgment.

The defence case is set out at paragraph 3 of the Defence. This paragraph was amended with leave and re-numbered at the commencement of the trial. It will be convenient I think to set out below (so far as material) the terms of paragraph 3 of the Defence as amended:

"3. As to paragraph 3 of the Statement of Claim the defendant says:-

(i) That on or about the 18th day of April, 1974 the plaintiff entered into an agreement with the defendant whereby the plaintiff agreed to supply to the defendant 150,000 second-hand jute bags 44" x 26 $\frac{1}{2}$ " of good quality by the end of March 1975 at the rate of 15,000 to 20,000 jute bags per month commencing from the 30th day of June, 1974 at the following prices:-

- (a) 75,000 jute bags at 23¢ each;
- (b) 75,000 jute bags at 24¢ each;

The defendant says that the plaintiff agreed initially to supply 5,000 jute bags by the 30th day of June, 1974 and further supply 20,000 jute bags by the 15th day of July, 1974.

- (ii) That it was further agreed by the plaintiff on delivery of the said second-hand jute bags the same would be inspected on the spot by the defendant or its agents to ensure that the jute bags were of good quality.
- (iii) That it was further agreed by the plaintiff that he would supply the said jute sacks on a "cash on delivery" basis.
- (iv) That it was further agreed by the plaintiff that the supplies as agreed would be made on time and that should he fail to supply the said jute sacks on time the defendant had a right to cancel the said agreement entered into.
- (v) That on or about the 18th day of April, 1974 it paid to the plaintiff the sum of \$4,000.00 as a deposit against the supply of the jute bags by the plaintiff to the defendant.
- (vi) That as a result of further discussions between the plaintiff and the defendant on or about the 16th day of July, 1974 the plaintiff agreed to supply to the defendant as part of the order of 150,000 jute bags a supply of 30,000 jute bags at 37¢ each to be supplied by the plaintiff to the defendant as follows:-
 - (a) 8,000 jute bags by the 23rd of July, 1974;
 - (b) 8,000 jute bags by the 10th of August, 1974;
 - (c) 8,000 jute bags by the 23rd of August, 1974;
 - (d) 6,000 jute bags by the 10th of September, 1974.
- (vii) The defendant says that the plaintiff failed to make regular supplies of jute bags to the defendant as set out in paragraph 3(i) and (iii) hereof.

- (viii) The defendant says that the plaintiff was immediately informed by the defendant of the failure by the plaintiff to supply the said jute sacks and the plaintiff failed to take note of this and as a result the defendant on the 19th September, 1974 cancelled the said Agreement.
- (ix) The defendant says that what supplies of jute bags made by the plaintiff to the defendant were paid for by the defendant to the plaintiff on delivery except for a sum of \$740.00 for supplies made by the plaintiff to the defendant on the 20th day of August, 1974.
- (x) The defendant says that the sum of \$4,000.00 paid by the defendant to the plaintiff on the 18th day of April, 1974 as a deposit was to be adjusted against the final supplies of jute bags made by the plaintiff to the defendant.
- (xi) The defendant says that in the outcome a refund of \$3,260.00 is due by the plaintiff to the defendant which the plaintiff has failed to pay to the defendant."

The defendant company is counterclaiming a sum of \$3,260 which is said to be the balance of a deposit of \$4,000 which was paid to the plaintiff on the 18th April 1974 for the supply and delivery of jute bags by the plaintiff to the defendant firm and which was to be adjusted against the orders received at the end of the contract period, namely at the end of March, 1975.

The plaintiff denies owing any such amount of \$3,260 and further denies any deposit having been made to him under the agreement between the parties but alleges that the sum of \$4,000 which was received by him on or about the 18th April, 1974 was for jute bags supplied.

The plaintiff has since 1972 been engaged in his own business of selling and delivering second-hand jute bags. He has several employees in the business whose main task would be to wash and clean the bags before re-sale. The Fiji Sugar Corporation was the main source of plaintiff's supply of these second-hand jute bags during 1974.

Towards the end of 1973 plaintiff began supplying and delivering second-hand jute bags of 44" x 26½" to the defendant company in accordance with orders received. This arrangement was largely done on an ad hoc basis which continued until 19th June 1974 when a bulk order for 150,000 bags was placed all of which was to be supplied by the plaintiff by the end of March 1975. Two letters are relevant in this connection (Exhibit 1 pages 4 and 5) and for ease of reference these are quoted in full below:

"19 June 1974

Mr. Hari Prasad,
147 Marks Street.
SUVA.

Dear Sir,

We refer to the discussion we had in our Mills and confirm the following order placed to you for the sound second-hand jute bags of 44"x 26½" to be supplied to us by the end of March 1975 on a regular basis of around 15000 to 20000 per month.

- a. 75000 bags at 23 cents each.
- b. 75000 bags at 24 cents each.

As further agreed you will supply us about 1000 bags by next week and 20000 bags by 15th of July.

Yours faithfully,
FLOUR MILLS OF FIJI LIMITED

(sgd) Jayant Vithaldas
Managing Director

"16 July 1974

Mr. R.H. Prasad,
174 Marks Street,
SUVA.

Dear Sir,

We confirm the discussion the undersigned had with you this afternoon when we have ordered the following requirements to be supplied to us as detailed below -

30,000 jute bags at F\$ 37.00 per 100 bags.

Delivery time: 8,000 bags by 23rd July.
8,000 bags by 10th August.
8,000 bags by 23rd August.
6,000 bags by 10th September.

The above requirements are to be treated as part of the requirement of our order of 150,000 bags however, as this is a better quality we have agreed to pay 37 cents per bag instead of 23 cents.

Yours faithfully,
FLOUR MILLS OF FIJI LIMITED

(sgd) Jayant Vithaldas
Managing Director

"

The plaintiff gave evidence on his own behalf but called no witnesses. According to his evidence he first made arrangements to sell jute bags to defendant company at the end of 1973. This was done through a Mr. Jayant Vithaldas, Managing Director at the time. The price was then 20 cents a bag. Payment for the bags was made at the end of each month against a statement of account submitted to the defendant company. For each delivery of bags a delivery docket would be made out in respect of such delivery and which would be signed for by one of the employees of the defendant company who would take the top copy after counting and checking the quantity of bags. Plaintiff said that on each occasion that delivery of jute bags was made he would be present. He said he would himself personally check the prepared statement which at first did not have copies of delivery dockets attached to them but later this became the usual practice.

Plaintiff said he was never paid a deposit of \$4,000 on 18th April 1974 but the money was paid in respect of jute bags supplied to the defendant company.

Plaintiff said that in June 1974 he supplied 11,013 jute bags at 23 cents each to defendant company to a total value of \$2,532.99 and in July 1974 he again supplied 31,992 jute bags at a revised price of 37 cents a bag to a total value of

\$11,837.04 cents. Plaintiff claims that defendant company has not paid for the bags thus supplied and that the company still owes him a sum of \$14,370.03 for unpaid jute bags supplied to the defendant company. He said that the delivery dockets in respect of supplies of jute bags were made out and duly signed by the receiving employees of the defendant company who took the top copies. The plaintiff said all duplicate copies of the delivery dockets were attached to the statements which he personally delivered to the defendant company through a Mr. Modi. When he gave the statement to him Mr. Modi said that there was some trouble upstairs and asked for all the copies of the delivery dockets he had with him.

Plaintiff said the payments from the defendant company were sometimes made in cash and at other times by cheque. He said he never received the letter (Exhibit 2 Item 7) dated 22nd August 1974. The letter was in these terms:

"Mr. Hari Prasad,
147 Marks Street,
SUVA.

Dear Sir,

We refer to our letter of the 19th June confirming our order for 150,000 bags to be supplied on the basis of 15,000/20,000 per month.

We are very much disturbed to note that you have not been able to supply us the above monthly requirements despite several verbal requests to you.

We must now ask you to expedite your supply with a view to making up the arrear supplies as soon as possible.

We regret that unless your supply position improves within the next two weeks' time we will be forced to ask you to refund us the amount of \$4,000 which was given to you on 18th April as deposit against the above supply.

Yours faithfully,
FOR FLOUR MILLS OF FIJI LIMITED

Jayant Vithaldas
MANAGING DIRECTOR "

The plaintiff said the order for 150,000 jute bags was not placed with him on 18th April 1974 but in June 1974 as confirmed by Exhibit 1 Item 4 (quoted earlier in this judgment). Plaintiff said the reason given to him by the defendant company to explain why it stopped accepting any more bags from him was because ^{of} the Australian Wheat Board ban on importation of wheat products in old bags. Exhibit 3 was produced in support of this claim.

In cross-examination plaintiff said he was sure that defendant company stopped buying from him in August 1974. He said he knew this because they had not paid for June and July supplies of bags and that they had asked for replacement statements to be submitted. He took these statements to them and asked for payment of his account and it was then they told him that the Australian Wheat Board had put a ban on the bags. He said he read this too in the newspapers. He said letters from the defendant company to him were never posted but he would collect them in person at the office of the defendant company. According to plaintiff he had had discussions with Jayant Vithaldas in May or June concerning the present agreement to supply bags. He said he had no problem before with regard to payment of his accounts by the defendant company. He said he would give the accountant the statement and copies of the delivery dockets and the accountant would make out the cheque which would be signed by Vithaldas. He said in June and July 1974 he had sufficient stock of bags and from this he supplied bags to defendant company under the agreement. He said he did not receive letter (Exhibit 2 Item 4). This letter which is dated 19th September 1974 and was sent by registered mail reads as follows:

"Mr. Hari Prasad,
147 Marks Street,
SUVA.

Dear Sir,

We refer to our letter reference
HB/159/74 of 22nd August and regret to know that
we have not yet received any reply from you.

In view of your inability to supply the bags as agreed, and the considerable period of time that has already elapsed between time we placed the order and now, we would ask you to cancel your supply of the balance quantity immediately.

Since we paid a deposit of \$4,000 on 18th April 1974 against the supply of these bags, would you kindly refund us this amount within seven days of your receipt of this letter. We regret that if we do not receive your payment within the aforesaid time, we will be forced to ask our solicitors to take the necessary action to recover this account.

Yours faithfully,
FOR FLOUR MILLS OF FIJI LIMITED

P.G. Chanda
Secretary "

Plaintiff said that he was present on each occasion in June and July when delivery of bags was made at the premises of defendant company. The respective delivery dockets which was signed were attached to the statements supplied to the defendant company. He said he received \$4,000 by cheque on 18th April 1974 which according to him was in payment of bags supplied.

Plaintiff said he did not keep records of monies received from the defendant company as according to him after receiving the monies he had no further use for retaining a record.

Plaintiff denied that the transactions between him and the defendant company were on a cash on delivery basis. He denied that his claim against defendant company was bogus. The following questions and answers were given during cross-examination of plaintiff.

"Q. Did you receive \$1,100.45 cents in July 1974?

A. Could be.

Q. \$610 on 29th July?

A. I don't remember.

Q. Did you receive \$818.79 on 27th June 1974?

A. I could have received I can't remember very well. "

Having carefully considered the evidence adduced by and for the plaintiff in the light of the evidence adduced on behalf of the defendant company I find on the balance of probabilities that the plaintiff has not established his claim for a sum of \$14,370.03 in this action.

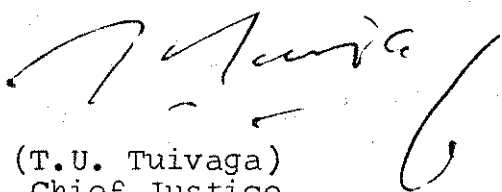
The nature of his evidence is unsatisfactory and vague making it impossible to give any credence to it. For such a large claim one would expect better and proper particulars in the pleadings supported by credible oral and documentary evidence. This was badly lacking in this case. The uncertainty and vagueness of plaintiff's claim is in my opinion clearly highlighted by the letter from Messrs. Munro, Leys, Kermod & Co. on behalf of the plaintiff to the defendant company (Exhibit 2 Item 5) which initially put the basis of plaintiff's claim on a wholly different factual basis from that which eventually materialised in his pleadings in this case. Such conspicuous discrepancy in the factual basis of plaintiff's claim against the defendant company raises the question whether this claim was not purely bogus as alleged by the defendant company. Plaintiff for reasons best known to himself had not kept proper records showing particulars of his various transactions, particularly delivery transactions with defendant company. This failure which is inexplicable in plaintiff's particular line of business must necessarily affect the quality of his claim. There is evidence that the defendant company in fact paid plaintiff a sum of \$818 on 27th June 1974, a sum of \$1,100.45 on 17th July 1974 and \$610 on 29th July 1974 but the plaintiff expressed difficulty in recalling these payments. No copies of delivery dockets were produced to support the numerical claim for second-hand bags allegedly supplied during the months of June and July 1974. In these circumstances I feel constrained to dismiss this action.

The defendant company has conceded however that \$740 was owing to the plaintiff for bags supplied but this was not

paid to him because the amount was debited against a sum of \$4,000 which it is said, was paid to the plaintiff by way of deposit against the supplies of bags and as we have seen, the balance of \$3,260 thereof became the subject matter of defendant company's counterclaim against the plaintiff.

On the evidence before me I am unable to accept that the sum of \$4,000 which was in fact paid to the plaintiff on 18th April 1974 was paid as deposit against supplies of bags as alleged. The plaintiff is adamant that the payment of \$4,000 was in respect of bags supplied to defendant company round about that time. In any event there is no evidence in writing to indicate that the purpose of payment of \$4,000 to plaintiff was in respect of deposit against the supplies of bags. Nor was the matter recorded as such anywhere in the defendant company's books of account. The first intimation in writing about a deposit payment to plaintiff was in a letter dated 22nd August, 1974 (Exhibit 2 Item 7). In these circumstances I am far from satisfied that the defendant company's counterclaim has been established and will therefore be dismissed.

In the result I must find that a sum of \$740 is due to the plaintiff from the defendant company by way of unpaid account on bags sold and supplied to and admitted by the defendant company. Accordingly there will be judgment for the plaintiff in the sum of \$740 with no order as to costs.


(T.U. Tuivaga)
Chief Justice

Suva,
5th December 1980.