

Between:

AIR CONDITIONING (S.P.) LIMITED

Plaintiff

and

HYGRADE MEATS LIMITED

Defendant

Mr. H.M. Patel for the Plaintiff.

Mr. G.P. Lala for the Defendant.

JUDGMENT

The plaintiff's claim against the defendant is for the sum of \$3,400 New Zealand currency being the cost of a pneumatic pineapple peeler machine ordered by the defendant company from the plaintiff.

In his Statement of Defence the defendant denied ordering the machine but admitted cabling the plaintiff on the 19th August 1979 asking the plaintiff not to proceed with the machine.

Only two witnesses gave evidence - Mr. I.W. Airlie, Managing Director for the plaintiff company, and Mr. W.O. Williams, a director of the defendant company.

If I had had experienced any difficulty in determining which of the two witnesses I believed consideration of the documentary evidence would have established that the defendant company did order the machine and has not paid for it. Mr. Airlie in evidence stated his company had had several dealings in the past with the defendant company. All were of a verbal nature.

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He stated that in July 1979 Mr. Williams on behalf of the defendant company asked him on behalf of his company to manufacture a pneumatic pineapple peeler machine. His company first produced and sent Mr. Williams drawings of the machine. The price agreed was NZ\$3,400. Mr. Williams sent Mr. Airlie some empty cans so that his company could produce a cutter to suit the cans. He said they went ahead with the manufacture of the cans as Mr. Williams said the matter was urgent. The price was to be paid when the machine was ready by the defendant arranging a letter of credit whereupon the machine would be shipped to the defendant. The letter of credit was never arranged because Mr. Williams was trying to make arrangements for a buying house to purchase on his behalf. The plaintiff has never been paid.

Mr. Airlie said the machine was still in his company's yard. He described it as a "one off machine which we can not sell elsewhere". The machine was completed in early August 1979.

Mr. Airlie said that in April 1980 his company decided to offer the defendant credit facilities themselves in an effort to obtain payment for the machine. It was only after that offer, he said, that the defendant wrote on 23rd May 1980 indicating cancellation of the order.

The letter of 23rd May 1980 was written by Mr. Williams and contains allegations which he repeated in evidence. It alleges "no official order was ever given by our company for a pineapple machine to be purchased" by the defendant company. It also alleges that Mr. Airlie was advised that the defendant could only purchase a machine if one was available by getting confirming finance from an overseas confirming house and that Mr. Airlie was advised not to proceed until such finance was obtained. The letter states Mr. Airlie went ahead and made the machine.

Mr. Williams' letter to Mr. Airlie of 19th August 1979 quotes his cable of that date which satisfies me that Mr. Williams did order the machine and did not cancel the order. The cable read:

"Attention: Ian please hold pineapple peeler machine until advised. I am arranging a confirming house to buy on our behalf. Will advice arrangements soon. "

In evidence Mr. Williams said he sent the cable because Mr. Airlie had rung him advising machine would be shipped on sight draft basis. He said he did not know of any other similar type of machine which confirms Mr. Airlie's evidence that it is a "one off" machine. I believe Mr. Airlie and do not believe Mr. Williams when he contends he did not order the machine and in any event had instructed the plaintiff not to proceed.

I accept the machine is a one off order and can not be resold by the plaintiff. I hold as a fact that the defendant company through Mr. Williams ordered the machine at an agreed price of NZ\$3,400. The plaintiff manufactured the machine and is entitled to judgment.

Judgement for the plaintiff for the sum of \$3,400 New Zealand currency and costs.

R.G. Kermod
(R.G. Kermod)
JUDGE

SUVA,

13 July, 1981.