

**A RAGHWAN CONSTRUCTION CO. LTD**

v.

**WORMALD SECURITY SERVICES LTD**

**B [COURT OF APPEAL, Tuivaga, P., Tikaram, J.A., Palmer, J.]**

**Civil Jurisdiction**

Hearing: 21 November, 1988.

Judgment: 3 March, 1988

**C** *(Contract—supply of material and installation—judgment very brief— no finding of specific facts—extent of trial Judge's duty to make detailed findings of fact—result here decided on credibility—different if case not one of credibility—trial Judge on the evidence entitled to reach stated conclusion—failure to find specific facts did not vitiate judgment or hamper the appeal court).*

**D** **V. Parmanandam for the Appellant**  
**R. C. Patel for the Respondent.**

**E** Appeal by Raghwan Construction Co. Ltd. (defendant) against a verdict for \$2,697.30 plus interest given on 21 September 1987 by the Supreme Court (as it then was) in favour of Wormald Security Services Ltd (plaintiff) for the balance of the contract price for supplying materials and labour to instal a 'Visiphone' Security System at a block of apartments owned by the defendant. The total price had been \$10,500 leaving the balance claimed. Defendant had contended—

"The system installed differed from that ordered was unsatisfactory, a camera, part of the system had not been supplied."

**F** Grounds of appeal were—  
(1) That the learned Trial Judge erred in law and fact when he held that the defendant had proved its claim having failed to analyse the evidence as to the installation of the equipment and as to its adequacy or fault;  
(2) The learned Trial Judge erred in failing to make a finding as to whether the security system was in fact secured, it being a requirement of the contract.

**G** The principal complaint of the defendant which sought a retrial was that in his very brief judgment the trial Judge failed to analyse the evidence and make specific findings on the various issues; and that he reversed the onus of proof.

The judgment read—

**H** "I am satisfied on the evidence before me that the plaintiff company has proved its claim. I do not accept the evidence of Mr Raghwan, I found it specious and not in accord with the obvious facts or proper business management or arrangements. In short I do not think he was telling the whole truth. I find for the plaintiff in the sum of \$2,697.30."

There was no dispute that—

- (i) The plaintiff gave a written quote on 20 June 1984 to provide one 20 button type outdoor unit TD 20S and associated equipment for \$15,000 odd and that two days later A
- (ii) The defendant placed a written order to (2) "provide complete work to provide all visiphone T.D. system quoted \$13,000."

Issues at the trial were that— B

1. Plaintiff claimed the contract was for 1 (20) button system; the defendant said the quote was changed to (2) 10 button systems instead.
2. Defendant contended the installation of a camera was part of the installation to be provided; the plaintiff denied this.
3. The defendant claimed that the system was not working satisfactorily and required the installation of a camera; C
4. The defendant claimed that his company did some work, namely chipping for the laying of cables, at the plaintiff's request and at an expense to it of \$1,150.00;

*Held:* Though the judgment did not record specific findings as to each of these issues; where there was a conflict, the learned Judge preferred the plaintiff's evidence to that of the defendant he decided the matter on credibility. D

There was nothing in writing to support the claimed change of systems; nor any request to have the camera repaired when it failed, or returned when it was removed. As to issue 3 there had been no plea that it was a term express implied or statutory that it would perform satisfactorily. Further, the plaintiff's evidence was that the defendant did not complain of any failure of the equipment to work satisfactorily. E

There was no set-off counterclaim that the defendant did the work referred to in 4 or at the expense of the plaintiff.

**The extent of a trial Judge's duty to give reasons is referred to in *Petitt v. Dunkley* (1971) 1 NSW Law Reports 376. The principle that he should do so was reaffirmed. However in *Petitt* no reasons at all were given. Here the brevity of the Reasons had not prevented—** F

"A proper understanding at the basis upon which the verdict entered has been reached."

(per Asprey, J.A.) G

Reference was made to the proposition stated by Viscount Simonds (p. 327) in *Benmax v. Austin Motor Co. Ltd.*, (1955) All E.R. 326 (HL)—

"A judge sitting without a jury would fall short of his duty if he did not first find the facts and then draw from them the inference of fact whether or not the defendant had been negligent." H

But in *Benmax* the question was not, as in the instant case, credibility (ibid p. 327). There the House of Lords warned against differing from the trial Judge on a

A matter of credibility. See per Lord Reid at p. 328. Still, a Court of Appeal may well differ from a trial Judge on the inference to be drawn from facts he has found. A

B The trial Judge had seen and heard the witnesses and gave his reasons for his verdict by reference to credibility. It could not be said he was not entitled to come to the view he did nor that his failure to make findings on individual issues vitiated his judgment or hampered the Court in dealing with the appeal. It is "dangerous", as the defendant argued to leave so brief a judgment without more detailed findings as a precedent for the future. This however may have been referable to current "exigent circumstances" which may have exerted time pressures on the trial Judge. Having regarded to the evidence, to which reference was made, the finding as to interest should not be disturbed. B

C Appeal dismissed. C

Defendant to pay costs. C

Cases referred to:

*Pettitt v. Dunkley* (1971) 1 NSW Law Reports 376

*Benmax v. Austin Motor Co., Ltd.*, (1955) All E.R. 326 (HL).

D Judgment of the Court

This is an Appeal against a judgment given on the 21st September 1987 by the Supreme Court of Fiji (now renamed the High Court) in which there was a verdict for the Plaintiff for the sum of \$2,697.30 plus interest at the rate of 10% from the 19th June 1985 to judgment, and costs to be taxed.

E The pleadings were amended a number of times but essentially the Plaintiff, who is a firm supplying security services, claimed the sum eventually awarded as the balance contract price for supplying the materials and labour necessary to install a "Visiphone" Security System at a block of apartments in Suva owned by the defendant. E

F The total of the various accounts was \$13,197.30. The defendant had paid \$10,500 of this, leaving the balance claimed in the action. F

The defendants claimed that the system installed was different from the one ordered, that it proved unsatisfactory, and that a camera which was to have been part of the system was not supplied. The defence also alleges that the defendant at the request of the plaintiff did certain work in connection with the installation to the value of \$1,150. However, no set-off or counter claim was pleaded. G

The defendant appeals on two grounds as follows:

- (1) That the learned Trial Judge erred in law and fact when he held that the defendant had proved its claim having failed to analyse the evidence as to the installation of the equipment and as to its adequacy or fault;
- (2) The learned Trial Judge erred in failing to make a finding as to whether the security system was in fact secure, it being a requirement of the contract. H

We were told by counsel for the appellant that he is seeking a retrial.

The principal complaint of the appellant is that the learned Trial Judge gave an extremely brief Judgment, that he failed to analyse the evidence and failed to make specific findings on the various issues raised in the evidence. Counsel also claims that the Learned Trial Judge reversed the onus of proof.

The Judgment is certainly very brief. The essential portion reads as follows:

"I am satisfied on the evidence before me that the plaintiff company has proved its claim. I do not accept the evidence of Mr Raghwan. I found it specious and not in accord with the obvious facts or proper business management or arrangements. In short I do not think he was telling the whole truth. I find for the plaintiff in the sum of \$2,697.30."

The factual issues were within a fairly small compass. There appears no dispute that the plaintiff gave a written quote on the 20th June 1984 to provide one 20 call button type outdoor unit TD2OS and some associated equipment for a price of some \$15,000 odd and that two days later the defendant placed a written Order to the plaintiff "to provide complete work to provide all visiphone TD system quoted \$13,000." The written quote has in handwriting "\$13,000 net" at the bottom, and there is no dispute that \$13,000 was the amount agreed upon between the parties between the time of the quote and the placing of the order. The issues raised at the trial appeared to be 4 in number:

- (1) The plaintiff claims that the contract was for 1 (20) buttons system while the defendant says that the quote was changed to (2) 10 buttons systems instead;
- (2) **Defendant contended that the installation of a Camera was part of the installation to be provided; the plaintiff denied this.**
- (3) The defendant claims that the systems was not working satisfactorily and required the installation of a camera;
- (4) The defendant claims that his company did some work, namely chipping for the laying of cables, at the plaintiff's request and at an expense to it of \$1,150.00.

It is clear from the Judgment that the Learned Trial Judge although not recording any specific findings as to each of these issues preferred in respect of each of them where there was a conflict the evidence of the plaintiff to that of the defendant. This is a plain inference from the reasons given. In other words he determined the matter on the basis of credibility.

As to the first issue, the quote refers to 1 (20) call system. The evidence of the plaintiff's witnesses was to the effect that there was no change in this. The defendant claims that during the discussion in which the quote was reduced the plaintiff had agreed to put in 2 (10) button systems instead. However, there is no written order or other documentation to evidence this supposed change.

As to issue No. 2, the plaintiff's evidence is that a camera was installed on a trial basis but no order for the same having being received from the defendant it was removed again. The plaintiff's evidence was also to the effect that the defendant never made any request for the camera to be returned, nor, when it failed, to have it repaired.

As to issue (3), there is no plea in the defence that there was a term whether express, implied or statutory that the system would perform satisfactorily.

A However, be that as it may, the plaintiff's evidence which included that from the installing technician, was to the effect that the defendant did not complain of any failure of the equipment to work satisfactorily.

As to issue (4), as already noticed, there is no set-off or counter claim pleaded in respect of this. The allegation is denied in the evidence of the plaintiff.

B **The case raises the question of the extent of a Trial Judge's duty to make detailed findings of fact. This matter was discussed extensively by the Court of Appeal of New South Wales in *Pettitt v. Dunkley*, (1971) 1 NSW Law Reports 376 in which the authorities on the point are reviewed. That was a case in which the Trial Judge refused, for reasons he deemed sufficient, to give reasons for his verdict. The Judgment and the cases referred to therein confirm the well known general proposition that a Judge at first instance should give reasons for his decision.**

C This Court is of course aware of the principles restated in *Pettitt v. Dunkley*:

It is to be noted that *Pettitt v. Dunkley* deals substantially with cases where no reasons were given for the verdict. That is not the case here. The brevity of the learned Trial Judge's reasons has not disabled us—to use the words of Asprey, J.A. in *Pettitt v. Dunkley*—from "a proper understanding of the basis upon which the verdict entered has been reached."

D **Counsel for the appellant cited to us *Benmax v. Austin Motor Co., Ltd.*, (1955) All E.R. 326 (HL) for the proposition stated by *Viscount Simonds* on page 327:**

"A judge sitting without a jury would fall short of his duty if he did not first find the facts and then draw from them the inference of fact whether or not the defendant had been negligent."

E **However, a reading of the case shows that this proposition is addressed to a case where the question is not one of credibility, as *Viscount Simonds* says on page 327, after referring to the power of the Court of Appeal to draw inferences of fact and to give any judgment and make any order which ought to have been made:**

F "This does not mean that an appellate court should lightly differ from the finding of a trial judge on a question of fact, and I would say that it would be difficult for it to do so where the finding turned solely on the credibility of a witness."

Lord Reid on page 328 said this:

G "Apart from cases where appeal is expressly limited to questions of law, an appellant is entitled to appeal against any finding of the trial judge, whether it be a finding of law, a finding of fact or a finding involving both law and fact. But the trial judge has seen and heard the witnesses, whereas the appeal court is denied that advantage and only has before it a written transcript of their evidence. No one would seek to minimise the advantage enjoyed by the trial judge in determining any question whether a witness is, or is not, trying to tell what he believes to be the truth, and it is only in rare cases that an appeal court could be satisfied that the trial judge has reached a wrong decision about the credibility of a witness. But the advantage of seeing and hearing a witness goes beyond that. The trial judge may be led to a conclusion about the reliability of a witness's memory or his powers of observation by material not available to an appeal court. Evidence may read well in print but may be rightly discounted by

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the trial judge or, on the other hand, he may rightly attach importance to evidence which reads badly in print. Of course, the weight of the other evidence may be such as to show that the judge must have formed a wrong impression but an appeal court is, and should be slow to reverse any finding which appears to be based on any such considerations."

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**In this case, and as already noted, the judge having seen and heard the witnesses gave his reason for his verdict by reference to credibility. We are unable to say that he was not entitled on the evidence to come to the view he did, nor that his failure to make findings on individual issues vitiates his judgment or that such a failure hampers this court from dealing with the appeal.**

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We were also urged to consider the fact that the trial concluded in February 1987 and the judgment was written in September 1987. There is nothing whatsoever to suggest that the learned trial judge—who took a full note of the evidence—suffered such a lapse of memory as to make it unsafe to uphold his judgment. Finally it was urged by counsel for the appellant that it would be dangerous to leave so brief a judgment without more detailed findings and reasons as a precedent for the future. We do not share this apprehension. We agree that the judgment is short. We note that it was given in September 1987 when exigent circumstances which had prevailed at the time may have exerted certain time pressures upon the learned trial judge. However, we see no danger in setting a precedent in that we are determining this appeal on the facts of this particular case, and without derogating from the principles stated in *Pettitt v. Dunkley*.

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**Some time was devoted in argument to the question of interest. We note that the order as to interest was not appealed against. As a matter of fact Mr Raghwan who gave evidence for the defendant was asked on page 35:**

Q: "You note that all Wormalds accounts stipulate interest on non payment of cash."

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A: "I have been seeing those accounts for the past 20 years. It has never been exercised."

A letter of demand from the Plaintiff's Solicitors demanding payment of the outstanding amount and interest was put in at the trial. It was dated 19th June, 1985. This is the date from which the learned trial judge ordered interest to run. In the circumstances, we are not prepared to interfere with that part of the judgment.

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For the reasons stated the appeal is dismissed. The Appellant must pay the Respondent's costs to be taxed, if not agreed.

*Appeal dismissed.*

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