

A

IN THE SUPREME COURT )  
OF THE TERRITORY OF )  
PAPUA AND NEW GUINEA )

CORAM: MR. JUSTICE BIGNOLD

THE UNIVERSITY  
OF  
PAPUA & NEW GUINEA  
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5th October, 1956.

No. W.S. 36 of 1956

B E T W E E N

E. E. KRIEWALDT & COMPANY LIMITED

Plaintiff

- and -

MRS. D. TROETH

Defendant

J U D G M E N T

In this case, the Plaintiff, E.E. Kriewaldt & Company Limited, a company duly incorporated according to the laws relating to companies in force in the Territory, seeks to recover from the Defendant, Mrs. Troeth, of the Rouna Hotel, the sum of £415.15.0 for goods sold and delivered and for goods bargained and sold.

The goods are principally beer in cartons, and the particulars of the goods are as set out in the Writ.

Mr. Craig Kirke, of Counsel, appeared for the Plaintiff Company and Mr. Norman White, of Counsel, for the Defendant, Mrs. Troeth.

At the trial, the Defendant admitted, through her Counsel, the sale and delivery to her in May, 1954 of 60 cartons of Flag Ale valued at £97.5.0 and 2 bags of potatoes valued at £10.2.0 and 2 bags of onions at £8.8.0, and she admitted, in evidence, that the cost of these, totalling £115.15.0., is still due and unpaid by her.

Mr. Kriewaldt, who gave his evidence with great care and fairness, testified to a conversation with the Defendant concerning her future beer requirements, which he says she gave as about 60 dozen a month, and she agreed to him putting her down for that amount, but he quoted no firm price, only guaranteeing that it would be sold at a price of 1/- less per dozen than she could purchase it elsewhere wholesale in the town. The Defendant swears she told Mr. Kriewaldt her monthly requirements varied between 30 and 60 dozen, and states, in effect, that there was no definite arrangement come to, but that it was understood she was prepared to take beer according to her requirements as mentioned.

She says further that on two occasions she inquired if there was any beer for her, once in July, as it was in short supply, but received a reply that it was all sold. In my view, that conversation in May about the future supply of beer could give rise to no legal obligations of itself.

Mr. Kriewaldt swears that in June and July he rang Mr. Troeth up and recognised her voice on the phone and told her that Kriewaldts had some beer for her, and she said she would arrange to have it picked up. Mr. Kriewaldt does not know how it was picked up, nor could he give any particulars of its delivery. In August, he says that he rang her and inquired about her picking up beer and suggested the cancellation of her order, to which she agreed.

Mrs. Troeth says as to the remainder of the beer, set out in the Plaintiff's claim, that she never received delivery of it or any part of it, and as to some beer said to have been "appropriated" to her from the Four-Mile Store, she swears further that she knows nothing of this and she was never told anything about it.

The Plaintiff Company has been in the unfortunate position of being unable to adduce any satisfactory evidence of delivery, and tried to support its claim by evidence of the posting of monthly invoices to the Defendant and the posting of a letter to the Defendant dated 18th November, 1955, a copy of which was shown in Court to the Defendant. She denied upon oath receipt of any of the invoices, except one numbered 6181 (which she received after issue of the Writ, she says) or any receipt of the letter.

Whilst I suppose there is a presumption that letters shown to be posted will reach the addressee in the normal course of post, mere posting is not conclusive evidence of receipt, and I do not think I would be at liberty to hold that she received the invoices or any of them except the ones she has admitted to receiving, or that she received the letter in opposition to her distinct and positive oath to the contrary. Reidpaths Case, Law Reports XI, Equity Cases 89.

The evidence does not enable me to find any delivery of beer to the Defendant, except the 60 cartons in May, 1954, which she has admitted she received. Further, on the evidence before me, I can find no "appropriation" of beer at the Four-Mile Store in pursuance of any bargain or sale to the Defendant.

The Defendant, by her Counsel, relied, inter alia, upon the provisions of Section 9 of the Goods Ordinance 1951, making the sale of goods over the value of £10 subject to certain exceptions unenforceable in the absence of writing signed by the party to be charged or her agent.

I find a verdict in favour of the Plaintiff Company in the sum of £115.15.0., with costs.

E. Bignold  
J.

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