

SR AND COMPANY LTD -v- ANDY PIKO, VICKY NAGASIMA, BREDA AMA AND
SABRINA PAUL (Trading as TADIRIA Group)

High Court of Solomon Islands

(Muria J.)

Civil Case No. 145 of 1991

Hearing: 27 January 1992

Judgment: 31 January 1992

J. Corrin for the Plaintiff

A. H. Nori for the Defendants

MURIA J. The plaintiff's claim is for the sum of \$25,684.90 plus interest in respect of the supply of trochus shells to the defendants at the price of \$17.00 per kilogram. The defendants deny the claim.

The case arose in this way. The plaintiff's Manager, Mr George Taylor, and one Mrs Vicky Nagasima who is one of the partners in the defendants' business trading under the registered name of Tadiria Group met in March 1991 at Gizo airport where they had some discussions about buying and selling trochus shells. At that meeting Mr Taylor said he mentioned to Mrs Nagasima that his company (the plaintiff) had three tons of trochus shells in Gizo. Mrs Nagasima then replied that she would give him a special price. Upon her return to Honiara, she received a fax dated 8 March 1991 (Exh. 9) from Mr Taylor. That fax showed that some 3,041 kilograms of trochus shells had been packed at an acceptable price of SI\$15,000.00 per ton and that payment was to be made through NBSI A/c No. 01078994 02039. Just a few days after Mr Taylor sent the fax to Mrs Nagasima, Mr Taylor received some more trochus shells from the Shortlands amounting to more than five tons. Mr Taylor then sent a second fax (Exh. 8) to the defendants informing them that due to high charter rates and high prices for the trochus shells they should consider \$18.00 per kilogram. There was a follow-up from Mr Taylor by telephone when he spoke to Mrs Nagasima about the more than 8 tons of trochus shells and about the price. Mr Taylor suggested over the phone that the price for the plaintiff's trochus shells was \$18.00 per kilogram but after some discussion over the phone, the price was agreed at \$17.00 per kilogram. Subsequently the 8,755.7 kilograms of trochus shells were shipped to Honiara to the defendants who arranged for transportation and had them collected from the wharf to their place of business in Honiara.

On 3 April 1991 all the trochus shells were weighed by the defendants with the help of the plaintiff's boys. The total weight came to 8,755.70 kilograms at the price of \$148,846.90. A list (Exh.1) showing the number of bags and their weights was made and that record was signed by Mrs Nagasima for the defendants and Mr Kevin Misi who is the Managing Director of the plaintiff. Of the sum of \$148,846.90, the plaintiff was paid the sum of \$71,995.00 by cheque no. 938620 (ANZ). The record shows that the "amount to be paid later" is \$76,851.90.

On 15 April 1991, following some discussion with the defendants, the plaintiff shipped a further 761 kilograms of trochus shells which were delivered to the defendants in Honiara. They were weighed and priced at \$17.00 per kilogram and valued at \$12,937.00.

As it turned out, the defendants refused to pay the plaintiff the balance of \$76,851.90 together with \$12,937.00. The defendants say that they only ordered 4 tons and not 8 tons and that they had already paid for what they ordered. So the defendants, on 27 April 1991, returned some of the trochus shells totalling 4,342 kilograms in weight back to the plaintiff's Managing Director's residence. After waiting for sometime, the plaintiff knew it would not receive any more payment from the defendants. The plaintiff then resold the 5,342 kilograms of trochus shells to Sunking Enterprises Ltd at a lesser price of \$12.00 per kilogram and recovered only \$64,104.00.

The plaintiff now claims the loss it suffered together with damages.

The defendants, as I have already said, deny the claim. They deny entering into any contractual arrangement with the plaintiff for the supply of 8 tons of trochus shells and that the sum of \$71,995.00 which it paid to the plaintiff represents the amount of trochus shells it ordered.

Mrs Nagasima, although agreed meeting Mr Taylor at Gizo Airport, denies any suggestion that she discussed about ordering trochus shells from the plaintiff. She said no price was discussed with Mr Taylor at Gizo except when Mr Taylor rang her in Honiara. At that time they discussed the price at \$15.00 per kilogram but that was changed when Mr Misi had some discussion with her in the defendants' office. The defendants insisted that any amount of trochus shells beyond 3 tons was delivered by the plaintiff out of its own accord and not through any order from the defendants.

In the course of argument, Counsel for the defendants argued that the plaintiff would have to show that the defendants had agreed to accept unlimited amount of

trochus shells from the plaintiff and that the defendants had agreed that the plaintiff was to exclusively supply unlimited amount of trochus shells to the defendants. I do not find Counsel's argument attractive as the plaintiff's claim is for specified quantities of trochus shells namely, 8,755.7 kilograms and 761 kilograms. The quantities of trochus shells were identified and agreed on at the time they were delivered, weighed, recorded and kept by the defendants at which time the sale was completed.

Counsel also raised other points but as those points have not been pleaded, I need not consider them here.

The first question that I must be satisfied with is whether there was any contractual arrangement between the plaintiff and the defendants for the supply of more than 3 tons of trochus shells. The evidence adduced in Court and the pleadings clearly established that there was an initial agreement, partly oral and partly in writing, between the parties for the supply of about 3 tons of trochus shells at \$17.00 per kilogram. Thereafter the evidence of the parties are at variance with each other in so far as the quantity of trochus shells is said to be ordered. There can be no question about the price of \$17.00 per kilogram as the parties had agreed on that and the defendants had made payment based on that price.

The evidence of Mr Taylor as to the quantity of trochus shells which were said to be ordered by the defendants is that at the meeting between himself and Mrs Nagasima at Gizo, he said he had three tons at the time and that he expected some more from Shortlands. She said she would give him a special price. A further supply of more than five tons of trochus shells arrived after Mrs Nagasima's return to Honiara. Mr Taylor then contacted Mrs Nagasima by phone and told her that he now had more than eight tons of trochus shells available altogether. Mr Taylor also spoke to Mrs Fung Chi Ko who said she wanted more trochus shells and that the trochus shells should be shipped to Honiara as early as possible. Mr Taylor stated that both Mrs Nagasima and Mrs Fung Chi Ko discussed with him over the phone about the more than eight tons of trochus shells and that they agreed to accept the trochus shells at \$17.00 per kilogram.

Mr Kevin Misi, in his evidence said that after receiving a call from Mr Taylor about the eight tons of trochus shells, he rang the defendants and spoke to Mrs Fung Chi Ko. The next day he went to the defendants' office and spoke to Mrs Fung Chi Ko with Chao Ping, Mrs Nagasima and Mrs Moni Wheatley present in the office. Mr Misi discussed with them about the eight tons of trochus shells and suggested the price was \$18.00 per kilogram. After some discussions, the defendants agreed to \$17.00 per kilogram with the plaintiff responsible for the freight. Mr Misi left the defendants' office and contacted Mr Taylor who then arranged for shipment of the trochus shells which arrived on 2 April 1991.

Mr Misi's evidence also shows that when the first shipment arrived all the trochus shells were transported by the defendants to their place of business. The defendants weighed all the trochus shells with the help of some of the plaintiff's boys. The record showing the amount of trochus shells and the price as prepared and agreed to and signed by Mrs Nagasima and Mr Misi (Exh 1).

Mr Misi's evidence is supported by Mrs Wheatley who said that she was in the office when discussions took place between Mr Misi and Mrs Nagasima. They were discussing about the supply of about eight tons of trochus shells. Mrs Wheatley also stated that between 8 and 11 April 1991 she received a telephone call from Mr Taylor for Mrs Nagasima who was talking about 18,000 kilograms of trochus shells with Mr Taylor. She further stated that Mrs Nagasima accepted to receive and pay for the trochus shells. She also stated that it was Mrs Nagasima and herself who arranged for transport to collect the trochus shells from the wharf. She was present when Mrs Nagasima and Mr Misi signed the list (Exh. 1) containing the records of the trochus shells weighed and priced. Further she was present when part payment was made to Mr Misi for the plaintiff's trochus shells.

Mrs Nagasima agreed that there was some discussion about and later agreed to the price of \$17.00 per kilogram. She agreed collecting all the trochus shells from the wharf to the defendants' place of business and weighing all the trochus shells in bags. She agreed paying Mr Misi \$71,995.00 and she agreed signing (Exh. 1).

On the evidence before me I am satisfied that the parties had discussed and agreed to the ordering and delivering of 8,755.70 kilogram of trochus shells. I am also satisfied on the evidence that the defendants agreed to pay for the plaintiff's trochus shells at the price of \$148,846.90 and that the defendants made part payment in the sum of \$71,995.00 and the balance to be paid later.

On the plaintiff's claim in respect of the 761 kilograms of trochus shells, the evidence on that from Mr Taylor was that when he received these trochus shells, he phoned Mrs Nagasima who was said to have made an offer of \$17.00 per kilogram. Subsequently Mr Taylor shipped these trochus shells to the defendants also.

Mrs Wheatley gave evidence that Mrs Nagasima and herself calculated the price and made a record of the trochus shells (Exh. 6). She did the recording of the 761 kilograms of trochus on the instructions of Mrs Nagasima. After weighing, the defendants kept the 761 kilograms of trochus shells but did not pay the plaintiff.

Mrs Nagasima denied ordering the 761 kilograms of trochus shells although she agreed that Mr Taylor ran her from Gizo about it. She agreed that when the second shipment arrived and the plaintiff delivered the trochus shells to their premises, she weighed the trochus shells but did not pay the plaintiff. She said, they would have to wait for Mrs Fung Chi Ko who was then still in Taiwan.

If, as the defendants say, the 761 kilograms of trochus shells were not ordered by them, then one would expect that the most natural action for the defendants to take was to reject the delivery of the trochus shells to their place of business. The evidence shows that when the trochus shells were delivered, the defendants weighed, priced and kept them. Such action on the part of the defendants is an action which is inconsistent with the plaintiff's ownership of those trochus shells and the defendants must be deemed to have accepted them.

Having observed the witnesses, I must say that the defendants' witness did not seem to me to be forthright in her evidence unlike Mrs Wheatley who gave a very convincing account of what actually took place in support of the plaintiff's case.

I am therefore satisfied that the defendants accepted the delivery of the 761 kilograms of trochus shells and it is contractually bound to pay the plaintiff for those trochus shells.

There will therefore be judgment for the plaintiff in the sum of \$25,684.90 together with interest at 10% per annum from the date of the issue of the writ. The defendants have to pay the plaintiff's costs.

(G.J.B. Muria)

JUDGE