ARSENE DOKO -v- PATTESON FULABURI AND ANOTHER

High Court of Solomon Islands
(Palmer J.)
Civil Case No. 168 of 1991
Hearing: 27 May 1993
Judgment: 4 June 1993

J. C. Corrin for Plaintiff
T. Kama for the Defendant

PALMER J: This action stems from what the Plaintiff alleges is a valid sale of a second hand nissan cabstar 3 ton engine, model no. MGH 40, engine no. ED33 3298 and chassis number MGH 40 - 00568, for the price of $4, 500.00. The sale was done on the 30th of May 1991, and the engine delivered the same day.

The Defendants, Patteson Fulaburi and Martin Matanilau and Agritrade Limited deny that there ever was a sale for that price. They state that the engine was bought at a price of $500.00 and that when they knew that the price was $4, 500.00 they rejected the engine.

The Plaintiff commended proceedings by writ of summons filed on the 2nd of August 1991. A judgment in default was signed by the Registrar of the High Court on the 13th of September 1991. On the 5th of March 1992 a summons was filed by the Defendants, Patteson Fulaburi and Martin Matanilau trading as Agri Traders. On the 19th of March 1992 the judgement in default was set aside, primarily because the Registrar was satisfied that the wrong party had been sued.

In the affidavit of Patteson Fulaburi filed on the 17/3/92 in support of the summons at paragraph 2 he states:

"Both Martin Matanilau and I are directors of the Company."

On that basis the application to set aside judgment was granted. This particular fact is important to bear in mind because in the evidence given by the defendant, Patteson Fulaburi before this court during the hearing he stated that that was a mistake and that Martin Matanilau was never a director but an employee only.

With due respects to the submissions of Mr Kama I find the explanation provided by Mr Patteson Fulaburi very unsatisfactory and quite contrary to what Mr Kama has stated, deceiving. Had Mr Patteson Fulaburi stated what he now says, he would not have had the judgment set aside. On that basis alone the defence should be dismissed.

The reason for now claiming that Martin Matanilau was only an employee would seem to be to show that there never was any concluded agreement with the company, and that the only person who could conclude that agreement was Mr Patteson Fulaburi in his capacity as a director. He never agreed or accepted any price of $4,500.00 and accordingly it is argued there never was any sale and purchase for the engine.

The Plaintiff gave very clear and concise evidence as to the sale price of the engine discussed in the meeting with Martin Matanilau. He called 4 witnesses who were with him at his house at the time Martin Matanilau arrived to enquire about the engine. All 4 witnesses related how the Plaintiff told Martin Matanilau that the price of the engine was $4,500.00 and how Martin Matanilau then told them to load the engine into the vehicle - a hilux that he had come in.

Mr Martin Matanilau on the other hand denied being told about the price. He did say however that the Plaintiff did tell him that there was no engine for $500.00. The Plaintiff then wrote something on a piece of paper and told him to take it to Patteson Fulaburi.

Martin Matanilau then loaded the engine and had it taken straight to their Ranadi Office whilst he went to see Patteson Fulaburi.

I must say that I find the version of events as put by Martin Matanilau very unlikely, improbable and unusual. The prices that are at issue are so different; at $500.00 and $4,500.00. I find it unlikely that Martin Matanilau would go all the way to see the Plaintiff about the purchase of the engine for $500.00 as he alleges and yet not being told by the Plaintiff as to the correct price of the engine, especially at $4,500.00. If it is true that he had gone to see the Plaintiff to make an offer of $500.00 but then being told by the Plaintiff as he alleges that there was no engine for that amount, I find it quite unusual that with that knowledge he still told the Plaintiff to load the engine. A normal reasonable intelligent person would then ask, what is the price for the engine that you are offering? He would then return to his boss if it was true that he was a mere employee and tell him that there was no engine for $500.00, and then tell him what the true price of the engine that the PLaintiff was offering! A mere employee would not act in the way Martin Matanilau acted.

In any sale and purchase agreement the price of the goods is always one of the first things that the parties discuss and agree on before ever taking any further steps or action.

I have listened to the evidence of the Plaintiff's witnesses as opposed to Martin Matanilau's evidence. I am satisfied on the balance of probability that Martin Matanilau was told plainly that the price of the engine was $4,500.00. That price was a fair and reasonable price. The Plaintiff called Mr Steven Martin, a diesel engine mechanic of some 13 years standing. He stated that he was looking for an engine for R & R Engineering Company for their truck and when he heard about the engine, he went to have a look at it. After looking at the engine he made an offer of $4,500.00 which in his expert opinion was a fair value for the second hand engine. He then returned to inform the Company about the engine, but the person responsible for authorising such purchases was away on leave.

The Plaintiff therefore used the value put by Mr Steven Martin as the price for the sale of his engine. The price of $4,500.00 therefore in my view was a fair price based on an assessment and value done by a reliable person. There was no way therefore that a reasonable person in the capacity of the Plaintiff would be expected to sell such an engine for a meagre price of $400.00 or $500.00.

In Cross examination, Mr Steven Martin did point out that for comparison purposes, a new crank shaft alone for that engine would be priced at about $3,000.00. The price he assessed in his view therefore was fair.

I find the actions of Martin Matanilau inconsistent with that of a mere employee.

His actions are demonstrative of a person who has authority to make a purchase. If he wasn't sure of what the price was or he was told that the price was not $500.00 then there was nothing to stop him from returning to Mr Patteson Fulaburi at his Office at Honiara and getting further instructions. The Plaintiff was living at Bahai Centre at that time. At the most it would have taken Mr Martin Matanilau a ten minute ride in his hilux to see Pattesson Fulaburi. In fact a normal reasonable person in the capacity of Martin Matanilau would have gone straight back to his employer and obtained further instructions.

Martin Matanilau did not do all these. Instead he directed the Plaintiff to load the engine in his hilux and take it away. Martin had no right to take the engine away if there was no purchase.

Despite being told that the price was $4,500.00, he took the engine away. Martin Matanilau in my finding clearly had the authority to conclude the sale with the Plaintiff. I find that he was clearly informed about the price. The evidence called by the Plaintiff is very convincing. Martin accepted the price on behalf of the Company and Patteson Fulaburi and took it away. The engine was then taken straight to their Ranadi factory. If he was unaware or uncertain or that there was no agreement on a price, he would have obtained or found out the correct price and went to Patteson Fulaburi to get his authority, before loading the engine onto his hilux. If not, he would have taken the engine in my view first to Patteson Fulaburi, get him to have a look at it and then confirm the price.

With due respects, his actions clearly amounted to an acceptance at the price of $4,500.00.

The subsequent events confirms or support the above conclusion.
First, when Martin Matanilau showed as he alleged the piece of paper to Patteson Fulaburi about the price, Mr Fulaburi stated that he did not agree with the price. However, his response in my view did not show that he did not accept the terms of the sale. The difference in price is about $4,500.00. A reasonable person in my view would immediately rush off or telephone his office at Ranadi that very hour and ask them to return the engine. If Patteson Fulaburi was so concerned and did not accept the price of $4,500.00 he would have jumped in his truck and went and picked up the engine and returned it that day, or, he would have it returned the next day. They had a vehicle with them all the time. Martin Matanilau had come straight to his office from the Plaintiff's house. It was a very simple thing to do.

The engine was not returned that day, neither the next day. It was only when the Plaintiff's brother, John Baptist, was sent to the Defendants office with an invoice for the engine, that he became aware that the Defendant did not want the engine. And yet no effort or attempt was made to return the engine to the Plaintiff.

Further, the engine was tested, by the mechanics of the defendants and kept in their custody. The Plaintiff alleges that the engine has been dismantled. The Defendant denies this.

The Defendant say that they have asked the Plaintiff to collect his engine but he has refused. The Defendant say that they have checked the engine (their mechanics have done that) and found that it is not of merchantible quality. Further, they say that they only wanted some parts of the engine.

With due respect, the Plaintiff did make it clear that the sale was of a second hand engine.

There was no warranty on it or if there was any, there was no evidence of that. The Defendants bought it on an as is where is basis.

When Martin Matanilau took the engine he had all the opportunity to inspect and check it. If he did not have the expertise, then the mechanics of the Defendant could easily have went with Martin Matanilau to inspect the engine.

I find that the sale was concluded at the Plaintiffs house. Martin Matanilau was vested with the authority to conclude the sale and purchase of the engine. Consistent with the conclusion of that agreement, Martin Matanilau took delivery of the engine. That was a positive act. There was no evidence, whatsoever that the engine was being taken for inspection or testing. It was taken away as the property of the Defendants. The contract was completed when that was done. The Plaintiff therefore is entitled to be paid for his engine.

The actions of the Defendant I find to be inconsistent with that of someone who was mistaken about the price. The so-called rejection occurred well after the contract had been concluded. If there had been a mistake the engine would have been returned immediately. A difference of $400.00 to $4,500.00 is too big a difference to be taken for granted.

The Defendants did mention in their evidence about a piece of paper written by the Plaintiff for delivery to Patteson Fulaburi about the price of the engine. If that is so,then why didn't Martin Matanilau take that paper to Patteson Fulaburi first and get his approval before returning to collect the engine. I do not believe Martin Matanilau that he was not aware of the price of the engine. He acted authoritatively about the purchase of the engine. I am satisfied he knew about the price and that he had the authority to conclude the purchase there and then.

And even if that may not be so, the subsequent conduct of the Defendant in not returning the engine that day or the next day, amounted to a positive act of acceptance. Further, if they did not want the engine and did not accept it, then why test it? The actions of the Defendant amounted to acceptance and the Plaintiff is entitled to be paid the purchase price of $4,500.00. Judgment for that sum with costs.

(A.R. Palmer)
JUDGE