
BETWEEN : UILANOMA FIFITA & OTHERS : Plaintiff

AND : 1. SEPA MAFI
2. SITANI MAFI CO. LTD. : Defendants

BEFORE THE HON. JUSTICE FINNIGAN

COUNSEL : Mr Fifita for Plaintiffs
Mrs Taufateau for Defendants.

Date of Hearing : 27 & 28 July 1999
Date of Judgment : 25 August 1999

JUDGMENT OF FINNIGAN, J

This is a claim by a family for damages in tort. There was an alternative claim in contract for sale of goods but counsel proceeded on the tort ground only. The result would be the same in either event. The cause of action is that the family purchased hamburger meat from the supermarket operated by the defendants, which they ate almost immediately. Within a short time of eating the meat those who ate it became ill and were treated for stomach upset.

Four members of the family gave evidence for the plaintiffs, and an affidavit from an absent witness was tendered. From that evidence, the major events put forward by the plaintiffs are as follows. The meat was purchased after 4:30pm in the afternoon on Friday 21 March 1997 from the defendants' supermarket. Hamburger buns were then purchased at another shop. Both were thereafter taken home, the meat was cooked and the hamburgers were eaten. There can be no doubt that within a very short time, all those who ate the meat were ill and very uncomfortable with stomach upset which lasted overnight and cleared up during the following days. None of those had had a

meal earlier that day. The one who did not eat the meat was not ill. Of those who were, some were taken to Vaiola hospital, and all were treated with medicine from Vaiola hospital. There was no evidence of other illness, before or after, which may have come from that, or any other cause.

One family member came late, and found his hamburgers waiting. He was the father. He gave evidence that he did not eat them, because, he said, the meat tasted "kind of sour" and it was unnaturally soft and had a strange smell. He said the family ate the buns the next day with no ill effect. He said he went and saw Chris, a manager upstairs at the supermarket. He said that Chris apologised for the bad meat.

After the evidence given for the plaintiffs, I ruled that there was a case to answer. By itself the evidence to that point could establish on the balance of probabilities that the cause of the illness was the meat.

There were four witnesses for the defendants. The first was a supervisor for the supermarket. He was tested in cross-examination. He gave evidence of how the meat was treated in general. He then said that on the day in question, Friday 21 March 1997, he had heard a loud noise at the meat department and he heard somebody say, bring the goods that are the subject of the complaint. The father had come into the store, and was talking loudly. When the witness had heard him he instructed the staff to bring the same goods which were the subject of the complaint. There is a frypan there for customers, who sometimes want meat cooked, and a sample of the meat was thereupon fried and eaten, and it was still good. He said that he had checked the meat himself in the morning and it had been good then. He said the meat tested was the meat from the tray of meat that the complainant had brought to him. It was in the form of beef that had been shaped into patties. He said he ate some and three other employees ate some, and two customers were there. He said it was tasty and delicious. He said the complainant did not give him the meat that had caused the complaint. He said that he stopped selling the meat during the test, but that after that the rest of the tray was sold to public and that there were no complaints.

He said that, as it happened, the medical officer had been in the store the previous day, a Thursday, on his duties. The medical officer had tested that meat he said, and found it good so they had put it out for sale. He said there had been no other complaints about it, either before or after.

One of the employees gave evidence and was cross-examined. She remembered the incident when the father came into the store and complained about the beef patties. She said he told them his family had got sick from eating the beef patties, so they fried some and some employees ate some and they gave some to two customers. She said she ate two, and the meat was all right when she ate it. They continued their work with no ill effect; the meat was put on display again to be sold. In cross-examination on this witness agreed she heard Chris say it was the employees' fault, they should check the meat before putting in on display. She said she did not like his attitude toward her work, he had not been working in the butchery that day.

Another employee gave evidence. She also had a clear recollection of the complaint that had been made, and of the subsequent testing. She said she ate three of the patties and continued working until her work finished at 9pm without any ill effect. She said the selling continued after the test without complaint.

A health inspector appointed by the Ministry of Health gave evidence. He told of his inspection of the whole store on 20 March 1997, which was the previous day. He produced a certificate that he had prepared on 20 March pursuant to s 14 of the Public Health Act, certifying that on overall inspection of the store he had found it to comply with all health requirements for the following quarter. He said he had inspected the store that day, both the goods, which he said included all the food in the supermarket, and the customers. He said he had inspected for damaged food and had found none. He said he had inspected the butchery department.

THE SUBMISSIONS

Both counsel addressed the Court. Counsel for the plaintiffs relies upon *Donoghue v Stevenson [1932] AC 562*. He submitted that the defendants had a duty of care

when offering meat for sale to the public to offer meat that will not cause illness and stomach upset. In his submission this duty was shown by the evidence to have been breached, with resultant harm to the plaintiffs. He sought damages of \$1000 for each of the family members who had been less affected (\$5000 in all) plus \$1,500 for each of the two who were more badly affected. The total claim is thus \$8,000.

Counsel for the defendants relied on the burden of proof, and submitted that the plaintiffs had not established (1) that the defendants had breached their duty of care, and (2) that in any event the illness and discomfort of the plaintiffs had been caused by the meat.

DECISION

On the evidence that I have summarised above, there can be only one finding. The events all occurred between 4:30pm and 9pm on 21 March 1999. The evidence of the testing conducted by the defendants' staff, upon the specific complaint of the father made very soon after the meal was eaten, cannot be ignored. It is notable that there is no evidence that the father brought for testing the cooked meat that he said was the bad meat. The inspector had been there the previous day and had inspected, it seems, the very meat to be sold on the Friday including that sold to the plaintiffs. On the evidence before me it cannot be held on the balance of probabilities that the defendants sold bad meat to the plaintiffs.

In respect of the cause of the illness likewise, it is not proved on balance that it was the meat that caused the upset. There is no doubt that the family members blame the meat, but on the evidence before me their illness is still unexplained. Other possible causes come to mind but it is not for the Court to speculate.

The claim must be dismissed. Costs follow the event and are awarded to the defendants, to be agreed or taxed.

NUKU'ALOFA: 25 August 1999

