

MORRIS HEDSTROM (SAMOA) LIMITED v  
H & J RETZLAFF LIMITED

Supreme Court Apia  
Sapolu CJ  
14 August, 17 August 1992

TORT - conversion of bundles of timber - mistake is no defence to claim in conversion - no damages awarded for unlawful detention

R S Toailoa for Plaintiff  
P A Fepuleai for Defendant

Cur adv vult

This is a claim based on the tort of conversion for damages relating to three (3) bundles of imported Douglas Fir timber imported from Oregon, U.S.A., and arrived at the Apia Wharf on a ship on 16 March 1992.

The facts are that the Plaintiff, Morris Hedstrom (Samoa) Ltd (hereinafter called "Morris Hedstrom") and the Defendant, H & J Retzlaff Ltd (hereinafter called "H & J Retzlaff") had both ordered timber from Oregon, U.S.A. Both companies are major retailers of building supplies and materials in Apia. Their respective consignments of timber were put in bundles and shipped to Western Samoa on the ship called Innokently. Morris Hedstrom had its mark MH on its bundles of timber and I presume H & J Retzlaff also had its mark on its bundles of timber. There were supposed to be 28 bundles of timber for Morris Hedstrom in the shipment from Oregon, U.S.A. and 94 bundles of timber for H & J Retzlaff.

When the Innokently arrived at the port of Apia on 16 March 1992, H & J Retzlaff started to take delivery of its consignment of timber from the Apia Wharf employing mostly trucks by Apia Haulage Ltd. Delivery took two days and it was discovered by H & J Retzlaff that its consignment of timber was three (3) bundles short. On 18 March 1992, Morris Hedstrom took delivery of its consignment of timber from the Apia Wharf employing mostly trucks by Silver Ltd and it discovered that its consignment was four (4) bundles short.

Both companies made prompt enquiries to locate their missing bundles of timber as soon as their respective shortages were discovered. H & J Retzlaff on 17 March 1992 enquired of Burns Philp (South Sea) Co Ltd which is the shipping agent at that time for the vessel Innokently and were advised to wait until all

consignment of the vessel had been taken delivery of and if there were any timber left over then those timber must be H & J Retzlaff's missing timber. On 18 March 1992, the Tally Clerk for Morris Hedstrom also informed the same shipping agent of the shortage of four (4) bundles from its timber consignment. On the morning of the following day, 19 March 1992 employees of Morris Hedstrom including its Aerial Manager went down to the Wharf to enquire and locate their missing timber. The Tally Clerk from Morris Hedstrom found four (4) bundles of timber belonging to Morris Hedstrom on the Wharf and told the shipping agent for the vessel Innokently and the forklift operator who works for Apia Haulage Ltd on the Wharf that Morris Hedstrom would take delivery of its timber in the afternoon of the same day. Two of the bundles had Morris Hedstrom's mark on them. The other two bundles were broken. However, when Morris Hedstrom employees returned to the Wharf in the afternoon, they were told that the timber had been carted away on a truck employed by H & J Retzlaff. Morris Hedstrom's employees then went to H & J Retzlaff's timber yard at Saleufi and their evidence shows that they found their timber there (except for the bundles found at AST's timber yard) but were informed by H & J Retzlaff's shipping clerk that the aforesaid timber was to make up for the three (3) bundles shortage in H & J Retzlaff's timber consignment. H & J Retzlaff refused to hand over the timber to Morris Hedstrom despite repeated requests supported by evidence.

According to the shipping clerk for H & J Retzlaff, after discovering the three (3) bundles shortage in its timber consignment and was advised by the shipping agent for the vessel Innokently to wait until the whole of the ship's consignment had been taken delivery of so that if there were any timber left over then those must be H & J Retzlaff's, he went back on 19 March 1992 and found a bundle of timber with Morris Hedstrom's mark on it and two broken bundles. He then checked with the Customs Department and was advised that Morris Hedstrom had taken full delivery of its timber consignment of 28 bundles. He also sighted a delivery note prepared and filled in by the Customs officer who was on duty on 18 March 1992 at the gate which is the Customs checkpoint for outward goods from the Wharf and that delivery note confirmed that Morris Hedstrom Ltd had taken full delivery of its timber consignment. So he assumed that the remaining timber lying on the Wharf belonged to H & J Retzlaff notwithstanding Morris Hedstrom's mark on one of the bundles. He then loaded the timber and removed it to his company's timber yard.

The Customs officer who prepared the delivery note for Morris Hedstrom's timber consignment has testified that he was not present at all times at the Customs checkpoint at the gate to the Wharf on 18 March 1992 when Morris Hedstrom was taking delivery of its timber consignment as he was twice called to the Customs Department on other duties. He was certain that seven (7)

truckloads of timber for Morris Hedstrom had checked through the gate and according to his count, only 24 bundles of Morris Hedstrom timber had been delivered through the gate. On the seventh truckload he saw past the gate, the driver for Morris Hedstrom called out it's finished, so he assumed that Morris Hedstrom had taken delivery of all its timber consignment of 28 bundles. As the delivery note given to him earlier on in the day by Morris Hedstrom's Tally Clerk showed 28 bundles of timber, he felt that there must have been an eighth truckload with four (4) bundles of timber that had gone through the gate during the times he was absent when called to the Department. Thus he added an eighth truckload with four (4) bundles to the delivery note. That was the delivery note sighted by the shipping clerk for H & J Retzlaff.

On these facts, I am satisfied that the three (3) bundles of Douglas Fir timber claimed by Morris Hedstrom belonged to and were the property of Morris Hedstrom. The shipping clerk for H & J Retzlaff obviously assumed when he saw the delivery note kept by the Customs Department for Morris Hedstrom's timber consignment that that consignment had been fully delivered. The Customs officer who prepared that delivery note has explained that that delivery note is incorrect. The subsequent retention by H & J Retzlaff of the three (3) bundles of timber despite requests by Morris Hedstrom accompanied by supporting evidence for their release to the latter was wrongful and in the circumstances interfered with Morris Hedstrom's right to possession of those timber. The claim in conversion has been made out. If the shipping clerk for H & J Retzlaff was mistaken in this case, such mistake is no defence to the claim in conversion.

Accordingly I enter judgement for the Plaintiff Morris Hedstrom, in the sum of \$14,068.63 being the total retail value of the three (3) bundles of timber which had been lost to the Plaintiff. The separate claim for \$5,000.00 damages under unlawful detention has not been made out and I make no such award of damages.

I award costs in this action to the Plaintiff to be fixed by the Registrar.