IN THE COURT OF APPEAL, FIJI ISLANDS
ON APPEAL FROM THE HIGH COURT OF FIJI

CIVIL APPEAL NO. ABU0082/2000S
{High Court Civil Action No.ABC 0139 of 1997L]

BETWEEN:

CARPENTERS FIJI LIMITED

Appellant

AND:

RAJ KUMAR
SARLA DEVI t/as NAKAUVADRA TRANSPORT

Respondents

Coram: Sheppard JA, Presiding Judge
Tompkins, JA
Smellie, JA

Hearing: Wednesday, 29 May 2002, Suva

Counsel: Mr. H Lateef for the Appellant
Mr. A K Narayan for the Respondents

Date of Judgment: Friday, 31st May 2002

JUDGMENT OF THE COURT

The brief facts giving rise to this litigation are that the respondents purchased a ten ton truck from the appellant for $73,001.00 making payment by way of a trade in for $25,000 and securing the balance by way of bill of sale for a 4 year period. Shortly after the respondents took possession of the vehicle, which both parties knew was to be used to transport Coca-Cola products from Suva to Lautoka and back, it was involved in an accident. Subject to the respondents paying two further instalments under the bill of sale the appellant agreed to waive payment of further instalments until the truck was

repaired and the respondents were again earning under their contract with Coca-Cola. It took over a year for the truck to be repaired through no fault of the respondents. When the respondents sought to uplift the vehicle the appellants resiled from the arrangement that had been made immediately after the accident and refused to hand it over until arrears in excess of $21,383.00 under the bill of sale, which had accrued over the year or more of repair time, were paid. When the respondents did not make those payments, the appellant purported to exercise rights under the bill of sale and sold the vehicle for $22,000. Meantime the respondents lost their contract with Coca-Cola which was to run for 5 years with rights of renewal thereafter on an annual basis.

In the Court below the trial Judge accepted that payments had been waived pending repair of the truck and resumption of earnings from the Coca Cola contract. As a consequence the Judge awarded the following to the respondents:

"$25,000 trade in price

$3,300 conversion of CU456

$5,027 payments to Carpenters Finance

$27,000 value of CU456

Total $66,327 "

In addition the Court awarded damages for loss of profits from the Coca Cola contract of $10,000 and ordered that the total judgment sum should carry interest at 13.5%

from the date of the issue of the writ to the date of judgment.

On appeal the appellant accepted that the respondents were entitled to the return of the $25,000 trade in price. The balance of the Judge's award, however, was disputed including the rate of interest although not the award of interest as such.

Counsel for the respondents as we understood him, conceded that his client could not recover both the trade in allowance and the sale price of the vehicle. If that concession was not specifically made, then as a matter of law we hold that the sale price after the vehicle was repossessed could not be recovered by the respondents because after the initial monthly payments of $5,027 no further payments were made and a sum in the region of $50,000 was required to clear the debt.

Although the cost of conversion of the vehicle to satisfy the Coca-Cola contract was not much discussed by Counsel both parties knew that that conversion cost was going to be incurred. That expenditure was lost by the respondents along with the trade -in price as a consequence of the appellant's breach of contract. Accordingly we uphold the judges award in respect of that sum of $3,300.

So far as the payments to Carpenters Finance are concerned, however, the view the Court takes is that those payments had to be made in order to secure the waiver of further instalments under the bill of sale during the time the vehicle was being repaird.

Accordingly we hold that the payments to Carpenters Finance are not recoverable and we vary the judgment in that regard.

Turning then to the loss of earnings award of $10,000. Again in the course of discussion with the Court counsel for the respondents acknowledged that the original claim of $45,000 for loss of earnings could not be sustained. Counsel conceded that the figure should reduce to something in the region of $28,000. But contingencies would have to be taken into account and a discount allowed on that sum to recognise the advantage of receiving the loss of profit damages some 2 to 3 years before they would in fact have been earned had the contract run its full course. The view of the court is that this is one of those situations where it is not possible to award an amount which is mathematically based. The issue inevitably is one of impression which is obviously how the Judge in the court below went about his task. In those circumstances although individual members of this Court might have awarded either a higher or lower figure we see no justification for interfering with the Judges assessment of $10,000.

So far as interest is concerned the rate of 13.5% per annum is perhaps on the generous side. On the other hand the trial Judge appears to have assessed the whole situation and within his discretion directed that the interest run from the date of the issue of the writ rather than from the date of the breach of contract. In those circumstances we are not prepared to interfere with the interest rate of 13.5% and confirm it is to run from the date of issue of the writ.

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In the result the judgment in the court below is varied and the respondents will now recover from the appellant the following:

$25,000 trade in price.

$3,300 conversion costs

$10,000 loss of earnings

$38,300 Total

The above judgment sum of $38,300 to a carry interest at 13.5% from the date of issue of the writ, namely the 14th of May 1997, to the date of judgment namely the 6th of October 2000.

Although the recovery by the respondents has been reduced substantially nonetheless the appeal has only succeeded in part. The parties will therefore bear their own costs on this appeal.

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Sheppard JA, Presiding Judge

FIJI COURT OF APPEAL

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Tompkins, JA

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Smellie, JA

Solicitors:

Messrs. Lateef and Lateef, Suva for the Appellant
Messrs. A.K. Narayan and Company, Ba for the Respondents

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