

IN THE HIGH COURT OF FIJI
WESTERN DIVISION AT LAUTOKA
CIVIL JURISDICTION

CIVIL ACTION NO. HBC 113 OF 2017

BETWEEN : **VINIL VIKASH KRISHNAN** trading as **RAINBOW IMPORTS**
AND WHOLESALERS of Nadi.

PLAINTIFF

AND : **FIJI ISLANDS REVENUE & CUSTOMS SERVICE** Revenue and
Customs Services Complex, Corner of Queen Elizabeth Drive and
Ratu Sukuna Road, Nasese, Suva.

DEFENDANT

Appearances : Ms S. Ravai for the plaintiff
Mr O. Verebalavu with Mr E. Qalo for the defendant
Date of Hearing : 28 February 2019
Date of Judgment : 01 May 2019

J U D G M E N T

Introduction

- [01] The plaintiff brought this action against the defendant claiming an order that the defendant release all declared goods as per invoice No. 17/40912 from Yuhang Import and Export Limited, general damages and costs.
- [02] The defendant pleaded among other things that the container was detained because the plaintiff had failed to declare goods consisting of 200 cartons of empty DVD which was not included in the invoice No. 17/40912.

[03] At the trial, both parties called one witness each and tendered documents. Neither party filed closing submissions, albeit they obtained time for that purpose.

The background

[04] The background facts of the case, as gleaned from the statement of claim are as follows: on 22 May 2017 Vinil Vikash Krishnan t/a Rainbow Imports and Wholesalers, the plaintiff imported certain goods from a Chinese Company, Yuhang Import and Export Limited as per invoice No. 17/40912. The plaintiff paid customs duty of \$2,846.20 on declared goods. Fiji Revenue and Customs Service assessed the duty. The plaintiff alleges that the defendant, in breach of its statutory duty failed to release the container, and as a result he sustained loss and damages.

Defendant's case

[05] The defendant filed statement of defence and states: it did not assess the duty. Whatever duty was payable was self-assessed by the plaintiff's customs broker. The defendant has not approved or passed the Customs Entry because it questions the accuracy and truth of the documents attached to the Customs Entry. The plaintiff paid the amount as assessed by the customs broker which does not include surplus goods not declared to Customs which is also subject to duty. The plaintiff had declared to the defendant that he had one FCL (full container load) and all goods contained in the FCL is consigned to him, however when the container was physically examined by the defendant, it was established that the plaintiff failed to declare goods consisting of 200 cartons of DVD which was not included in the invoice No. 17/40912. As a result of the undeclared goods found in the FCL and the failure by the plaintiff to satisfy the defendant on the circumstances surrounding the sale, the entire container was detained by the defendant. The plaintiff, according to the defendant, must provide security if they want the detained goods to be released and it is a legal requirement.

The law

[06] The Customs Act 1986 (*'the Act'*), section 129 contains provisions as to detention, seizure and forfeiture, which reads:

'Provision as to detention, seizure and forfeiture

129 (1) An officer or other person authorised in that behalf by the Comptroller may at any time seize or detain any goods liable to forfeiture under the customs laws or any goods which such officer or other person has reasonable grounds to believe are liable to forfeiture thereunder.'

[07] Subsection (2) of that section, so far as relevant, states:

"(2) The following goods are liable to forfeiture and may be seized or detained as aforesaid-

(a) ...;

(b) ...;

(c) ...;

(d) ...;

(e) ...;

(f) all goods in respect of which any entry, invoice, declaration, answer, statement or representation which is false or incorrect in any material particular has been delivered, made or produced;

(g) ...;

(h) ...;

(i) ...;

(j) all dutiable goods concealed in any manner;

(k) ...;

(l) ...;

(m) any imported goods found, whether before or after delivery, not to correspond with the entry made thereof." (Emphasis provided)

The evidence

Plaintiff's evidence

[08] The plaintiff called one witness namely Vinil Vikash Krishnan (*Vinil*), plaintiff himself in support of his claim. The plaintiff in his evidence states:

a) He is the director of the plaintiff company.

b) The business was registered on 11 May 2017.

- c) *He's consignment arrived in Fiji on 22 May 2017. It was from China. It contained flowers, food warmers, musical instrument and chairs. (Tab 1 PBOD) Tab 1 – the companies name was Rainbow Imports and Wholesalers. He was taken through "Ex 1 & 2".*
- d) *He paid customs duty for declared goods and the container was released. He took the container to his yard in Natabua. Thereafter customs officers came and opened the container and inspected. There were cartons that had CDs in it and that was the reason why the items was not released to him.*
- e) *They told me that items won't be released. They put the items back in the container and locked it and told me that they will not release the entire consignment unless I get clearance for the CDs.*
- f) *He then called the people who sent the items to me from China and explained what had happened. They told me that the boxes of CDs had mistakenly been put in that container.*
- g) *He said he did not know United Fashion Co Ltd but he knows Sreekumar Balakrishnapillai who is in China as a friend. (He tendered a letter sent by Sreekumar to him Ex. 4).*
- h) *After 2 days of detention, he was interviewed by Customs officers and they told me that the CDs in the container belong to me.*
- i) *He said as a result of the detention of the items the business was affected.*

[09] During the cross-examination, the plaintiff was taken through the defendant bundle of documents ('DBOD'), he states:

- a) *He confirmed the commencement date on the registration of his business as 2 May 2017 and the certification of registration was issued on 4 May 2017. He confirmed the date of invoice was 3 April 2017.*
- b) *When questioned that how was it possible that your company has been issued a commercial invoice for a date prior to your company actually commenced he said he told them that company registration to be done and then the items to be sent.*
- c) *He said Michael Binnu gave the company information to the suppliers.*

- d) *He admitted that his declaration to the Customs that all information he gave is free and correct and that he signed the declaration.*
- e) *He also admitted that the date is inconsistent with his business registration commencement date.*
- f) *He said he did not know the nationality of Mr Sreekumar.*
- g) *He also said he spoke to the supplier in Hindi language.*
- h) *When suggested that so he is a Fiji Hindi speaking individual living in China, he replied that he was speaking Hindi language spoken in India.*
- i) *He said he did not pay the total amount of goods imported to the supplier, but it was paid by Sreekumar.*
- j) *This is the first time to be dealt with this supplier and they have made the mistake in importing undeclared good in my container.*

Defendant's evidence

[10] The defendant also called one witness namely Virendra Vikash Reddy, Senior Customs Officer, Investigation (Virendra). He states in his evidence that:

- a) *He is currently based in the Customs Investigation Section of the Customs Intelligent Compliance & Investigation Division.*
- b) *Customs got alerted of the consignment because of the supplier. Upon inspection, we, earlier in a container from the same supplier, found 300 cartons of blank unrecorded DVD, undeclared which attracted a duty liability of \$700,000.00.*
- c) *The supplier in the case was Yuhang Import & Export Ltd from China.*
- d) *We asked the importer to be physically present to answer a few questions before we actually process the customs entry.*
- e) *Bill of Lading, the invoice and the declaration (C454) would be required for clearance of a consignment. These documents would be filled in by the importer consignee and then given to the broker. The broker then prepares the customs declaration. 7 items were declared.*

- f) *In this case, there was doubt over the truth and accuracy of the value of the goods. It was a first time importer and the supplier from China had given 90 days to pay. So we could not confirm whether the price actually paid was the value declared on the customs invoice. The date on the invoice was prior to the registration of the business. Other discrepancy was the supplier, Yuhang Import & Export Ltd a company which is not actually manufacturing all the items on the invoice and which is a company responsible for packing the goods and shipping only, which has a warehouse in China. We found out this through our investigation.*
- g) *The actual value of the goods would only be identified by the manufacturer if the manufacturer had provided invoice.*
- h) *Upon questioning, the plaintiff are unable to justify how orders were placed to the suppliers, what was the arrangement regarding payment of the goods. He could not also confirm communications with the suppliers. That's why inspection was done on the container.*
- i) *We requested the importer (plaintiff) to remove the container from the wharf as it would incur demurrage to his premises so that 2 custom officers can visit and inspect the goods. At the time of inspection, the goods were not released as the entry was not passed.*
- j) *Upon inspection we found out 200 cartons of unrecorded DVDs which would attract duty liability of more than \$600,000.00.*
- k) *A sum of \$2,846.20 has been paid based on declared goods. We have still doubt about the truth and accuracy of the declaration which is the price actually paid or payable for the goods.*
- l) *We can release the goods pending a document of the importer provides a security deposit be decided by the Comptroller.*

[11] Under cross examination, Virendra states:

- a) *There is still doubt about the valuation of the imported goods.*
- b) *Three documents (Bill of Lading, Invoice and Declaration) were provided to us by Cross Ocean Customs Clearance on behalf of the plaintiff.*
- c) *We request additional documents for the importers if there is a need.*
- d) *He confirms customs received a letter from Sreekumar.*

- e) *He said provision of security is not only related to undeclared goods. Failure to declare goods would constitute offence and penalty.*
- f) *If the goods were intentionally imported to defraud, the State will collect evidence and charge the consignee.*

Discussion

- [12] The plaintiff's claim arises out of the detention of the container with its consignment. He seeks release of all declared goods imported from Yuhang Import and Export Limited ('Yuhang'). The container, according to the defendant, was detained as the plaintiff failed to declare goods consisting of 200 cartons of DVD which was not included in invoice submitted by the plaintiff.
- [13] The issue that arose at the trial was whether the detention was lawful in all the circumstances of the case.
- [14] The plaintiff paid the sum of \$2,846.20 as duty and removed the container to his yard.
- [15] The defendant's evidence is that the container was ordered to be removed to the plaintiff's yard after payment of duty as assessed by the Plaintiff's Customs Broker, and at this point in time the container was not released as the entry has not been passed.
- [16] In the declaration form, the plaintiff declared that he had one full container load ('FCL') and all goods contained in the FCL is consigned to him. That means he has taken responsibility of the goods in the FCL.
- [17] According to defence witness, when the customs officers physically examined the container they found out that the plaintiff failed to declare goods consisting 200 cartons of DVD which was not included in the invoice. The DVD is subject to duty, which attracts duty of \$5.00 each.

- [18] Having found the undeclared goods in the container, the defendant interviewed the plaintiff where he disclaimed the undeclared goods and said it has been loaded mistakenly. It triggered further investigation by the customs, and the investigation revealed that on a previous occasion the customs found out some undeclared 300 cartons of DVD in a container sent by the same exporter (Yuhang). This time the plaintiff had imported FCL of goods from Yuhang where there were 200 cartons of DVDs (120,000) not included in the invoice. If it were declared, DW1 said, it would have attracted a duty of \$600,000.00 (120,000 x \$5).
- [19] Upon investigation on the undeclared DVDs, the plaintiff had disclaimed the items and claimed that it had been loaded into the container he imported mistakenly. The plaintiff relies upon a letter dated 24 May 2017 written to the defendant by a Mr Sreekumar Balakrishnapillai, the director of United Fashion Co Ltd ('PEX4'), which reads:

*'The Officer in-Charge
International Clearance Section
Fiji Islands Revenue & Customs
Lautoka
Fiji Islands*

Dear Sir/Madam,

I Mr. Sreekumar Balakrishnapillai the director of the above mentioned company hereby declare that the goods exported to Rainbow Imports & Wholesalers Fiji was from my company, as I have been informed by Mr. Vinil Vikash Krishnan that there was 200 Carton's of China DVD's with the Consignment.

Sir/Madam, That 200 Carton's of DVD's was not supposed to go to Fiji instead it was supposed to go to Kerala, India. In fact all my export goods are kept in the container yard and most of the time that has happened.

Sir/Madam, I have sent goods to Choise Resources to Mr. Alvin Raj in Lautoka Fiji several times such as all his musical instrument and sound system. As we wanted to export DVD's to Fiji and I have been advised by Mr. Alvin Raj that due to high customs duty they cannot import DVD's to Fiji and there was some

left over items for Mr. Raj which I have put in the Rainbow Imports Container which all was solely sent to Fiji on my costs.

Sir/Madam, by mistake these Chinese people at the container yard loaded the all those DVD's without my knowledge, and rest of the goods commercial invoice was sent to Rainbow Imports & Wholesalers buy our agent YUHANG EPORTS.

Sir/Madam, I'll really appreciate if your kind assistance is provided to Mr Vinil Vikash Krishnan for release of goods and I'll see the alternative to get those DVD's back to China.

If you need any further information please do not hesitate to contact on the number given above.

Thanking you.

(Sgd)

Yours sincerely

Sreekumar BalakrishnaPilai

Director'

[20] The letter did not satisfy the defendant and they further investigated and investigations revealed the following facts:

1. The container has been shipped to the Plaintiff Company before its incorporation.
2. The shipper was not the manufacturer. It was only a shipping agent.
3. The plaintiff was unable to establish actual payment to the manufacturer, i.e. he could not submit any document in proof of payment for the goods imported.
4. On a previous occasion the Customs found 300 cartons of undeclared DVDs in the container shipped by Yuhang, the same shipper for the plaintiff.

[21] There were some doubts about the truth and accuracy of the documents and declaration presented by the plaintiff. The defendant then wrote a letter dated 13 June 2017 ('DEx1') to the plaintiff explaining to him the reasons to doubt on the truth and accuracy of the document presented, which is as follows:

"...

The reasons to doubt on the truth and accuracy of the documents presented are based on the irregularities as follows:

1. *Initially you verbally gave declaration that one Mr Meichael Bhinnu Ganga Jalam gave orders to the suppliers, however, Mr Jalam denies the fact that he ordered the goods.*
2. *You have not provided sufficient evidence of your communication with the shipper of the goods.*
3. *You have given verbal statement to Customs Officers that you do not understand, read and write English language.*
4. *You have given verbal statement to Customs Officers that Mr. Meichael Bhinnu Ganga Jalam is employed by your company Rainbow Imports & Wholesalers, however, Mr Jalam denies the fact that he is employed by you.*
5. *You have given verbal statement to Customs Officers that you are not aware how you had received the invoice for the goods imported.*
6. *You gave statement that the last time you had contacted with your supplier was four to five months ago.*
7. *You had not declared the 120,000 unrecorded DVD when given a second opportunity by Customs Officers to correctly declare all the details of the consignment.*

You are now given seven days from the date of this letter to respond to the irregularities above and comply by disclosing the correct documents..."

[22] It is the evidence by the defendant that the plaintiff did not rectify and comply by disclosing the correct documents within the time given in the letter (above).

[23] An officer or other person authorized in that behalf by the Comptroller may at any time seize or detain any goods liable to forfeiture under the customs laws or any goods which such officer or other person has reasonable grounds to believe are liable to forfeiture thereunder (see s.129 of the Act). In terms of subsection (2)

(f), all goods in respect of which any entry, invoice, declaration, answer, statement or representation which is false or incorrect in any material particular has been delivered, made or produced.

Conclusion

[24] The defendant gave clear and straightforward evidence, which I accept. Therefore, on the evidence adduced by the defendant, I find that the plaintiff had delivered, made or produced false or incorrect invoice, declaration, answer or statement in respect of goods he imported, especially in respect of the 200 cartons of DVDs. In the circumstances, the defendant was entitled to detain the container exercising their powers under section 129 read with subsection (2) of that section. Thus, the plaintiff's claim fails. Accordingly I would dismiss the plaintiff's claim with summarily assessed costs of \$1,000.00 payable to the defendant by the plaintiff.

The outcome

1. Plaintiff's claim dismissed.
2. Plaintiff will pay summarily assessed costs of \$1,000.00 to the defendant.

M. H. Mohamed Ajmeer

17/5/19

M. H. Mohamed Ajmeer

JUDGE

At Lautoka

01 May 2019

Solicitors:

For the plaintiff: M/s Fazilat Shah Legal, Barristers & Solicitors

For the defendant: Legal Section, Fiji Revenue & Customs Service

