

In the High Court of Fiji

At Labasa

Civil Jurisdiction

Civil Action No. HBC 02 of 2020

Vijendra Pratap

Plaintiff

v.

Harish Chandra

Defendant

Counsel: Mr S. Sharma with Mr A. Namua for the plaintiff
Mr R. Dayal for the defendant

Date of hearing: 11th May,2022

Date of Judgment: 2nd March,2023

Judgment

1. The plaintiff claims payment for plywood supplied to the defendant. The defendant entered into an oral agreement with the plaintiff to purchase plywood from him on credit and pay within a reasonable time. The statement of claims states that the plaintiff supplied plywood to the defendant for the period 29 March,2019, to 23 August,2019, for the value of \$63,968.00. The defendant has paid a sum of \$37,204.00 and \$26,764.00 is outstanding. He gave an undertaking in writing to pay the balance in installments. He has breached his undertaking.

2. The defendant in his statement of defence states that the plaintiff has not supplied plywood for the value of \$63,968. On each occasion plywood was supplied, he deposited monies for the plywood in the plaintiff's bank account at Bank of Baroda and BSP. He also paid \$15,000.00 in cash in July, 2019, to the plaintiff. He has paid the plaintiff \$39,852.00. Alternatively, the goods were sold on credit and the plaintiff failed to provide proper invoices in accordance with section 6 of the Sale of Goods Act. He did not give any undertaking to the plaintiff. Any purported undertaking is false, fabricated and fraudulent and an attempt to mislead Court.
3. The plaintiff in his reply states that the defendant did not pay \$15,000.00 in cash. He is not in breach of section 6 of the Sale of Goods Act. An invoice was provided at the time of sale.
4. ***The hearing***
 - a. PW1, (the plaintiff) in evidence in chief said that he sold plywood to the defendant to the value of \$63,968.00. The plywood was delivered to the defendant with an invoice. Three invoices were signed by the defendant. He produced several invoices for plywood delivered to the defendant. The defendant paid a total sum of \$37,204.00 to his bank account. He produced an undertaking given by the defendant to pay the outstanding amount.
In cross examination, he said that the defendant did not pay him in terms of the invoices. The defendant could not sign all the invoices, as the plywood was delivered to his home in Nakasi, while he was working in Suva. PW1 denied that he supplied plywood only to the value of \$39,852.00 and the defendant paid him \$15,000.00 cash. It was put to the plaintiff that the defendant's copy of the Customer reconciliation statement did not contain the undertaking relied on by the plaintiff. PW1 said that the defendant signed the undertaking in his house before a witness. The defendant did not have a photocopy machine to take a copy.
In re-examination, he said that the defendant made payment in respect of some of the invoices he did not sign.

- b. DW1, (*the defendant*) in evidence in chief said that he paid the plaintiff \$15,000.00 in cash. No receipt was issued. He produced deposit slips in respect of \$24,852.00 paid into the plaintiff's account. He disputed that he signed the undertaking at his residence in the presence of Navin Prakash. He purchased plywood to the value of \$40,000.00. He said that he disputed the figures contained in the Customer reconciliation statement sent by the plaintiff and his signature in the undertaking produced.

In cross examination, he said that the plaintiff came with Navin Prakash to his residence in Nakasi. He denied that they came with the undertaking. He agreed that the invoices he received contained the serial number, the nature of the item, its total value and was written in English. He denied that he owed the plaintiff \$27,674.00.

The determination

5. *Agreed Facts*

- a. *The Plaintiff.. is the registered proprietor of a business operated in the name and style of Vinal's Investment and is specialized in retailing of plywood.*
- b. *The Defendant is a businessman operating the business in the name and style of Harish Plywood, Nakasi and entered into an oral agreement with the Plaintiff to purchase plywoods from the Plaintiff on credit in the course of their business.*
- c. *The Defendant was selling the ply board supplied by the Plaintiff.*

Issues

- i. *Was any agreement reached between the Plaintiff and the Defendant for the Plaintiff to supply Plywood to the Defendant?*
- ii. *Did the Plaintiff issue invoices to the Defendant for supply of plywood on credit?*
- iii. *Did the Defendant pay the sum of \$39,852.00 to the Plaintiff for the goods sold and delivered to him and was there any balance remaining unpaid thereafter?*
- iv. *Did the Plaintiff personally meet the Defendant on several occasions requesting the Defendant to pay the outstanding sum?*
- v. *Whether the Defendant gave an undertaking in writing to the Plaintiff to pay the balance sum of \$26,764.00 to the Plaintiff as follows;*
 - First payment of \$ 7,000.00*
 - Second payment of \$ 7,000.00*
 - Third payment of \$ 12,764.00*
- vi. *Whether the undertaking now produced by the Plaintiff is fraudulent?*

- vii. *Has the Defendant breached any purported undertaking or is the undertaking fraudulent?*
- viii. *Did the Defendant pay the Plaintiff the sum of \$15,000 in July, 2019 for which the Plaintiff failed to issue any receipt?*
- ix. *Has the Plaintiff breached the Sale of Goods Act 1979 and if so, is the Plaintiff's claim unenforceable in law?*

6. It is not in dispute that the plaintiff supplied plywood to the defendant on credit. The issue is whether the invoices are legally valid, plywood was supplied to the defendant as per the invoices produced and whether the defendant made payment for same.

7. It was contended that the invoices were not in accordance with section 6 of the Sale of Goods Act.

8. Section 6 (a) provides that a sale of goods on credit shall not be enforceable unless the invoice contains “(i) the serial number ; (ii) the date of the transaction;(iii)the name of the buyer (iv)the nature ..the quantity of goods, in the English language and in figures; and (v) the price in English words and figures”.

9. The defendant confirmed in cross examination that the invoices he received contained the serial number, the nature of item, its total value and were written in English.

10. The plaintiff produced the following invoices:

Invoice Nos. 0105	-	5694
0109	-	4897
0110	-	2040
0111	-	3305
0119	-	3434
0120	-	4843
0126	-	7726
0127	-	4146
0128	-	3700
0129	-	3400
0130	-	3400
0137	-	4620
0136	-	3325
0137	-	5210
0147	-	4005

11. I have perused the invoices.
12. In my judgment, the invoices comply with section 6(a) of the Sale of Goods Act.
13. The defendant argues that he did receive the quantity of plywood itemized in the invoices. He did not sign all the invoices produced in evidence.
14. The plaintiff said that the reason that the defendant did not acknowledge receipt of all the invoices was because the goods were supplied to the defendant's home in Nakasi while he was working in Suva.
15. Sub-section 6 (b) provides that "*at the time of delivery of the goods, the original or duplicate of the invoice or docket be delivered to the buyer or to some person to whom the goods may properly be delivered on his.. behalf*".(emphasis added)
16. I am satisfied from the evidence that plywood was supplied to the defendant as per the invoices issued. The invoices the defendant states he received tally with the rest of the invoices.
17. The defendant states that he paid the plaintiff \$39,852.00. He paid \$15,000.00 in cash and was not given a receipt.
18. The plaintiff states that the defendant has paid a sum of \$37,204.00. He disputes the payment of \$15,000.00 in cash.
19. The defendant testified that he made payments direct to the plaintiff's Bank account as evidenced in the deposit slips he produced.
20. In the light of his evidence, I do not accept that he paid \$15,000.00 cash to the plaintiff. Moreso as he did not obtain a receipt.

21. The defendant denies that he gave the plaintiff an undertaking to pay the balance sum of \$26,764.00. He said that the signature on the undertaking produced in evidence was not his signature.
22. In my view, the burden was on the defendant to establish that the signature on the undertaking was not his signature.
23. The defendant admitted that the plaintiff visited him at his residence with the witness to the undertaking.
24. In my view, the evidence establishes on a balance of probability that the defendant signed the undertaking.
25. In my judgment, the defendant is liable to pay the outstanding sum of \$26,764.00 as agreed to in the undertaking.
26. The plaintiff claims interest.
27. Section 3 of the Law Reform (Miscellaneous Provisions) (Death and Interest) Act provides that the Court may order interest at such rate it thinks fit for the whole or any part of the debt for the period between the dates when the cause of action arose and judgment.
28. The undertaking provides that the defendant agreed to pay the sum of \$26,764.00 as follows:

First payment of \$ 7,000.00 19/9/19
Second payment of \$ 7,000.00 11/10/19
Third payment of \$ 12,764.00 31/10/19
29. In my view, a fair and reasonable percentage to be applied would be 6 per cent per annum from the date of the breach of the third payment until date of hearing.

30. **Orders**

- a. The defendant shall pay the plaintiff the sum of \$26,764.00 together with interest at 6% from 11st May,2019 (date of hearing).
- b. The defendant shall pay the plaintiff costs summarily assessed in a sum of \$ 1000.00.



A.L.B. Brito-Mutunayagam

A.L.B. Brito-Mutunayagam
JUDGE

2nd March, 2023