IN THE SUPREME COURT OF NAURU

[CIVIL JURISDICTION] Case No 17 OF 2013

BETWEEN **JEROME REWERU AND PRIMA REWERU**
PLAINTIFFS

And **PRESWICK AGIGO AND MARIE AGIGO**
DEFENDANTS

Before: Madraiwiwi CJ

For the Plaintiffs: V Clodumar
For the Defendants: A Lekanaua

Date of Hearing: 16, 17 April 20145
Date of Judgment: 16 June 2015

CATCHWORDS:

Claim for breach of oral contract – sharing of importation costs – whether term of contact – parties not ad idem on term – claim dismissed

JUDGMENT

1. This is a claim by Jerome and Prima Reweru the plaintiffs, against Preswick and Marie Agigo the defendants, for their alleged share of charges incurred in the importation of 40 motor cycles in early 2013 from China (via Suva) comprising packing, container, freight, quarantine and telegraphic transfer fees.

2. The plaintiffs import and sell motor cycles, a business which is operated by Prima Reweru, the second plaintiff. Her husband Jerome Reweru the first plaintiff, is a mechanic with the Australian Federal Police and looks after the operational aspects of the business. The business which presently operates as "2 One 2" was not registered at the relevant time although the plaintiffs had been importing and selling motor cycles for several years.

3. Sometime in June 2012, the first defendant approached the first plaintiff initially to import 8 motor cycles as he also wished to sell imported motor cycles and had no experience in that regard. This was to be part of a shipment of 15 motorcycles being imported for sale by the plaintiffs. The first plaintiff and the first defendant are related, being nephew and uncle respectively which is the reason why the latter approached the former. This aspect has some bearing on what later transpired between the parties. The defendants paid $3,000 for those motor cycles which was later reimbursed. The relationship has soured since these proceedings.

4. The second defendant Marie Agigo then secured a contract from the Ministry of Transport of the Government of Nauru in the same month to import 20 motor cycles and was paid $40,000 upfront sometime in August 2012. As a consequence, the initial order was revised and the parties verbally agreed to purchase 40 motor cycles, 20 would be for the Government as per the order and they would share the profits equally as well as the costs.

5. The plaintiffs claim the defendants are obliged to pay them a total sum of $5325.50 comprised of half the total charges of importing the motor cycles as follows-

i. Packing costs ex China	$1,635.00
ii. Freight Fiji-Nauru	$1,970.50
iii. Handling fees and import duty	$ 480.00
iv. Commission	$1,240.00

In the alternative, if a finding is made that the agreement did not include the sharing of costs then the Defendants should pay out of pocket expenses incurred by the plaintiffs set out below-

i. Purchase of 40 motor cycles	$22,200.00
ii. Packaging costs	$3,270.00
iii. Freight Fiji-Nauru	$3,941.00
iv. Handling and import duty	$960.00
v. Commission on 10 motor cycles	$1,240.00
	Less $31,000.00
Due to the Plaintiffs	600.00

6. The exhibits tendered in Court related to the cost of the motor cycles and associated costs of cartage and customs clearance as follows-

Exhibit P1 Certificate of registration of "2 one 2 "dated 9 January 2013;
Exhibit P2 Invoice for 40 LJ110-8 motorcycles US$22,200.00;
Exhibit P3 Central Meridian receipt US$22,200.00;
Exhibit P4 Commercial invoice for packing US$3270.00;
Exhibit P5 Container and custom clearance US$3070.00;
Exhibit P6 Matson clearance costs $1000.00;
Exhibit P7 Matson freight costs Fiji-Nauru $3941.60;

Exhibit P8 Tax payment $490.00;
Exhibit P9 Port Authority handling cost $150.00
Exhibit P10 Quarantine charges $20.00
Exhibit P11 Port Authority charges for hire of side loader $300.00.

7. The facts are largely not in dispute and there was an oral contract between the parties to import 40 motor cycles and share the purchase price and balance of motor cycles equally after the Government had taken the number it had ordered and paid for.

8. Much of the hearing was taken up with the admission of the exhibits and whether or not the charges, in respect of which the plaintiffs were seeking an equal contribution from the defendants, were in fact incorporated in the purchase price of the motor cycles.

9. However, the basic issue in these proceedings is whether there was any agreement between the parties about the sharing of the costs of importation. It is trite law that in order to imply a term of a contract, a fundamental requirement is that the parties need to be *ad idem* or in agreement as to what it is they are agreeing to. There must be an offer and an unqualified acceptance and the parties must have assented to or deemed to have assented to the same thing in the same sense[1].

10. What is agreed is that the contract for the 20 motor cycles with and payment of $40,000 by the Government of Nauru was secured by the second defendant. With the $40,000, the parties were able to secure another 20 motor cycles which they divided equally between them (i.e. 10 each). The plaintiffs essentially would have 10 motor cycles gratis. Their contribution to this arrangement was their knowledge and experience in importing and selling motor cycles. This background is significant because in the Court's respectful opinion, together with the blood ties between the first plaintiff and first defendant, it has an important bearing on ascertaining what, if anything, the parties agreed about importation costs.

11. At the two meetings at which the parties met, verbally agreed terms and shared the $40,000 payment from the Government the understanding about what sharing costs meant was general rather than specific in nature. The Plaintiffs assert that there was specific agreement on cost sharing. The second defendant in her evidence stated there was no such understanding; the discussion was more about dividing the monies and the motor cycles.

12. Notwithstanding the close relationship, and not having to make any actual financial contribution to the purchase of the motor cycles, the plaintiffs believed that they would share the importation costs with the defendants. They received half of the $40,000 dollars paid to the second defendant by the Government, from which they would also pay for half the motorcycles imported for the Government and 10 for themselves.

13. The defendants on the other hand considered they had discharged their obligations to the plaintiffs by not only agreeing to give the plaintiffs half the purchase price, but a further $10,000 to pay for their share of the 40 motor cycles (i.e. 20 for the Government, 10 for the plaintiffs and 10 for the defendants). The result is that the plaintiffs received 10 motorcycles without having to pay anything for them, because it was all met from the purchase price for the contract secured by the second defendant.

14. Both the plaintiffs and the defendants only agreed to the importation of the 40 motor cycles which was to be funded by the $40,000 paid by the Government for 20 motor cycles. The additional 20 they were able to acquire with that money would be divided equally as was the $40,000 received from the Government. Beyond that, it is difficult to establish there was actual agreement to share importation costs as the plaintiffs assert. Because the importation of the motor

[1] Halsbury's Laws of England 3rd Ed. Vol 8 paragraphs 114, 140.

cycles, put bluntly, was only made possible by the contract the second defendant secured from the Government.

15. Both parties operated under different assumptions. The plaintiffs assumed this was a purely business arrangement and proceeded on that basis; whereas the defendants saw it as a business cum family arrangement benefiting both nephew and uncle. This coloured the parties' respective understanding of what the transaction including the sharing of costs entailed.

16. In the Court's respectful opinion, it is reasonable to conclude that the defendants did not specifically agree to share costs or pay any commission fees in circumstances in which they had secured the Government contract which funded the importation of motor cycles and where the plaintiffs, to whom they were closely related, made no financial contribution to the transaction but would acquire 10 motor cycles free of charge to sell for profit. The initial approach to the first plaintiff by the first defendant had been on the basis of their close blood relationship. The defendants were prepared to share the 'windfall' of the Government contract with their close relatives but the plaintiffs clearly perceived matters from another perspective.

17. The parties agreed verbally to the importation of the 40 motor cycles, the sharing of the $40,000 received from the Government, and dividing the motor cycles between themselves and the Government. However there was no oral agreement and therefore no contractual term about sharing importation costs.

18. Accordingly, the Court finds the plaintiffs' case has no basis and is dismissed. Costs are awarded to the defendants to be taxed by the Registrar if not agreed.

DATED this 16th day of June 2015.

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Joni Madraiwiwi
CHIEF JUSTICE