

Teta Ltd v Ullrich Exports Ltd

Privy Council
Appeal No 5/1984

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Civil Law Act - Law Reform (Miscellaneous Provisions) Act 1934 of England applicable to Tonga pursuant to Civil Law Act.

Contract - Form of contract - Contract Act not applicable to contract made by company incorporated in Tonga.

Judgment - interest may be awarded on amounts unpaid

30 In 1982 Ullrich Exports Ltd issued proceedings in the Supreme Court for money claimed to be owing for goods supplied in 1930 and 1961 and for interest at 10% on the amount claimed.

Teta Ltd relied in its defence upon the Contract Act and the fact that there was no contract in writing stamped and registered as required by section 3(2) of that Act, but the Supreme Court held that the Act did not apply where the contracting purchaser was a corporate body.

30 The Supreme Court also held that interest could be ordered to be paid in accordance with the Law Reform (Miscellaneous Provisions) Act 1934 of England which the Court held was in force in Tonga pursuant to the Civil Law Act of Tonga.

Both these rulings were challenged on appeal to the Privy Council.

HELD

Dismissing the appeal

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- (1) The Contract Act does not apply to a company incorporated in Tonga,
- (2) The Law Reform (Miscellaneous Provisions) Act 1934 of England is an English statute of general application which is in force in Tonga pursuant to the Civil Law Act.

Statutes considered

Contract Act

Civil Law Act

Law Reform (miscellaneous Provisions) Act 1934 UK

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Counsel for Appellant

Mr Edwards

Judgment

On the 8th April 1982 the Respondent Company issued proceedings in the Supreme Court claiming from the Appellant the sum of \$9,690.13, made up of \$1,1314.56, being the balance owing on foodstuffs supplied in December 1980, \$7,614.15 being the cost of a generator engine supplied in January 1981, and \$761.42 which was described as "interest at 10% for 12 months lost to the Respondent" consequent on the Appellant's failure to pay for the generator. Interest on the total sum of \$9,690.13 was also claimed.

80 The only defence raised in the Appellant's Notice of Defence was that the foodstuff and generator transactions were contrary to S.3(2) of the Contract Act (Cap.113). Rule 5 of the Supreme Court Rules provides that a defendant will not be allowed to raise any defence other than that contained in his Notice of Defence without the leave of the Judge at the trial. It appears that at the trial Harwood J. allowed the Appellant to raise a further defence, namely, that by the Law of Tonga interest was not recoverable.

The Contract Act is described in its preamble as "An Act to regulate dealings upon credit with Tongan subjects", and S.2 provides in summary that all contracts entered into by Tongans aged 16 and over for goods supplied shall be enforceable by action.

S.3(2) reads:-

70 "3.(2) Whenever as the result of one or more transactions the total indebtedness of a Tongan to another person for goods supplied exceeds five hundred pa'anga no action to recover the price of such goods shall be maintainable for an amount exceeding five hundred pa'anga unless there is produced to the Court at the hearing a written agreement in respect of each transaction by which the defendant's indebtedness to the plaintiff was increased beyond the amount of five hundred pa'anga. Such agreement shall be executed in duplicate at the time of each such transaction and shall contain a list of the various articles supplied and the price charged for each and shall be stamped and registered as hereinafter required."

80 Harwood J. held that subsection, and indeed the other provisions of the Act were designed to protect Tongan subjects and had no application where the contracting purchaser was a corporate body.

On the question of interest Harwood J. applied the provisions of the English Law Reform (Miscellaneous Provisions) Act 1934 in reliance of S.3 of the Civil Law Act (Cap.14) which reads:-

"3. Subject to the provisions of this Act, the Court shall apply the common law of England and the rules of equity, together with statutes of general application in force in England."

90 The English Act provides for interest to be awarded in the discretion of the Court, but prohibits the award of interest upon interest, which is what the Appellant, in part, sought in the instant case. In the result Harwood J. gave judgment for the Respondent and allowed interest at 10% on the sums of \$1,314.56 and \$7,613.15 for a period of 18 months and disallowed the claim for \$761.42.

This is an appeal against that decision.

100 The first ground of appeal was that Harwood J. was wrong in law in the holding that the Contract Act did not apply to a company incorporated in Tonga. On this issue Mr Edwards mounted an elaborate argument designed to convince this Council that Harwood J. was wrong. It was deficient in only one respect, in that he did not disclose that he had

argued this very same issue before the Council in the case O.G. Sanft Ltd v Tonga Tourist and Development Co. Ltd. (Judgment 22 May 1981 [1981-1988] Tonga L.R. 16 and had it disposed of by this Council after a careful analysis of the terms of the Act, in these words:-

"In the opinion of the Privy Council, therefore, the Contract Act places restrictions on the enforceability of contracts against Tongans of and over the age of 16 years. It has no applicability to a company registered in Tonga." (p. 20).

The only matter not raised in the Sanft case was the effect of S.25 of Companies Act (Cap.112), and its relationship to the provisions of the Contract Act. S.25(1)(b) of the Companies Act reads:-

"25.(1)(b) any contract which if made between private persons would be by law required to be in writing signed by the parties to be charged therewith may be made on behalf of the company in writing by any person acting under its authority express or implied and may in the same manner be varied or discharged."

S.25 deals with the "form" of contracts, and the only contract which would require to be in writing in the present context is one to which a Tongan subject was a party. If a company enters into a contract with a Tongan subject then the provisions of the Contract Act will apply.

We therefore reject Mr Edward's submission on the effect of the Contract Act.

The second ground of appeal reads:-

"There was no contract in writing in respect of the amounts claimed by the plaintiff and the Learned Judge was not entitled, even if Section 2(2) of the Contracts Act are not applicable to a limited liability company, not to apply the provisions of the Contract Act as to the production in evidence of an invoice particularising the items alleged to have been supplied and signed by the defendants company or acknowledged in writing by the said defendant company."

This appears to be a plea that the proof of liability to pay the sums of \$1,314.56 and \$7,614.15 was in some way deficient. Liability was never denied. What was denied was that the claim for the amount owing was enforceable. There was no evidence for the Appellant. Mr Ullrich, Director of the Respondent company gave evidence of the sale of the foodstuffs and generator and the failure to pay. In the light of the defence filed it is questionable whether even that evidence was necessary because the Appellant was relying on a technical defence - not one that went to the merits. We reject that ground.

The third ground of appeal concerns the Trial Judge's award of interest and it reads:-

"The Learned Judge had erred in holding that the Law Reform (miscellaneous provisions 1934 of England) is a statute of general application within the meaning of Section 4 of the Civil Law Act (Cap.14) of Tonga."

The general effect of the English Law Reform Act has been set out above, and the question is whether that Act is a "statute of general application". A Statute of general application is described in Commonwealth and Colonial Law by Sir Kenneth Roberts Wray, an authoritative text, as "Act of Parliament which are of general relevance to the conditions of other countries and in particular, not based upon politics or circumstances peculiar to England." In our opinion that describes exactly the English Law Reform Act

relating to the payment of interest.

In terms of the English Law Reform Act an award of interest is in the discretion of the Court, and Mr Edwards argued that Harwood J. was wrong in awarding interest on the basis that the Appellant had "wrongfully withheld payment." We disagree.

This was a case which cried out for an award of interest. The Appellant company had no merit whatsoever in its purported defence, and we can only conclude that its pursuit had only one end - to delay for as long as possible payment of a just debt. The appeal is dismissed with costs to the Respondent of \$250.