

Moala v Valu & anor

10 Supreme Court, Nuku'alofa
 Martin A.C.J.
 Civil Case 12/1989

2, 3, 4, 5 & 10 September, 1991

Contract - oral agreement - evidence - Contracts Act

20 The Plaintiff purchased a boat from the Defendants. A deposit was paid; possession was taken. Later the boat was returned to the defendants and its return accepted. The plaintiff claimed the return was on the basis that of the deposit moneys (\$6000) half would be kept as hire of the boat and that the other half would be refunded to him by the defendants. The defendants claimed the full deposit was to be put towards hire and no refund was owed.

Held, upholding the plaintiffs' claim for \$3000.

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1. When a verbal agreement is to be judged, although it is possible to come to a finding on the evidence of one man, if he is believed, it is a wise and necessary precaution to look for independent corroboration, before making a decision on the balance of probabilities.
 2. Sections 4 & 5 of the Contracts Act (cap.26) did not apply to the refund agreement.

Statute considered: Contracts Act - ss. 4 & 5

Counsel for plaintiff : Mr Finau
 Counsel for defendants: Mr Hoha

Judgment

In this case the Plaintiff claims \$3,000.00 from the Defendants, this sum being what he says was the agreed refund of a deposit of \$6,000.00 he paid on a boat he bought from the First Defendant and returned to him about 3 months later. He withdrew his further claim for \$2,500.00.

It is not disputed that the Plaintiff bought the boat from the First Defendant, that it was later returned to the First Defendant and that the First Defendant accepted its return. These agreements were verbal.

40 What is disputed is why it was returned and the conditions under which its return was accepted.

The Plaintiff says he returned the boat because it was not satisfactory and that the First Defendant said he would charge him (the Plaintiff) \$3,000.00 for the hire of the boat during the period that the Plaintiff kept it. The First Defendant, according to the Plaintiff, said he would take this \$3,000.00 out of the \$6,000.00 he had received and pay the balance of \$3,000.00 to the Plaintiff. The Plaintiff further says, with regard to the sale agreement, that the balance of the purchase price of \$12,000.00 was to be paid in instalments of no fixed amount or time limit. He says they were friends who trusted each other.

50 The Defendants in their pleadings and in the evidence of the Second Defendant say that the boat was returned because the Plaintiff could not pay the balance of the purchase price of \$10,000.00 within the stipulated time of 1 week, that the return took place 3 months and 3 weeks after the First Defendant had agreed, a week after the sale (when the full purchase price had not been paid), that the Plaintiff could use it for fishing and pay the balance after 5 months. The First Defendant says that the Plaintiff is not owed any refund because it was considered that in respect of the 4 months period the Plaintiff had the boat it had been hired for \$6,000.00.

60 The First Defendant did not appear. He is apparently still in New Zealand but due to return to Tonga this December. No adjournment was requested by Counsel for the First Defendant. The result is that there is an evidential gap in the case for the Defendants, the Second Defendant saying that during the major part of whatever negotiations took place he had no real part. The Second Defendant did give evidence, inter alia, that when the key of the boat was returned he heard the First Defendant mention the figure of \$6,000.00, but did not hear the Plaintiff's reply.

The issue to be decided is therefore whether the agreed hire charge was \$3,000.00 or \$6,000.00. The two witnesses for the Plaintiff were the Plaintiff himself and Mr Sione Talanoa. For the defence only the Second Defendant gave evidence.

70 I do not attach any great importance to the difference in the purchase price - the Plaintiff saying \$12,000.00 and the Defendants saying \$10,000.00 - as stated by the parties, since this case revolves around the admitted deposit of \$6,000.00 paid by the Plaintiff, and the return of the boat.

I do not consider that sections 4 and 5 of the Contract Act (Cap. 26 old Cap. 113) apply to the refund agreement and I so rule. It is not concerned with goods supplied, money lent or to be lent or services to be rendered. The original sale of the boat would have been covered by this Act, but that is not an issue here. I do not bemoan the recent repeal of an act which has long outlasted its use.

80 I consider that, in any event, I am entitled to look at the agreement, the contents being confirmed by Mr Talanoa, in seeking to find what was agreed between the parties. I also

consider that the Second Defendant has been much more involved than he claims. He says he arranged the original sale price, although the Plaintiff says it was the First Defendant. He used the boat before it was sold to the Plaintiff and it remained in his possession after its return by the Plaintiff until he sold it, this year, as his boat. I do not believe him when he says he signed a blank receipt. Although this receipt, exhibit 2, was not put to him in examination-in-chief, it does not give the impression of a document prepared after it had been signed. I should also add that while the Second Defendant said the money he received for the sale of the boat was used by him for his family, the First Defendant pleads that it was given to him.

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Two copies of the refund agreement were produced. The first, exhibit 1, was a photo copy of a carbon copy. The second, exhibit 1A, was a carbon copy of the original - which could not be found. On the carbon copy can just be traced the signature which the Plaintiff says is his. The signature on 1A by the Second Defendant appears to be an original signature and he may have signed more than one copy. I do not consider that this is of any real significance or casts any doubt on Mr Talanoa's evidence.

There was a good deal of evidence given on matters which in my view did not bear on the essential issues and I do not therefore intend to comment on it.

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I consider that the Second Defendant was, although he gave his evidence very emphatically, a most unsatisfactory witness who only told the truth when he thought it would not harm his case. The Plaintiff I considered to be essentially truthful, even when some of his answers might not have helped his case.

I find that the First Defendant did agree to refund \$3,000.00 to the Plaintiff and that the Second Defendant became a full party to this agreement. The boat was to be a security for the repayment and the boat and engine were sold by the Second Defendant for a total of \$2,300.00 - which he spent on his family. Nothing was said about the price of the sail, if it was sold.

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In the result I give judgment in favour of the Plaintiff against the First and Second Defendants, jointly and severally, for \$3,000.00 plus costs, to be taxed if not agreed.