

The judgment creditor claims that the shop is part of the whole business, and relies heavily on the agreement which was produced as Exhibit A during the substantive hearing, and on which the judgment is based. He claims that the contract for purchase of the business, which is the foundation of the judgment debt, included the shop and its contents. Thus his claim is that the goods in the shop belong to the judgment creditor, and are available to him in satisfaction of the judgment.

Wu Ying and the judgment debtor claim that things changed after the failed sale and purchase. Wu Ying stated in evidence that he took over the shop without stock from the Chinese person who previously operated it. He paid that person in January 2000, for chattels such as a bed, refrigerator, stove and gas bottle. He produced receipts for these payments. He stated that he stocked the shop himself at his own expense, buying the stock on 7 April 2000 with money that he had brought to Tonga in US dollars. He produced invoices showing purchases of the items, showing consecutive cheque numbers on an account at the ANZ bank in Nuku'alofa, all on 7 April 2000. He produced a photocopy of one cheque butt and during cross-examination offered counsel the cheque book for perusal of the others. Some of the goods he had purchased from the shop of the judgment creditor. He stated that he had opened the shop for business on Friday 7 April, and that it had been closed by the action of the bailiff on Monday 10 April.

After hearing the evidence and observing the witnesses, I have no reservations about what is the balance of probabilities. It is not necessary to resolve the issue of who ultimately operates the shop, though it does seem to me that the operator probably is Wu Ying. The licence is held by the judgment debtor and is in the name of his Tonga partner, which I find not surprising. As for the stock, I am satisfied to and beyond the probability standard that the items listed in the invoices were purchased on 7 April by Wu Ying with his own money. I find that they are the property of Wu Ying. I have not made a detailed check, but the submissions proceeded on the basis that goods seized by the bailiff from inside the shop are the same goods. I direct that they be now returned into the keeping of Wu Ying.

There is no doubt in my mind that the bailiff acted responsibly and in good faith. Nonetheless, the claimant is entitled to his costs on this application, and I hold accordingly. Liability to pay those costs, and the amount, I expect can be settled by counsel because they have been negotiating successfully in this matter till now. However, there can be submissions and I shall decide those matters if counsel cannot agree.

NUKU'ALOFA: 21 June, 2000



Amisonga
JUDGE