

IN THE SUPREME COURT OF WESTERN SAMOA

HELD AT APIA

CP. 41/93

BETWEEN: SETOA TE'O and FLO TE'O
of 17 Hindmarsh Street,
Henderson Auckland,
New Zealand, Administration
Officer and Travel Consultant
respectively

PLAINTIFFS

A N D: JOHN COLLINSON currently of
Sogi near Apia, Western
Samoa, Carpenter

DEFENDANT

Counsel : Fepulea'i for Plaintiffs
Enari for Defendant

Hearing : 8 July 1993

Judgment : 8 July 1993

JUDGMENT OF SAPOLU, C.J.

In this case the plaintiffs have given evidence that the defendant converted to his own use building materials belonging to the plaintiffs in the sum of NZ\$5,747.00. The defendant has called no evidence to dispute that claim by the plaintiffs.

On the evidence as adduced by the plaintiffs the Court is satisfied that the claim for this action of NZ\$5747.00 has ^{been} made out. As to the claim by the plaintiffs for \$5,000 general damages, it appears to the Court from the evidence that as consequence of the action by the defendant in converting the building materials in question for his own use, the plaintiffs had to go through the problem of contacting the police to search for these materials, of meeting with the previous solicitors for the defendant in an effort to obtain the return of these building materials, and thus having to wait for

a rather lengthy period of time for the materials to be returned but the defendant failed to do so. Furthermore as a consequence of the defendant's action, the plaintiffs were put to trouble of having to obtain replacement materials for those building materials which were taken by the defendant.

Legal action was also taken by the plaintiffs through their present solicitor to obtain the return of those materials but I think any costs incurred in that respect would be more appropriately be dealt with as costs in this action rather than as general damages for the plaintiffs. As a further consequence of the defendant's action, the plaintiffs' project for the construction of two pre-fabricated homes was put to a halt for sometime and that necessarily must mean some inconvenience to the plaintiffs.

Overall the Court is of the view that the plaintiffs are entitled to some general damages and I fix those general damages at \$1,800.00.

Judgment is given for the plaintiffs in the sum of NZ\$5747 being the price of the building materials converted by the defendant for his own use and for \$1800 for general damages. Costs plus disbursements are also awarded to the plaintiffs and are to be fixed by the Registrar.

T F M Sapsal
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CHIEF JUSTICE