

IN THE SUPREME COURT OF WESTERN SAMOAHELD AT APIAC.P. 11/92

BETWEEN: BRITISH PETROLEUM SOUTH
PACIFIC LTD a duly incorporated
company having an office at
Sogi:

PLAINTIFF

A N D: MAINA IMO of Vaimoso:

DEFENDANT

COUNSEL: Mrs R. Drake for Plaintiff
Mr T.K. Enari for Defendant

DATE OF HEARING: 16th March 1993

DATE OF JUDGMENT: 16th March 1994

JUDGMENT OF SAPOLU, CJ

The plaintiff is a company selling petroleum products. In 1989 the defendant was operating the plaintiff's petrol service station at Pesega. What actually happened was that orders were placed with the plaintiff's head office in Sogi for petrol and petrol was supplied by the plaintiff to the petrol service station at Pesega. An invoice was signed by the person who received the supply and the original was kept by that person while the invoice copy was taken back for the plaintiff's records by the plaintiff's employees who delivered the petrol. I accept the evidence for the plaintiff that no payment was made by or on behalf of the defendant upon delivery of the petrol to the Pesega petrol service station. When the account for petrol supply to the Pesega service station accumulated to a substantial amount, the plaintiff's regional headquarters in Suva,

Fiji expressed concern and gave instruction that further orders from the Pesega service station were to be paid before delivery. However it appears that on some occasions during that time petrol supplies were delivered without prepayments on requests from the defendant's husband who was then the local manager for the plaintiff company.

The exact basis on which the defendant operated the Pesega petrol service station is not entirely clear. That is, it is not entirely clear whether the defendant was an employee for the plaintiff or operating as an independent trader. I say this because on one hand the defendant was not paid a remuneration by the plaintiff but received her remuneration in other ways as her husband testified, while on the other hand the defendant says that she was operating the Pesega petrol service station for the plaintiff. Be that as it may, the important fact is that while the defendant was operating the Pesega petrol service station the account for that station accumulated to a substantial amount. The defendant does not dispute that she owes money to the plaintiff from the Pesega petrol service station. In fact she has already made repayments to the plaintiff for money she owes the plaintiff from the Pesega petrol service station. What the defendant disputes is the amount the plaintiff claims to be owing by the defendant.

According to the plaintiff, the defendant owes the sum of \$47,140.93. A statement itemising the various amounts claimed by the plaintiff was produced in evidence. The defendant says that she had made payments for some of the amounts claimed. I cannot accept all the amounts the defendant claims she has already paid because of the absence of receipts to substantiate all those payments. The defendant seems to say that some of the payments she made were not receipted. There is no evidence to support that except the defendant's own word. I do not accept that the defendant would have made the payments she claims to have made without asking for receipts. Some of the amounts claimed to have been paid but not receipted are substantial

and I cannot accept that a prudent person would make such payment without asking for a receipt or at least follow up for a receipt after payment was made. The only payment claimed by the defendant that I accept is the payment of \$466.68 made on 16 May 1989 as there is documentary evidence to substantiate that payment.

I have also considered the suggestion from the defendant's evidence that some of the amounts claimed by the plaintiff relate to the Apia Park petrol service station the defendant was operating for the plaintiff before she operated the Pesega petrol service station. I am of the view that the suggestion is not supported by evidence. The evidence of the current local manager for the plaintiff is quite definite that all the amounts claimed by the plaintiff relate to the Pesega petrol service station. There is also no satisfactory evidence from the defendant to confirm that any of the amounts claimed by the plaintiff relate to the Apia Park petrol service station.

Now the total amount claimed by the plaintiff is \$47,140.93. Subtract from that amount the payment for \$466.68 and the balance is \$46,674.25. I give judgment for the plaintiff in the sum of \$46,674.25 plus costs which I fix at \$350.00.

T. M. Papaku
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CHIEF JUSTICE