

IN THE HIGH COURT OF THE COOK ISLANDS

HELD AT RAROTONGA

(Civil Division)

Plaint No. 185/96

BETWEEN MARTHALINE MATAPO

(trading as Marthaline pearls)

of Avarua, Rarotonga

Plaintiff

AND JOHN GATTI of Tupapa,

Rarotonga

Defendant

Plaint No. 186/96

BETWEEN MARTHALINE MATAPO

(trading as Marthaline pearls)

of Avarua, Rarotonga

Plaintiff

AND LOUIS GATTI (also known as

Luiti Gatti) of Tupapa, Rarotonga

First Defendant

AND GIAMBATTISTA (JOHN)

GATTI

Second Defendant

Date of hearing: 21-22 August 1997

Counsel: T P Arnold for Plaintiff

BJ Gibson for both Defendants.

Date of Judgment: 27 August 1997

JUDGMENT OF QUILLIAM C.J.

These are two actions which were heard together. They concern a series of transactions for the sale of pearls to the defendants, who are father and son. It is acknowledged that, as a

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result of the transactions, there remains money owing by each defendant to the plaintiff, but the correct amount is in each case contested.

It must be said at once that the business and accounting methods of both the plaintiff and the defendants were so sparse and inefficient as to lead almost inevitably to just such disputes as have occurred.

It is necessary to set out, at least briefly, the circumstances of each transaction. For convenience I refer to the defendants as the father and the son. I deal first with the father's transactions.

The first was on 8 June 1996, and as to this transaction there is no dispute. The father purchased from the plaintiff 42 pieces for a total price of \$6885. These are recorded on an invoice kept by the plaintiff, the carbon copy of which remains in the invoice book. The original of that invoice was signed by the father. The carbon copy then records the payment of \$4500 on 20 June 1996 on account of the amount owing, and this entry was also signed by the father. There remained owing the balance of \$2385.

The second transaction was on 7 July 1996 and concerned the sale of 111 loose pearls for a total price of \$13,875. Again, the father has signed the original invoice and this is apparent from the carbon copy remaining in the book. That carbon copy has added to it by the plaintiff a note of the total then owing by the father, namely \$16,260. On the following day the father left for Europe in order to sell the pearls and his evidence was that he sold them all, but at a low price because of a slump in the market.

He said that immediately on his return, namely on 25 July 1996, he called on the plaintiff and handed her in cash NZ\$5000 and US\$3000, which together represented \$9000 by way of repayment of the amount he owed. The plaintiff said that no such cash payment was made and this is the subject of the first dispute.

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With regard to the son, there were three transactions. The first is not the subject of dispute. On 26 July 1996 he purchased pearls to a total value of \$9025. The plaintiff's copy of the invoice recording this sale has added to it the amount owing by the father of \$16,260, making a total of \$25,285, and the son has signed the invoice for that amount. The plaintiff has apparently regarded father and son as together liable for the purchases made by each. Accordingly, on the same invoice the plaintiff has recorded the total owing by both defendants, namely \$25,285, and has then deducted a payment of \$4,000 paid by the son, leaving a balance of \$21,285. This payment of \$4,000 was made by the son when he and his father called on the plaintiff shortly after 26 July.

The son's second transaction was on 27 August 1996. He then purchased 5 A Grade pearls and 55 other pearls. The invoice for their sale records the sale in this way:

25 p.c.		3,125.00
5 " A Back	7500	
30 p.c.		
		<u>\$10,000.00</u>

This invoice also contains a note of the outstanding balance, of \$21,285 which was after the payment of the \$4000 referred to. There is also shown a figure of \$5350 which relates to a subsequent transaction.

The issue on the second transactions relates to whether the son owes \$10,000, or only the first amount shown of \$3125. I return to this shortly.

The third transaction was on 28 August 1996. The invoice for this shows a sale of one pair of studs for \$350 and one string of pearls for \$5000. This is the total of \$5350 referred to above. The son acknowledges that he bought the studs as a gift for his fiancée, but says that the reference to the string of pearls was added to the invoice after he signed it. He said this

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should not have been added because the arrangement was that he should sell the string of pearls on commission for the plaintiff.

I return now to deal with the three disputed matters; and it must be said at once that the resolution of these is not assisted by the very poor standard of the plaintiff's bookkeeping, and the absence of any written record kept by the defendants.

1. Cash payment of \$9000

It is clear that, after his two purchases, the father owed \$16,260. After his first purchase he went to Europe to sell the pearls but said the market was slow and he was unable to sell them for enough to cover his costs. On his return he paid the plaintiff \$4500 and this was recorded by the plaintiff on the copy of the sale invoice and that entry was signed by the father.

He then made his second purchase on 7 July 1996, and his evidence was that the following day he went to Europe hoping the market conditions had improved. He said he was, however, forced to sell the pearls for less than he had expected. He returned on about 25 July 1996 and said he then saw the plaintiff and paid her the equivalent of \$9000 in cash. His evidence was that the plaintiff recorded this payment on the original of the sale invoice, which was loose in the invoice book, but retained that document herself. The carbon copy of that invoice has had added to it the amount of that sale (\$13,875) and the balance owing on the first sale (\$2385), showing a total owing by the father of \$16,260. There is no reference to a payment of \$9000.

There is, therefore, a direct conflict between the plaintiff and the father. It must be said at once that it is very hard to believe that a man with many years of business experience should be prepared to make a cash payment of \$9000 without insisting on receiving a written receipt of some kind. His explanation was that he was used to dealing with people on this basis and trusted those with whom he dealt.

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If this were the only evidence I might be left in a state of some doubt and, having regard to the onus of proof resting on the plaintiff, been required to give the father the benefit of the doubt. I think, however, it is possible to find some evidence which assists in a resolution of this conflict.

As I have said, the plaintiff's accounting records are sparse and primitive. They are, however, better than none at all which is the father's position. It is to be noted that there were three payments undoubtedly made to the plaintiff by the defendants, namely \$4500 by the father in respect of the first purchase, \$4000 by the son in respect of his first purchase, and a further payment of \$1500 by the son. Each of these has been recorded by the plaintiff. The \$4500 paid by the father is shown on the copy of the invoice and has been signed by him. The \$4000 is recorded on the copy of the invoice in respect of the son's first purchase, and that entry has also been signed by the father. The \$1500 is the subject of a receipt, the original of which remains in the receipt book.

However inelegant or informal these records are, at least they show a consistent attempt on the part of the plaintiff to keep some written record of payments received. It seems inconceivable that in the single case of the \$9000 she should have departed from this practice. I believe her, and accept her evidence that no payment of \$9000 was made to her. I am satisfied that it is more probable than not that she did not receive that sum.

2. The Invoice for \$10,000

I have set out earlier the way in which this sale was recorded. The plaintiff's evidence was that the sale comprised 5 A grade pearls at a price of \$7500, and a total of 55 other pieces which she entered on the invoice at a total of \$3125. Her explanation for the way in which the invoice is made out was that this sale was the result of two visits by the son on successive days. On the first day he bought 25 pieces and the 5 A Grade pearls, and on the next day he bought a further 30 pieces. Although the total of the amounts on the invoice would correctly have been \$10,625, the plaintiff eventually decided to give a discount because all 60 pearls

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were being bought. Certainly it is the case that the son signed the invoice which recorded a total price of \$10,000.

The son's evidence was that, at the time he signed the invoice the total of \$10,000 had not been entered, and that he believed the purchase was of the 60 pieces at a total of \$3125. At that time he had little knowledge of pearls and it may be that he was not in a good position to attach a value to what he wanted to buy. The plaintiff, however, was a dealer and I cannot accept that she would ever have agreed to sell a package of pearls which included 5 A Grade pearls for a total price of \$3125. She gave evidence that she had, not long before, made a sale to another person of 5 A Grade pearls for \$7500 and there was no other evidence to suggest that this was not a realistic price. Confirmation of this comes from the son who said he took the 60 pearls from this sale, and also the string of pearls from his third transaction to a Chinese jeweller in Auckland who was prepared to pay \$16,000 for them all. The son's evidence was that, however unwisely, he left those pearls with the jeweller in return for a deposit of \$3000, and the jeweller then decamped and has not been seen since. If this evidence is true then it reasonably establishes that the price of \$10,000 for the 60 pearls was a realistic one.

I accept the plaintiff's evidence that she is entitled to claim that \$10,000 is owing to her by the son.

3. The string of pearls

The son accepts that the studs which he purchased as part of the third transaction were intended as a gift to his fiancée and are correctly charged to him. He denies, however, that he purchased the other item on the invoice, the string of pearls. He said that he had an arrangement with the plaintiff to take these to New Zealand and to endeavor to sell them for her on commission. Before he left, however, this was changed and he was to be charged \$500 for them as they were not very good. This seems most unlikely, but in any event the matter is resolved by the invoice. This shows the two items, with the string of pearls charged at \$5000. That invoice was signed by the son, and the carbon copy remains in the book. It

would need very convincing evidence to overcome the clear impact of this invoice. I do not accept the son's evidence that when he signed the invoice there was no reference to the string of pearls.

One further matter requires determination, namely to which of the defendants should credit be given for the payments which were made. The difficulty arises out of the fact that the plaintiff at first gained the impression that both father and son were acting together in their joint interests. This was apparently not the case, and each is to be treated separately.

The father undoubtedly made the first payment of \$4500 and is entitled to credit for that. The son made each of the payments of \$4000 and \$1500. At one stage he asked the plaintiff to give credit for the payment of \$4000 to the father and the plaintiff has recorded this on one of the invoices. That payment must accordingly be credited to the father. No such request was made in respect of the payment of \$1500 and that must remain a credit to the son.

CONCLUSION

Having regard to the findings made the plaintiff is entitled in judgment against both defendants, and the amounts are calculated in this way:

The father: First purchase	\$ 6885	
Second purchase	<u>\$13875</u>	<u>\$20,760</u>
Less payment	4500	
Less payment credited to father	<u>4000</u>	<u>\$ 8,500</u>
Balance owing		<u>\$12,260</u>
The son: First purchase	\$ 9025	
Second purchase	\$10000	
Third purchase	<u>\$5350</u>	<u>\$24,375</u>
Less payment		<u>\$ 1,500</u>
Balance owing		<u>\$22,875.</u>

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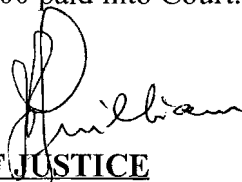
As to the father, the plaintiff has only claimed to recover \$10,760 and may have judgment only for that amount. I was informed that a sum of \$10,000 has been paid into Court pursuant to an earlier order. It is not at all clear what the status of that payment is, and accordingly, it's disposal must await a further order of the Court.

Accordingly, in action 185/96 there will be judgment for the plaintiff for \$10,760 together with costs, disbursements and witnesses' expenses as fixed by the Registrar.

In action 186/96, there will be judgment for the plaintiff for \$22,875 with costs, disbursements and witnesses' expenses as fixed by the Registrar.

It needs to be remembered that the witnesses gave evidence at a single hearing and their expenses should be apportioned between the two actions.

Leave is reserved to apply as to the disposal of the amount of \$10,000 paid into Court.


CHIEF JUSTICE