

IN THE FIJI COURT OF APPEAL
Appellate Jurisdiction
Civil Action No. 33 of 1985.

Between:

MAPLE DISTRIBUTORS

Appellant

- and -

KANTILAL & SONS LTD

Respondent

Mr. H. M. Patel for the Appellant.

Mr. I. Khan for the Respondent.

Date of Hearing : 8th July, 1985

Delivery of Judgment : 20th July, 1985

JUDGMENT OF THE COURT

SPEIGHT, VP

This is an appeal against a decision of the Supreme Court acting in its appellate jurisdiction from the hearing of a civil claim in the Magistrates Court. The amount of money involved is trifling but the point involved, though a brief one, is of importance.

The present appellant issued a summons in the Magistrate's Court at Suva claiming \$162 being the amount due and owing on the sale to the respondent of one rocking horse. It was alleged in the statement of claim that the appellant, which is in business as a wholesaler of

merchandise including toys, had received an order for and supplied the said rocking horse to the respondent which carries on business as a retailer at Nadi. Although a statement of defence was filed, the respondent did not appear on the hearing date, and after formal evidence judgment was given in the amount claimed. The Respondent then obtained an order for rehearing.

In the statement of defence it had denied that it had purchased the goods, and said it had received the same on terms of "sale or return", and that the article had not been sold. Alternatively it was pleaded that if it was held by the Court that there had been a sale, the claim was unenforceable by virtue of section 6 of the Sale of the Goods Act - No. 14 of 1979. That section may conveniently be set out now :

"6. - (1) A sale of goods on credit or an agreement to sell goods on credit in the course of trade shall not be enforceable by action at the suit of the seller unless -

- (a) at the time of the sale or agreement to sell, an invoice or docket, serially numbered, be made in writing in duplicate, both original and duplicate containing -
 - (i) the serial number;
 - (ii) the date of the transaction;
 - (iii) the name of the buyer;
 - (iv) the nature and, except in the case of goods exempted from this provision by order of the Minister, the quantity of the goods, in the English language and in figures; and
 - (v) the price in English words or figures; and
- (b) at the time of delivery of the goods, the original or duplicate of the invoice or docket be

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delivered to the buyer or to some person to whom the goods may properly be delivered on his behalf :

Provided that the provisions of this section shall not apply to an agreement to sell, over a period of time, goods of nature such as are commonly delivered at regular intervals, such as newspapers, bread or milk, or to any sale in pursuance of such agreement, where a written order signed by the buyer or his agent in that behalf is given to the seller at the time of the agreement to sell.

(2) In this section -

"docket" includes a packing note, delivery note or other printed form customarily used for recording the particulars of a sale;

"sale or agreement to sell in the course of trade" means a sale or an agreement to sell to a person by or on behalf of a person who carries on the business of selling goods."

At the original (undefended) hearing the Managing Director of the Appellant Company had deposed that when he had received the order he had made out an invoice. He recited the appropriate invoice number and the date and he apparently showed his carbon copy of the invoice to the Magistrate. He then said that he had forwarded the article to the Respondent at Nadi by "Easy Fast Freights" and had given a delivery docket to the freight contractor; and again he produced what was apparently a carbon copy of his delivery docket to the Court. The horse was delivered and the respondent paid freight in accordance with the alleged arrangement. The customer's copy of the delivery docket was signed on behalf of Respondent. The Magistrate gave judgment saying that he was satisfied that section 6 of the Sale of Goods

Act had been complied with by virtue of the Respondent's signature on the top copy of the delivery note which the carrier had had him sign.

When the matter was re-heard as a defended matter there seems to have been some misunderstanding about the admissibility of the documents which the appellant Company attempted to produce in Court. However the uncertainty has been cleared up in proceedings before Kermode J. and before us.

Mr. H. M. Patel, acting for the appellant in this court produced two separate books of carbon copies of vouchers or dockets. He told us of their contents and Mr. Khan had no objection to this course - that is as it should be.

The first book was of invoices - originals and carbons - and set out in this instance all the particulars required by Section 6. The second book was of delivery dockets originals and carbons and contained a similar description of the goods - but in this instance did not state the price.

The appellant's manager had said that after he had made out the invoice and despatched the horse by the Freight Company, with the delivery docket for signature of receipt, he had posted the original of the invoice to the Customer at Nadi the following day.

At the second hearing the Magistrate reserved his decision, and eventually held in favour of the appellant. He said that he accepted the Managing Director of the company as a truthful witness and he rejected the evidence of the respondent. In other words it was the sale for which payment should have been made, not an arrangement for return if not sold. Turning his attention to the defence which had been pleaded of non-compliance with section 6 of the Sale of Goods Act he held that the transaction was not a sale on credit but a cash sale. There was no stipulation of credit and accordingly no obligation to satisfy the requirement of section 6.

This judgment was appealed to the Supreme Court. Kermode J. recited the above facts as above, and of course accepted the finding made by the learned Magistrate of the truthfulness of the appellant's witness. He then considered the question of compliance with section 6.

In reviewing the Magistrate's decision Kermode J. held that the transaction was a credit sale. In particular he mentioned that no money had been paid at the time of order nor was it a cash on delivery docket. We presume, as he seems to have done, that the invoice would in due course be followed by a monthly statement due for payment in accordance with the ordinary terms of trade. We entirely agree with the learned Judge's finding on this point. It was a credit sale. He then considered the

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question of compliance or otherwise with the requirements imposed on a credit sale. He referred to a decision of Hammett C.J. in Safia Bibi v. Jora Singh and Sons 16 FLR 25 in which it was held that the onus of proof of compliance rests on the supplier and Kermode J. held there was no evidence that section 6 had been complied with.

We agree with the learned appeal judge and for the reasons that he gave. This enactment is passed for the benefit of consumers. We take the purpose of this part of the Act is to ensure that a purchaser to whom credit is extended has put into his hands, at the time of purchase or delivery, a document which unequivocally sets out all the details of the transaction including the price, so that there cannot thereafter be debate as to the amount of his indebtedness. It is a hard case because it has not been questioned that the appellant dealt honestly in this instance and its witness was truthful. The only lapse was that all the required particulars were not given to the purchaser in an invoice or docket at the time the goods were received by him. It is true that the delivery docket contained some of those particulars but not all of them. If, as well as the material on it, the price had also been included, then there would have been compliance, but it is not any part of the court's function to allow any deviation from such clearly expressed requirements.

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In deference however to the submission put forward by Mr. Patel we wish to add the following. He cited an earlier decision of this Court - Bhindi v. Bhindi & Anor. FCA 11/1982. He submits that that case is authority for the proposition that "prima facie evidence can be given of compliance and that the very documents need not necessarily be produced." He based his submission upon a passage in the Judgment which reads as follows:

"It was contended that there was no evidence of invoices or dockets complying with section 6. It is necessary to observe, however, the course which the proceedings took. In his evidence the plaintiff said he had given invoices to the defendants from time to time. He referred to one particular sale of 427 sarees on the 18th September, 1977, at cost, namely \$3,416. No invoice was produced at that stage. The second defendant, however, having given evidence that no invoices had been received, was confronted by copies of invoices showing a sale of 427 sarees at \$3,416 and he then conceded that this sale had taken place, but he claimed the sarees had been paid for. When the argument in respect of section 6 of the Sale of Goods Act was advanced in the course of counsel's submissions the learned Judge observed that the point had not been pleaded. It is not necessary to plead the law, but it would seem there ought to have been a pleading as to the fact that no invoice or docket had been delivered.

However that may be, it seems clear that there was produced to the learned Judge, even if not put in evidence an invoice or invoices which appear to have contained the details required by section 6.

We have derived some assistance from two previous decisions. They are Safia Bibi v. Jora Singh & Sons 16 F.L.R. 27, a decision of the Supreme Court and Gyan Prakash v. Abdul Hakim F.C.A. 67/74, a decision of this Court, from which it will be seen that prima facie proof from the plaintiff, against which nothing else is tendered will suffice. A fortiori where the defendant in the face of a tendered invoice concedes delivery.

In the light of this situation we observe that the ground of appeal does not expressly refer to the argument which has been offered. This argument was raised under ground 1 of the Notice of Appeal which was that "the learned trial Judge erred in law and in fact in deciding the case in favour of the respondent when this was against the weight of the evidence adduced." We think it is now too late to try and introduce into that ground an argument which is unrelated to the question of the weight of evidence.

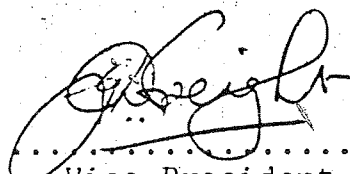
We should perhaps add that the purpose of the legislation is to ensure that litigation over the sale of goods on credit cannot succeed without contemporaneous documentary evidence. It is apparent that prima facie evidence was before the court, and the second defendant conceded the point."

Upon this extract Mr. Patel based his submission that "prima facie evidence" will suffice and he sought to apply that phrase to the circumstances of the present case to support his contention that something less than strict proof of the ingredients is required. We think that there is confusion between compliance, and proof of compliance. Quilliam J.A. in Bhindi's case was talking about the later-modes of proof.

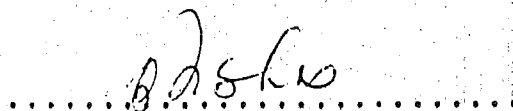
In Sale of Goods cases the best proof would be obtained by an order to produce the original document served on the defendant. If that course is followed then the purchaser's copy will be proof provided the court is satisfied of its authenticity. However there are other forms of proof. One may note Australian authority Durston v. Mercuri (1969) V.R. 507 where it was held that a carbon copy of a handwritten original in the

original writing provided it contains all the particulars which had been on the top copy, including the signature, is in fact primary evidence. Conversely in R. v. Collins (1960) 44 Cr. App. Rep. 170 a carbon copy of a letter not bearing a signature to match that which would have been on the original was not admitted; but it would seem that had evidence been given that it was a carbon copy of a true signed original, it would have been admissible under the secondary evidence Rules. What is required is satisfactory proof that at the time of acceptance of the goods the purchaser received a document which in all respects specified the particulars in section 6. This may well be proved in a variety of forms, the acceptance of which is dependent upon the assessment of the tribunal as to its accuracy in demonstrating the contents of the document. But that is not the issue here. The invoice which was the only complying document did not arrive at the time of delivery, and hence the requirements of Section 6 were not met.

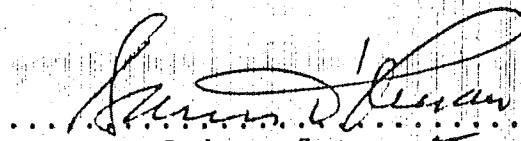
The appeal is dismissed with costs to be taxed if not agreed.



 Vice-President



 Judge of Appeal



 Judge of Appeal