

IN THE MAGISTRATE'S COURT OF FIJI
CIVIL JURISDICTION
WESTERN DIVISION AT LAUTOKA

Civil Action No. 129 of 2015

BETWEEN : **Alvin Raj** trading as **Choice Resources** (Fiji) of Lautoka, Businessman. **Plaintiff**
AND : **Alvina Vikash Raj** of Tavakubu, Lautoka, Clerk. **1st Defendant**
AND : **Praneel Chand** of Harry Ah Tong Place, Lautoka, School Teacher. **2nd Defendant**

Before : Resident Magistrate
Jeremaia N. Lewaravu

Date of Hearing: 14th August, 2017

Date of Judgement: 11th December, 2018

Counsel

Fazilat Shah Legal for the Plaintiff
The 2nd Defendant in person

Judgement

Introduction

1. The parties had entered into a Sale and Purchase Agreement over certain musical items in the sum of \$8,000.00 [Eight Thousand Dollars]. The Defendants, particularly the 1st Defendant had paid a deposit of \$3,500.00 [Three Thousand, Five hundred]. The parties agree that the balance sum of \$4,500.00 [Four Thousand Five Hundred Dollars] was to be paid within 6 months, failing which the musical items would be return to the Plaintiff.
2. The agreement was orally made between the parties. The 6 months period of repayment has lapsed without the balance sum being paid. The 1st Defendant has returned all musical items in his possession. The 2nd Defendant is refusing to return the Yamaha 16 Channel Powered Mixer in his possession. The Plaintiff seeks the recovery of the same.

The Law

3. Section 3 of the Sale of Goods Act provides that: '***a contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a money consideration called the price***' and further... '(3) ***Where, under a contract of***

sale, the property in the goods is transferred from the seller to the buyer, the contract is called a sale. Similarly, section 5 of the same Act stipulates that a contract of sale may be made in writing or by word of mouth.

Determination

4. In the case of **Chand v Kumar**[2011] FJCA 54, the Court held that:

"it is necessary to show that the parties have arrived at a complete and unconditional agreement".

5. In that case, the Court also cited with approval the decision in **Parker v Barnett** (1889) 16 VLR 214 that:

"the memorandum of contract must sufficiently identify the parties to the contract, the subject matter and the terms of the contract, including both the promised and the consideration..."

6. The Court in **Chand v Kumar**(supra) also cited with approval the decision by the House of Lords in **Gibson v Manchester City Council** [1979]All ER 972 that:

"to be a good contract, there must be a concluded bargain. And a concluded contract is one which settles everything"

7. In the matter herein, it is clear that the parties entered into a sale and purchase agreement over certain musical items. The agreement between the parties was an oral agreement. The identities of the parties are clear, the parties had identified the items, agreed to the following: (a) price, (b) the repayment plan and (c) discharge of agreement. I find that the agreement between the parties is a concluded contract.

8. It is also plain from the facts of the case, that the Defendants, particularly, the 1st Defendant had paid a deposit of \$3,500.00. It seems that the payment of \$3,500 is a partial performance of the sale and purchase agreement.

9. The 1st Defendant has returned some of the musical items that were with him after the Defendants failed to repay the Plaintiff as agreed within 6 months. However, the 2nd Defendant is refusing to return the mixer that is in his possession. The 2nd Defendant in his written submission now claims that there was no agreement between the parties and that there should have been a written agreement. The 2nd Defendant is also claiming fraud on the part of the Plaintiff.

10. The law is clear. In **Sharma v Akhil Projects Ltd [2010]** FJCA 8, the Court of Appeal stated:

' The onus of proving rests with the party alleging it '.

11. I have considered all the evidence presented and find that the 2nd Defendant has failed to prove his allegation of fraud on the part of the Plaintiff. The terms and conditions of the agreement are clear. If the Defendants failed to pay the full sum after 6 months, the items were to be returned. The 1st Defendant has honoured his obligation under the agreement. I surmise that the 2nd Defendant is only raising the issues regarding the receipts herein as an attempt to renege on an agreement that he had with the other parties herein.

12. In light of the foregoing, I find that the 2nd Defendant has failed to fulfil the obligations under the Agreement. The Plaintiff is therefore entitled to recover the said item as agreed.

13. The full orders of this Court are as follows:

a. The Writ of Summons filed by the Plaintiff is hereby upheld.

b. The 2nd Defendant is hereby ordered to return the Yamaha 16 Channel Power Mixer to the Plaintiff within 21 days in good working condition.

c. Appeal within 28 days.



Ordered Accordingly,

JEREMAIA N. LEWARAVU

RESIDENT MAGISTRATE

11th of December, 2018.