

Appellate Jurisdiction  
Civil Appeal No. 6 of 1978

BETWEEN:

STINSON PEARCE CO. LTD.

Appellant

-and-

MOHAMMED KHAN & ORS.

Respondents

Mr. B.C. Patel, Counsel for the Appellant  
Mr. M.T. Khan, Counsel for the Respondents

JUDGMENT

The appellant Stinson Pearce Ltd. appeals against a default judgment entered against him in the magistrate's court because of a failure to file a defence.

Stinson Pearce Ltd. were sued jointly with Dennis Frederickson (N.Z.) Ltd. by the Ba Meats Co. on a contract relating to the sale and supply of meat from New Zealand which proved to be unfit for consumption on arrival in Fiji. According to the Statement of Claim Stinson Pearce Ltd. acted throughout as the agents of Dennis Frederickson (N.Z.) Ltd.

Para 3 of the statement of claim alleges that Frederickson Ltd. conducts its Fiji business through Stinson Pearce Ltd. and para 4 states that in June 1976 the plaintiff ordered \$1984.62 of meat from Frederickson through Stinson Pearce Ltd.

Paras 5 & 6 allege that the meat arrived at Lautoka wharf and was examined in the presence of Stinson Pearce Ltd's officer and the latter admitted the meat was unfit and the plaintiffs refused to take delivery.

The plaintiff alleges in para 7 that Stinson Pearce Ltd. persuaded the plaintiffs to pay for the meat on the promise that Stinson Pearce Ltd. would arrange for

Frederickson Ltd. to claim from the insurance and refund the money. To date the money has not been refunded and the plaintiff claims it from the principal Frederickson (U.S.) Ltd. and the agent Stinson Pearce Ltd.

There is also a claim for interest at 10% but there is nothing to show that any interest was to be paid by the contracting parties in the event of a breach <sup>of contract</sup> and therefore that portion of the claim could not stand. ~~there was no reason why the plaintiff should not claim any~~ Of course/damage arising from the breach. It was incorrectly allowed in the judgment.

The writ was issued on 29th August 1977 and an appearance was entered by Messrs. Stuart, Reddy & Co., solicitors, for both defendants on 7/10/77.

On 12/10/77 the action was first mentioned in the court when the defendants through their solicitors were ordered to file a defence within 21 days.

On 23/11/77 Stuart, Reddy & Co., informed the magistrate that they had erroneously entered a defence for Frederickson when they had had no instructions and withdraw the appearance. The learned magistrate observed that Frederickson Ltd. would have to be served out of the jurisdiction. There was also an application by Stinson Pearce Ltd. for further time in which to file a defence and time was extended to 15/12/77.

On 12/1/78 Stinson Pearce Ltd. had filed no defence and judgment was given for the plaintiff as against Stinson Pearce Ltd.

It is against this judgment which Stinson Pearce Ltd. now appeals. There are two grounds of appeal, the second of which complains that the judgment is wrong in law that Stinson Pearce Ltd. was simply the agent for a disclosed principal.

At the hearing of the appeal Mr. B.C. Patel submitted that in the circumstances the plaintiff could only sue the disclosed principal and that it was incorrect to join the agent who was not and could not be made liable. Therefore judgment could not and should not have been entered against the agent, Stinson Pearce Ltd.

It is obvious from the statement of claim that there were only two parties to the contract namely the plaintiff and Frederickson Ltd. Although the contract was made through the agent, i.e. Stinson Pearce Ltd., the latter is not, in my view liable upon it. Thus if the meat was not delivered the plaintiff would have had to sue Frederickson Ltd. and not Stinson Pearce Ltd. for any damage the plaintiff may have suffered. On the face of it the plaintiff was not justified in suing the agent of the disclosed principal, unless of course he can introduce some specific kind of arrangement revealing that the agent assumed some obligation or responsibility in return for the plaintiff paying for the bad meat.

The contract was one for the supply of good meat and the plaintiff was not liable to pay the bad meat which was delivered. Mr. N.T. Khan argued that the plaintiff was induced by the agent's representations to pay for the bad meat. He says that the payment did not arise from an ordinary contract between a third party and an agent and that it was only because of the agent's undertaking that the plaintiff paid. It may seem strange that the plaintiff should pay for bad meat but para 7 of the statement of claim reveals that it was to enable the meat to be cleared from the customs area. There could be other reasons e.g. the risk may have passed to the plaintiff under the contract, although the statement of claim makes no reference to whether this was an f.o.b. or c.i.f. contract. It is as well to set out para 7 of the statement of claim which reads as follows:

"7. That the second named defendant (Stinson Pearce Ltd.) persuaded the plaintiffs to pay for the said meat

and have the same cleared from the customs at Lautoka, upon the/express undertaking that since the goods in question were insured, the second defendant will make arrangements with the first defendant (Frederickson) and the insurance company for the payment of the value of the goods."

There was not, in my view, any special obligation assumed by the agent outside the limit of his authority. He was simply stating that if the plaintiff paid he would persuade the principal to refund the money to the plaintiff. The so called undertaking amounted to no more than that the agent would ask the principal to arrange for the plaintiff to be paid from the proceeds of some insurance policy. The statement of claim does not allege that the plaintiff had any right to reject the goods and that he relinquished that right as a result of any guarantee from Stinson Pearce Ltd, that he would in fact be re-imbursed.

There is no suggestion that the agent said that if his principal did not refund the money then the agent would do so.

I cannot accede to Mr. M.T. Khan's submission that there was something in the arrangement which went beyond the ordinary contract between/third party and a fully disclosed principal.

To say the least the action against the agent was premature. If when he is served the principal raises matters in his defence which reject liability on the ground that the agent acted beyond the scope of his ostensible authority then the plaintiff may consider joining the agent. However, if the principal has accepted the \$1904.62 paid to his agent it would seem to be unlikely that he would also reject the agent's authority.

The appeal is allowed. The judgment in the magistrate's court is set aside. The respondent will pay the appellant's costs.

LAUTOKA,  
14th July, 1978.

(sgd.) J.T. Williams,  
JUDGE