

IN THE SUPREME COURT OF FIJI

Civil Jurisdiction

Action No. 119 of 1982

Between:

J. SANTA RAM STORES LIMITED

Plaintiff

and

PARMANAND (f/n Latchman)

Defendant

Mr Ashik Ali for the Plaintiff  
Mr A.C. Kohli for the Defendant

JUDGMENT

The plaintiff's claim against the defendant is for the sum of \$5,259.66 being the amount alleged to be due and owing by the defendant to the plaintiff for goods sold and delivered to the defendant on the 16th and 18th days of July, 1981.

The defendant denies that he purchased the goods alleged to have been sold and delivered to him by the plaintiff or that there was any contract of sale in respect of the said goods.

As an alternative defence, if it is held that there was a contract of sale, he pleads that the defendant did not comply with section 6 of the Sale of Goods Act and the alleged contract is therefore not enforceable against him.

There are three issues to consider. Firstly, did the defendant order the said goods and secondly, if so, did the plaintiff sell and deliver the goods to him? If the answer to either of the first two issues is in the negative there is no need to consider the third and that is whether the plaintiff complied with section 6 of the Sale of Goods Act.

There were only two witnesses as regards the first issue. They were Santa Ram, the managing director of the plaintiff company, and the defendant himself.

Santa Ram said in evidence that the defendant, whom he had known for 25 years, placed an order with him for goods in 1981 which he recorded in what appears to have been an order book out of which he tore the pages recording the order and gave them to his clerk to make up the order. He did not apparently have the defendant sign the order which would probably have saved him the trouble and expense of this action. He said that the defendant had come not only to the plaintiff's store but also to his house.

The evidence that the defendant came to Santa Ram's store and house in 1981 was not challenged in cross-examination by Mr Kohli who based his cross-examination on the facts surrounding the alleged order and sale in an effort to establish the defendant's alternative defence - non compliance with section 6 of the Sale of Goods Act, to which I will be referring later in my judgment.

When being cross-examined about the demand for payment Santa Ram stated he had gone to the defendant's store to ask for the money. He stated that the defendant did not tell him that he, the defendant, had not received the goods.

On re-examination Santa Ram stated that when he asked the defendant for payment he, the defendant, asked for time and stated that he was going to Suva in a week's time and he would pay at least half (the debt).

The defendant's story is a denial that he ordered the goods. He stated he had never been to Santa Ram's store. He could not recall having drinks at Santa Ram's house.

I was not at all impressed with the defendant and of the two I much prefer Santa Ram whose evidence I do accept. Quite apart from the unfavourable impression created by the defendant in the witness box, the defence he originally delivered lends support to Santa Ram's story.

The defence which the defendant endeavoured to establish in Court as regards the first two issues was first raised by him in an amended defence delivered more than two years after his original defence.

In his original defence he did not deny ordering the goods or claim that they were not delivered or were short delivered. He denied the plaintiff's allegation that he had given him full particulars of the goods alleged to have been sold to him. He did not allege that he had received no invoices, an allegation he made two years later, but he did indicate that he would "take objection in point of law under the Sale of Goods Act."

Three months after delivery of his original defence the defendant's solicitors took out a summons seeking an order that the plaintiff do forward copies of all invoices, delivery notes and statements of accounts in respect of the goods alleged to have been sold to him.

That summons is hardly consistent with a claim that the defendant never ordered any goods from the plaintiff but it would be consistent with a search for evidence to establish that section 6 of the Sale of Goods Act had not been followed.

On the first issue I accept Santa Ram's story that the defendant did order the goods.

As regards the second issue as to whether the goods were sold and delivered to the defendant, I am satisfied and find as a fact that they were sold and delivered to the defendant on or about the 15th or 16th of July, 1981.

There is the evidence of Pravind Prasad, a clerk employed by the plaintiff, who made out the invoices and the shipping documents and who delivered the goods to Patterson Brothers Limited's Agents in Vatuwaqa.

The Bills of Lading showing that the defendant was the consignee of the goods were produced.

Mr J Patterson of Patterson Bros. Ltd., produced from his company's records the original Bills of Lading and freight list which confirms that goods consigned to the defendant were shipped to Nabouwalu on board the Yatulau owned by Patterson Bros. Ltd.

Although goods were signed for on delivery it was not established that the defendant signed the copies of the Bills of Lading. It is not known who did in fact sign for the goods.

The defendant's failure to complain about non or short delivery when Santa Ram asked him for payment and asking time to pay the debt satisfies me that he did receive the goods.

There remains the third issue.

Section 6 of the Sale of Goods Act 1979 provides as follows:-

"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 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."

The marginal note to section 6 is misleading and appears to be an error. It states:

"Sale and agreement to sell goods on credit in course or retail trade (emphasis added) to be accompanied by invoice."

This is the same marginal note as appears in Cap. 206 of the 1967 Revised Edition of the Laws of Fiji. In that Act the corresponding section 7 referred only to retail sales. Sales to a person for resale e.g. to a retailer were excluded.

Section 6 of the present Act covers any sale on credit in the course of trade whether the purchaser is a retailer or otherwise.

Why a measure originally designed to protect cane farmers who can not exist without credit facilities should in the 1979 Act be extended to protect any purchaser at all buying on credit from a trader, even a fellow merchant, is not known but that is the present situation.

The defendant requested that the goods be delivered to Patterson Brothers Ltd for shipment to Nabouwalu. Delivery instructions were followed.

Pravind Prasad made out invoices which comply with section 6(i)(a). He stated, and I accept, that a copy of each invoice was attached to the Bills of Lading. Those copies were not with the shipping papers which Mr Patterson produced and probability is that they were delivered to the defendant or someone on his behalf when the goods were delivered to his store or wherever delivery took place. The pink receipted copies of the Bills of Lading show checking marks by means of red circles around each of the articles in the Bills of Lading which Mr Patterson said would have been made each time a package was checked off prior to delivery.

Mr Kohli has endeavoured to make capital out of the fact that the Bills of Lading are all dated 15.7.81 and the invoices 16.7.81. He argues that the invoices on the face of them were prepared the day after the goods were delivered to Patterson Bros. Ltd., and that, he said, was not in compliance with section 6 of the Act.

Since the evidence which I accept discloses that copies of the invoices accompanied the Bills of Lading, if the dates are correct, the Bills of Lading must have been prepared the day before the invoices.

Pravind Prasad stated that he delivered the goods to Vatuwaga Transport on 15/7/81 and that invoices were made before he delivered the goods. The date, 15/7/81 he got from looking at the Bills of Lading. When he was then shown the invoices he stated "from dates of invoices I never have delivered goods before delivery to transport operator." That is what is recorded and does not make much sense. What he may have been saying was that he could not have delivered the goods at the time when he earlier stated he had i.e. the day previously to the date of the invoices.

Mr Patterson could not remember if his Company received the invoices with the Bills of Lading. If it was not the practice to annexe invoices to Bills of Lading in respect of goods transported to Labasa Mr Patterson would no doubt have so stated and expressed doubts whether they had accompanied the shipping documents.

I find as a fact that the plaintiff did comply with section 6 of the Act and it is entitled to judgment.

The amount now claimed by the plaintiff is the sum of \$5,061.16 and \$198.50 for interest totalling \$5,259.66.

The plaintiff did not establish that the defendant agreed to pay interest on the overdue account. The fact that the invoices state that 10% interest will be charged

on overdue accounts does not make the defendant liable.  
Payment of interest was not in this case one of the  
conditions of sale on credit.

There will be judgment for the plaintiff for  
the sum of \$5,061.16 and costs.

*R.G. Kermod*  
R.G. Kermod  
J U D G E

SUVA,

21<sup>ST</sup> June, 1985.