

A

MORRIS HEDSTROM LIMITED

v.

KAPILDEO AND OTHERS

B

[SUPREME COURT, 1974 (Williams J.), 1st May]

Civil Jurisdiction

Contract—sale of goods to Farmers' Club—whether officers of that Club liable in a personal capacity for payment.

C *Sale of goods—delivery of goods to Farmers' Club—whether officers of that Club liable in a personal capacity for payment.*

It was clear from past transactions that the plaintiff company knew that it was dealing with an organisation under the name of the Tavua Farmers' Club. There had never been any suggestion that the plaintiff company should look to the defendants, who were officers of the Club, for payment for goods ordered by, and supplied to the Club itself.

D

Per curiam: A club cannot speak, write or negotiate in any way; this must be done by some persons purporting to represent the club and who have been authorised so to do. It also behoved such persons to make it quite clear that they were acting for the club and not accepting liability for the club.

Action in the Supreme Court for the price of goods sold and delivered.

E

B. Patel for the plaintiff company.

1st defendant in person.

G. P. Shankar for 2nd and 3rd defendants.

WILLIAMS J. : [1st May 1974]

The defendants 1, 2 and 3 are sued for the price of goods sold and delivered by Morris Hedstrom Ltd. in September 1971 and October 1971.

F

The plaintiff says in his Statement of Claim that the goods were delivered to defendant No. 1 for and on behalf of Tavua Farmers' Club at the request of the defendants 2 and 3.

G

The plaintiff's witnesses produced Ex. 1 a Customer's Credit card, which is in the name of Tavua Farmers' Club showing the indebtedness of the club to Morris Hedstrom Ltd. Nowhere does Ex. 1 suggest that it is a partnership or firm called "Tavua Farmers' Club" operated by partners (defendants 2 and 3). If defendants 2 and 3 are regarded by the plaintiff as the persons liable, why was the credit card Ex. 1 not in their names?

The written orders for goods from the club appear on printed forms headed "Farmers Club" and are signed by defendant No. 1. They are Exhibits P. 3 and P. 6.

H

Other written orders collected by salesmen are headed "Farmers Club Tavua". Exhibits P. 5 and P. 8.

The invoices made out by the plaintiffs are directed to Farmers Club Tavua, and not to defendants 2 and 3. If the goods were supplied at the request of Defendants 2 and 3 one would expect them to be invoiced for the goods.

The cheques paying those accounts are drawn on "The Farmers Club Tavua", and although they bear signatures of the defendants 2 and 3 during the latter months of 1970 and early 1971, the signatures of defendants 2 and 3 cease to appear on the club's cheques on and from 31/3/71. It would appear that the plaintiffs were not relying on the credit of defendants 2 and 3.

Ex. D.2 is a bank account in the name of Tavua Farmers' Club.

Thus there can be no doubt that the plaintiffs were dealing with an organisation which called itself Tavua Farmers' Club, and were fully aware of it.

The balance owing for goods supplied to the club in September and October 1971 amounts to \$5017.96, and the plaintiffs are not now looking to the club for payment. They have sued defendant No. 1 the present Secretary who ordered the goods in question jointly with defendants 2 and 3.

The plaintiff argues that their business arrangement in the first place was made with defendants 2 and 3, that it arose on the basis of a written contract Ex. P.2, and that the contract has not been altered or terminated.

The document Ex. P.2 is a standard printed form belonging to the plaintiffs and it shows their name in large print at the top. It is a potential customer's request to open a wholesale account. It contains a number of requests in print, purporting to be made by an applicant wishing to deal on a credit wholesale basis with the plaintiff. The requests by their wording assume that the applicant is an individual, a firm such as a partnership, or a limited company. It makes no provision for an organisation such as a club which does not have a separate entity for the purposes of trade etc. and which must operate through such of its members as it authorises. The *name of the applicant* is significantly Club Tavua"; then very significantly appears the information that the *trade name* is "Farmers' Club Tavua". From that it would seem that it is the Farmers Club which is making the application and it says "our business is that of a club".

It is signed at the foot by the 1st defendant (Chairman) and 2nd defendant (Secretary). The plaintiff says this is clearly a request by 1st defendant and the 2nd defendant for goods to be supplied to an organisation run by them under the name of The Farmers' Club.

A club cannot speak, write or negotiate in any way; this must be done by some person(s) purporting to represent the club and who have been authorised so to do.

It behoves persons who purport to represent a club in such matters to make it quite clear that they are acting for the club and not accepting liability for the club.

I cannot see having regard to the course of dealing between the parties, that the plaintiffs ever thought that defendants 2 and 3 had entered into business as a club, or were asking the plaintiffs to supply a club with goods on the basis that the plaintiffs should look to defendants 2 and 3 for payment.

I see no justification for adding defendant No. 1. He ordered goods and signed for them but he clearly did so as the agent of the club.

The plaintiff's claim is dismissed as against all defendants with costs which I fix at \$14.00 for defendant No. 1, and order to be taxed in respect of the costs of defendants 2 and 3.

Plaintiff's claim dismissed.