

ISLAND ENTERPRISES LTD -v- NAITORA (Trading as Ohio Community)

High Court of Solomon Islands

(Ward C.J.)

Civil Case 24 of 1990

Hearing: 3 and 5 October 1990

Judgment: 12 October 1990

J. Corrin for the Plaintiff

A. Nori for the Defendant

WARD CJ: The plaintiff claims \$6,259.25 for a solar lighting unit supplied to the defendant in 1988. The defendant denies ordering it or receiving it and further denies that he has any authority to act for the Ohio Community nor did he so act.

It is agreed by both sides that lighting equipment was delivered to Ohio village and installed in time for a conference of Are Are chiefs. Shortly after there was a fault and the plaintiff company sent a man who rectified it.

The question for the court is how it come to be sent and what arrangements were made.

The first witness for the Plaintiff, Philip Bradford is the managing director of the plaintiff and he explained how this happened. His case is simply that the defendant and an expatriate, Larry Sole, came to see him and asked him first to supply the equipment as a demonstration and, when he declined, ordered it. Because it was to be installed in a community centre, however, he did offer to bear the costs of transport and installation. He said that Naitora agreed to pay.

After a number of requests for payment had failed to produce any result, he went to see the defendant in his office. At that meeting the defendant asked him to "reschedule" the debt and then became heated and the meeting finished.

The defendant said that he was introduced to Bradford at a Rotary Club meeting because he was interested in solar lighting. Some months later he went with Sole to Bradford's office. He was organising the chiefs' conference and felt the plaintiffs may have been interested in demonstrating the equipment. He did not represent the Ohio Community and certainly did not order the equipment and neither did he say he would pay. It is clear the meeting in Bradford's office is vital in deciding the case.

Mr Bradford was a forthright witness. In evidence in chief he stated that, in October 1988, Sole and Naitora came to see him and wanted the equipment for the Ohio Community. He said negotiations had gone on a long time and he had first spoken to Sole and Naitora in about March. He also said that his sales supervisor, Alefurai, would have been involved in the negotiations and went on "whether he sat in on every meeting I don't know but he sat in on some of the meetings." He also said that after the equipment had been installed an invoice was raised. The copy of that invoice was produced as Ex.1. I shall return to it later.

In cross examination, that account was varied. He said the initial approach was by Sole. He referred to the fact that he spoke to Sole more than Naitora but said they both approached him a number of times about the village literacy scheme. He also had the impression Sole was representing the Ohio Community.

As he was questioned further he said that, at the first meeting in his office about this, he believed Naitora was present but that Sole had been in his office before that without Naitora. He had met Naitora before but could not recall if he had spoken to Naitora about it before the

meeting. He then again said Naitora had been involved in the discussion about it prior to the meeting but, when asked where that was, replied that, at the informal meeting, Naitora's name was mentioned only.

Although he referred to the meeting in his office as the first meeting, he then, agreed it was the only meeting at which Naitora was present and he said that Sole did most of the talking at that meeting.

When it was suggested the equipment was already packed for transit by the time of that meeting, he said it would not have been packed until they had been told to go ahead but then said he could not say whether it was packed by that time.

There was confusion about the date of that meeting. Bradford thought he had a note in his diary but found he did not. Having then stated a reference to the barge leaving in September was the time the equipment was delivered he agreed it was too early but was unable clearly to state when the barge left.

He always told the court that Naitora agreed he would pay. He said:

"Both Naitora and Sole discussed it. Naitora, in the end, agreed to pay.

They came in and we discussed a demonstration.

I said I could not afford to send it unless it was paid. Naitora said he would guarantee payment".

I felt the evidence generally of how this agreement was reached was unsatisfactory and the invoice does not help clarify it.

It is written as a pro forma invoice. Bradford explained that was written to give, as it were, a quotation. I would expect such an invoice to be given to the prospective

purchaser before the deal yet it was sent after the equipment was installed. That gives some support to the suggestion by Naitora that the installation was a demonstration and had not been purchased. It is addressed to the "Ohio Community, John Naitora, National Archives". It is also right to say that, when the equipment failed, it was Naitora who told Bradford and also who queried the price later. Those matters suggest that Naitora was involved but his case is that he was a convenient contact between the Community and Bradford as he had been visiting both the village and Honiara.

I accept on balance that could be true.

Finally there is the matter of credit. Bradford stated he did not often give credit when equipment was going to outlying villages. In this case, he only made an exception because of Naitora's assurance of payment. I feel that evidence could be read either way. It could explain the exception being made this time and it could equally be argued that without any written evidence of Naitora's commitment and the despatch of the pro forma invoice it supports the suggestion of a demonstration unit.

Alefurai's evidence also did not support Bradford in the way it was suggested it would. He said that Sole was the first person to discuss the lighting for the conference. Later they both came and thereafter Naitora came alone.

At the meeting where both were present, he was also present and he said -

"At the meeting there was a discussion as to who should pay and it was agreed Ohio would. Naitora was the one who was invoiced."

He said that Naitora was the one who organised it and that was why he was to be invoiced and he told the court Naitora said he would pay.

In cross examination he again said it was Sole who first discussed it and talked of the lighting for a conference and also a demonstration. As a result, when he went to install it, he had a lot of leaflets to distribute should anyone be interested. He was asked if the question of the equipment being a demonstration was raised at the meeting with Naitora and he was not sure. He recalled it had been raised at the meeting with Sole but then felt it might have been raised at the later meeting also.

He later said

"The demonstration was to show people how it worked and if they wanted it they could order it.

We gave a copy of the home lighting kit at the meeting

If the villagers wanted to buy that is the sort of price they would be looking for."

Regarding the invoice, he said at first he wrote it at the meeting with Naitora and Sole and then said he wrote it after they left. He then said he could not remember if it was written at the meeting or posted but finally said he remembered it was posted. He also said it was given at the meeting and another was later posted but no second invoice was produced.

He said that in 1988 they did not send equipment to villages on credit. It was put to him that was why they sent it on credit because it was for demonstration and he replied "It was for demonstration and later they would pay for it". In re-examination he was asked 'Was the equipment supplied free of charge?' and answered 'yes'.

"Was anyone going to pay for it?"

"The Ohio Centre"

He said:

"It was sent without payment but someone was going to pay for it. At the meeting it was agreed payment would be made. It was agreed Ohio would pay through John."

He was asked "What do you mean by demonstration?" and replied "To show the villagers it works. It was also to show villages outside it worked. We hoped to get further orders."

I accept that much of the evidence is ambiguous. However, it is on the plaintiff to prove the agreement. I cannot be satisfied on balance that an agreement as pleaded was made with the defendant, I am not satisfied he was the person who negotiated the supply or that he agreed to pay or that he held himself out to represent the Ohio community. I appreciate the attitude he took to payment when asked later generally supports the plaintiff's case but I feel they could also be the reaction of person who is simply being approached to try and persuade others to pay because he is the nearest contact. Thus I do not feel it is proved to the required standard.

I give judgment for the defendant with costs.

*F.G.R. Ward*

(F.G.R. WARD)  
CHIEF JUSTICE