

BETWEEN : SIUA FONUA - Appellant;

AND : KEVIN LI - Respondent.

BEFORE HON JUSTICE FINNIGAN

Counsel appearing: Mr Tu'utafaiva for Appellant,
Mrs Vaihu for Respondent.

Date of Hearing: 20 May 1999

Date of Judgment: 1 June 1999.

JUDGMENT OF FINNIGAN, J

On 30 October 1998 at a hearing in the Magistrates' Court (No 58/98), the respondent ("Li") claimed \$800 from the appellant ("Fonua"). In a separate hearing on the same day (No 86/98) Fonua claimed \$996.29 from Li. Fonua accepted Li's claim and judgement was entered for Li by the Magistrate, with costs. Li disputed Fonua's claim and Fonua gave evidence. The Magistrate rejected Fonua's claim and gave judgment for Li in that claim also, without costs. Fonua has appealed.

He stated the facts of his claim in the Magistrates' Court. He sought 2 sums, \$500 said to be due under an agreement dated 16 December 1997 [Exh A] and not paid, plus \$496.29 said to be an over-allowance by him to Li while calculating the figures for the agreement. Both sums are part of a short series of calculations to total \$10,000.

Under the agreement the \$500 was to have been paid immediately by Li to Fonua's lawyer for Fonua's fees. He said in the Magistrates' Court that he asked Li to pay it to the power board for reconnection of his power, and he said Li agreed but did not pay it. A copy of a receipt by Fonua's lawyer was produced to him but he made no comment on it, except to say his lawyer hasn't been paid. It was dated the date of the agreement and recorded a \$500 payment by Li to Fonua's lawyer for legal fees [Exh C]

The \$496.29 claim arises this way. In the agreement Fonua allowed credit to Li of \$2670 because, he said in evidence, Li told him that was what he owed Li from another

transaction. The said he did not check the amount or read the agreement. He said he later discovered Li had told him the wrong amount, he owed only \$2173.71. He sought judgment for the difference.

In both courts he relies on s 79 of the Evidence Act cap 15 for authority to introduce parol evidence to vary the written agreement. It is his case that there was more to it than the written agreement. To rely on s 79 he was required and attempted to establish in the lower court that he had been the victim of fraud, mistake and/or misrepresentation in signing the written agreement.

In submissions, Mr Tu'utafaiva made admirably clear what otherwise might have been difficult to follow. Taking in reverse order the 4 grounds of the appeal, he submitted that Fonua's failure to read the agreement and/or check what he owed is not fatal to his case, but rather shows that he acted in good faith. He submitted that the learned Magistrate was wrong to base his decision on the written agreement only, and had wrongly failed to make the necessary findings of fact for the introduction of the evidence of other oral agreement, i.e. the facts tending to show fraud misrepresentation and/or mistake by Li.

DECISION

The evidence regrettably does not measure up to Mr Tu'utafaiva's fine submissions. After perusal of the transcript I am satisfied that there was no substantial evidence before the Magistrate sufficient for a finding of fraud misrepresentation and/or mistake by Li. Fonua signed an agreement in certain clear terms and wishes a chance to recover a sum of \$496.29, which he now says he foolishly over-allowed. The law is that a bargain once made will normally stand unless the parties themselves subsequently abrogate or vary it. The bargain in Exh A is clear, detailed and final. As for the \$500, Exh C shows prima facie that Li paid it immediately to Fonua's lawyer for Fonua's fees as required by the contract. The facts about payment of Fonua's power board account are no part of the transaction in Exh A. Fonua wove a web too tangled, and the Magistrate got to the heart of it. His decision appears to me to be correct in fact and in law.

The appeal is dismissed, with costs to the respondent, to be agreed or taxed.

NUKU'ALOFA, 1 June, 1999



D. M. J.
JUDGE