AUSTRALIA AND NEW ZEALAND BANK GROUP LIMITED v
ALE (ULUGIA)

Supreme Court Apia
Ryan CJ
December 1991

CONTRACT - Unjust enrichment - bona fide mistake.

HELD: Defendant had been enriched by the receipt of a benefit of $16,010 more than he should have been, he had been enriched at the Banks expense and it would be most unjust to allow him to retain the benefit.

CASES CITED:

- Kelly v Solari (1841) 9M & W 54, 58
- Fibrosa Spolka Akcyjna v Fairburn Lawson Combe Barbour Ltd [1943] A.C. 32, 61.
- Sinclair v Brougham [1914] A.C. 398
- Holt v Markam [1923] 1K.B. 504

R Drake for Plaintiff
T K Enari for Defendant

The facts in this case are not in dispute. The parties filed an agreed statement which reads as follows:

"1. ON or about the 27th January 1989 Linda Ale purchased a bank draft for AUD$800.00 from the Plaintiff's Rockdale Branch, New South Wales, Australia.

2. THE said Linda Ale is a daughter of Ale Ulugia, Defendant herein.

3. THE beneficiary for the said bank draft is the said Ale Ulugia.

4. THAT in return for her AUD$800.00 the said Linda Ale received bank draft No. 2395 5663256/5 for WST$17,506.00 dated 27th January 1989.

5. THAT subsequently the said Ale Ulugia presented to the Bank of Western Samoa bank draft No. 2395 5663256/5 and received WST$17,506.00.

6. THAT using the correct exchange rate at the time of AUD$ = 1.8694 the bank draft should have been for WST$1,496.00 and not WST$17,506.00.

7. THAT on a number of occasions the said Ale Ulugia was interviewed by various bank officers from the Bank of Western Samoa concerning the overpayment to him of $16,010.00 but advised to refer the matter to his daughter in Australia who had sent him the bank draft.

8. THAT the said Ale Ulugia has spent the money."

Mrs Drake for the Plaintiff submits that the Plaintiff is entitled to Judgment for the $16,010.00 as moneys had and received in that the sum was paid to the Defendant under a bona fide mistake of fact. She refers to the decisions in KELLY v SOLARI (1841) 9M & W 54, 58 and FIBROSA SPOLKA AKCYJNA v FAIRBURN LAWSON COMBE BARBOUR LTD [1943] A.C. 32, 61.

Mr Enari for his part is firmly in the corner of Lord Summer in SINCLAIR v BROUGHAM [1914] A.C. 398 and Lord Justice Scrutton in HOLT v MARKAM [1923] 1K.B. 504, 513.

The debate as to whether all civil disputes must fall either into contract or tort or whether quasi-contract is a legitimate category it seems to me must be rather bemusing for the pragmatic bystander in the South Pacific half a world away from the esoteric discussions taking place in the Courts of England. The simple issue in my view is whether or not there has been an unjust benefit or unjust enrichment. Cheshire v Fifoot's "Law of Contract" 6th N.Z. Edition at p.533 comments upon a study of the issue by Goff and Gareth Jones - that they "have accepted as its rationale the principle of unjust benefit or unjust enrichment". This principle "presupposes three things: First, that the Defendant has been enriched by the receipt of a benefit, secondly that he has been so enriched at the Plaintiff's expense; and thirdly, that it would be unjust to allow him to retain the benefit" - The Law of Restitution 2nd Edition 1978, 13 - 14.

In the United States there is no distinction based on the form or nature of the gain received. It is a pity that English law does not take a similarly realistic approach. For my part I am quite satisfied that the Courts in Western Samoa should not be bogged down by academic niceties which have little relevance to real life.

This is a clear case where in my view the three presumptions mentioned by Goff & Jones fit in neatly with the undisputed facts.

The Defendant has been enriched by the receipt of a benefit of $16,010 more than he should have been; he has been so enriched at the Bank's expense, and finally it would be most unjust to allow him to retain the benefit.

The Plaintiff is entitled to Judgment in the sum of $16,010 together with costs and disbursements as fixed by the Registrar.