

HELD AT APIA

C.P. 237/93

BETWEEN: TIAPAPATA TOWERS LTD a duly
incorporated company having
its registered office at Apia:

Plaintiff

A N D: JOE STRICKLAND of Vaimea,
Businessman:

Defendant

Counsel: Mr Nelson for Plaintiff
Mr Malifa for Defendant

Date of Hearing: 19th November 1993

Date of Judgment: 19th November 1993

ORAL JUDGMENT OF SAPOLU, CJ

This is an action by the plaintiff for the balance of the purchase price of eleven(11) cane tables supplied to the defendant in January this year. This action is really based on Section 47(1) of the Sales of Goods Act 1975.

According to the evidence for the plaintiff which was given by Mrs Drake, she called the defendnat sometime in December 1992 whether he was interested in buying cane tables from the plaintiff. Subsequent to that, the defendant inspected the cane tables in the presence of Mr Drake at the plaintiff's premises at Motootua. Then Mrs Drake again called the defendant on phone and stated that the price for the cane tables was \$500 per table. Mrs Drake says that the defendant agreed to that price but indicated that he was not able to pay the full price of the cane tables at that time but will make a part payment. Then on the 5th or the 6th of January 1993 when the defendant had still not taken delivery of the cane tables, Mr and Mrs Drake

visited the defendant to confirm whether he still wanted to buy the cane tables. Apparently the defendant indicated to Mrs Drake that he still wanted to buy the cane tables. On the following day or soon thereafter, the cane tables were delivered to the defendant's workshop at Vaimea.

On the 13th of January 1993, Mr Drake on behalf of the plaintiff received payment of \$1,000 for the cane tables and a receipt was issued for that amount. After that payment the defendant made no further payment until the 6th of April 1993 and that was after further phone calls from Mrs Drake. The defendant made the payment of \$500. Mrs Drake denies that the defendant was mistaken as to the nature of transaction because the discussions she had with the defendant in relation to these cane tables were both in English and Samoan and she did not use any legal terminology. So she believes that the defendant could not have been mistaken as to the nature of the transaction.

For the defendant he says that there was a mistake as to the nature of this transaction as he was under the understanding that the tables were given to him on a consignment basis. That means the cane tables were given to the defendant to display and sell and when a cane table is sold, the defendant will receive commission and the price of the cane table that has been sold will be given to the plaintiff.

Mrs Drake denies that the cane tables were delivered to the defendant for the purpose of displaying in his workshop. She says that the cane tables were sold to the defendant at the price of \$500 per table, which the defendant agreed to. Now after the defendant received the tables, he advertised these tables in a newspaper under the defendant's name rather than the plaintiff's name. It appears that the tables have not been sold for the reason given by the defendant that the price by Mrs Drake for each table was too excessive. However the defendant did pay \$1,000 in January and \$500 in April to Mrs Drake for the price of all the tables. These payments appear to have been part payments for the price but the defendant says that the arrangements with Mrs Drake was that, when a table is sold he will take his commission and the

price will be paid to Mrs Drake who was acting for the plaintiff.

If the defendant is right, then obviously he was not keeping to the arrangement he says he had made with Mrs Drake that the tables were given to him on a consignment basis.

I have considered the whole of the evidence, even though I have referred to essential parts of the evidence. I have come to the conclusion that the evidence of Mrs Drake is to be preferred to the evidence of the defendant. I believe and accept what Mrs Drake has told the court, as to the nature of the transaction and what transpired between herself and the defendant when she told the defendant that the price for each table was \$500. I do not accept the evidence of the defendant that the tables were given to him on a consignment basis.

Accordingly, I have come to the conclusion that the plaintiff has made out his claim and judgment is therefore given for the plaintiff in the sum of \$4,000 claimed, plus costs to be fixed by the Registrar.

T. F. M. Supala
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CHIEF JUSTICE