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IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. G.188/1995

BETWEEN GUYANA REFRIGERATORS PLAINTIFF

A N D WEST INDIES SYNTHETICS LIMITED DEFENDANT

D. Morrisson Q.C., and G. McBean for Plaintiff

D. Goffe Q.C., and M. Henry for Defendant.

HEARD: 18th, 19th, 20th, 21st, 22nd,
28th September, 1995, 5th
October, 1995 and 20th March,
1997.

Ellis, J.

The plaintiff claims damages for breach of contract for the manufacture and delivery of goods by the defendant at the plaintiff's request.

The evidence discloses that orders were placed by the plaintiff in February, 1983 (the first order) and in September, 1983 (second and third orders). The first order was numbered 001530, the second order 001558 and the third 00159.

The issues in relation to the first order put simply are:

- (a) What were the agreed terms of payment for the goods and when were they agreed.
- (b) What was the agreed time for delivery.
- (c) Were any of the goods supplied defective as to quality or description.

In relation to the second and third orders the issues are:

- (a) Were the goods delivered within a reasonable time?
- (b) What was the currency payments?
- (c) Did failure to deliver goods on time result in the plaintiff having to pay more for the goods because of devaluation.

I will deal with the first order 001530. Mr. McBean for the plaintiff submitted that Caricom Invoices dated 3rd August, 1983 and 11th November, 1983 recited the terms of payment to be "C and F Sight Draft." He said the witness Brassington gave evidence that

those terms were agreed in April, 1983.

He did say in his submission that alternative terms of payment were proposed by the defendant in December, 1982 but went on to say that that alternative was rejected by the plaintiff in January, 1983 as evidenced by letter of 10th January, 1983. Moreover, Mr. McBean said that the defendant's proposal of a 120 days open account subject to Bank of Guyana's approval was agreed when the Bank approved it in April, 1983.

Since the defendant commenced production of the goods by the end of April, 1983, he would not have done so if payment arrangements were not settled.

Mr. Goffe on his part, has not really disputed the history of the correspondence between the parties. What he has said is it was not until August, 1983 that the defendant felt comfortable to ship the goods produced although all the terms of the contract were not completed.

I find that the submission of the plaintiff on this issue is sound. I say so for this reason. The defendant an experienced business man did not embark upon the manufacture and shipment of goods to the plaintiff in order to be charitable. He did so because he was satisfied with the terms of payment for those goods which I find were agreed from April, 1983.

The arrangements for paying for the goods were between the defendant and the plaintiff. The fact that Homelectric should be the conduit of that payment was a matter between Homelectrix and the plaintiff.

On a consideration of the evidence I do not find that there was any expressed time for delivery. The document at page 5 of the agreed bundle of documents speaks to delivery being within six weeks from receipt of letter of credit. That document cannot evidence any expressed time for delivery in that no letter of credit was sent and it was dated 18th February, 1983 well before the terms of payment were agreed.

There being no expressed time for delivery of the goods they must

be delivered within a reasonable time. Mr. Goffe submitted that what is a reasonable time is a question of fact discernable from considering all the circumstances. He contended that the goods were shipped within a reasonable time considering the long time the plaintiff took to finalize terms of payment. This date on defendant's case was 1st August, 1983.

That submission as to the date 1st August, 1983 is untenable since I have found the terms of payment were agreed in April, 1983.

Mr. McBean agreed that if the terms of payment were agreed to in April, 1983 a reasonable delivery time would have been at mid June, 1983. On the evidence delivery was in two tranches; one in September and the other in November, 1983. That manner of delivery he said, breached the contract, being in contravention of S. 31 (1) of The Sale of Goods Act.

The plaintiff waived his right to reject the delivery by accepting the goods.

I therefore find on the evidence and a consideration of defendant's submission that the goods were not shipped within a reasonable time. Nothing from that finding avails the plaintiff since he waived his right to reject the goods.

Were There Defective Goods Shipped To The Plaintiff?

Brassington for the plaintiff stated that plastic sheets which were received in September, 1983 were defective. He said that they were uneven in the thickness and had blistered surfaces. Those defects inhibited the use of the goods for the manufacture of re-grigators.

The defendant's agent R.S. Lopes inspected the defective goods at the plaintiff's factory. He confirmed the inspection and defects in a letter to the plaintiffs dated February 8, 1984 (Exhibit 15). At that date, in a total of 259 prices of goods 142 were defective.

Mr. Lopes in his letter requested a final count of defective sheets from the plaintiff. That final count was delivered in a letter of 13th March, 1984 (Exhibit 16). In a total of 1250 pieces

of goods 513 were defective.

Mr. McBean argued that the defendant made no denial that the plastic sheets had defects. The defendant he said only sought to explain the plaintiff's problem with the plastic sheets as due to plaintiff's faulty heating process.

In addition to the evidence of defects in the goods the plaintiff argued that the goods were sold by description. The goods he said did not correspond with the description.

The plaintiff therefore asked the court to find that goods were defective and did not meet the description.

There is no doubt in my mind that there were defective plastic sheets in the shipment and I so find. I reject the defendant's contention that the plaintiff's heating process caused defects in the plastic sheets.

Section 15 of The Sale of Goods Act does not provide for an implied warranty as to the quality or fitness of goods supplied, for any particular purpose.

There is however, exceptions in the section. The one which seems to be applicable here is this:

- (a) "Where the buyer, expressly or by implication makes known to the seller the particular purpose for which the goods are required, so as to show that the buyer relies on the seller's skill or judgmentthere is an implied condition that the goods shall be reasonably fit for such purpose....."

I find that the plaintiff's contention that the defective goods did not make for their use for the particular purpose which on the evidence was known to the defendant.

The question is what was the quantity of defective goods?

The plaintiff submitted a total of 2,282 sheets of plastic as being defective. The defendant contends for not more than 513 sheets.

I have seen no evidence, other than Ex. 16, which speaks only to

513 defective sheets, not to 2282.

The defendant is therefore correct in its contention for 513 sheets and I so find.

The Second and Third Orders

In determining the first issue under this head, I apply my reasoning and finding as to delivery of the goods on the first order.

The goods under the above orders were not delivered within a reasonable time.

In relation to the second issue, the defendant does not dispute a payment in Jamaican dollars as submitted by Mr. McBean. Jamaican dollars is therefore the currency of payment.

At the date of agreement the price of the goods was expressed in United States Dollars. The then rate of exchange was 1.78J\$ to 1 U.S.\$

The evidence which I accept is that because of late delivery the plaintiff had to pay more than the stipulated price for the goods due to an intervening devaluation in November, 1983. Prior to that devaluation, there was introduced what is called the Caricom rate of exchange which was 2.25J\$ to the U.S.\$1. That rate was binding on each member of Caricom. The defendant had nothing to do with the imposition of that new rate and bears no responsibility for any effect it had on the plaintiff.

Late delivery did cause the plaintiff to pay more for the goods.

The plaintiff claimed compensation for transportation of goods from Trinidad to Guyana. The defendant denied that claim and said shipment of the goods to Trinidad was on the instruction of the plaintiff. In the circumstance he is not responsible for the cost of transportation to Guyana.

I accept the defendant's case on this aspect and I hold that the plaintiff is not entitled to any compensation.

The plaintiff's claim for damages consequent upon loss of sales due to the defendant's failure to deliver on time has not been proved.

In the light of the findings the plaintiff succeeds in his claim for

- (a) damages for defective goods;
- (b) repayment of money paid over the stipulated price because of a devaluation which was avoidable if defendant had delivered the goods within a reasonable time.

In relation to (a) above, I have found that 513 plastic sheets were defective. The agreed price was U.S.\$2.25 per pound. The plaintiff gave no evidence of the weight of each sheet and I am therefore unable to ascertain the weight of the 513 sheets. However, the plaintiff is entitled to the weight of 513 sheets at U.S.\$2.25 per pound.

As to (b) of the findings, the plaintiff claims an amount of J\$248,984.63 as the amount overpaid.

The plaintiff is awarded that amount as damages.

Judgment for the plaintiff with costs to be agreed or taxed.