

IN THE SUPREME COURT )  
OF THE TERRITORY OF )  
PAPUA AND NEW GUINEA )

W.S. 66 of 1960 (P)

BETWEEN:

THE PORT MORESBY FREEZING COMPANY LTD.

v.

WILLIAM IONA LEE

J U D G M E N T

The Plaintiffs claim an agreement by the Defendant to answer for the debt to them of another, one Detton. It has peculiar features because the Plaintiffs rely on an oral agreement with the Defendant taken in conjunction with a written agreement between the Defendant and Detton. There was no written agreement on the subject between the Plaintiffs and Defendant.

The Defendant went into partnership with Detton in the business of a restaurant at Port Moresby known as "Ambrosia," for which partnership the Defendant paid the sum of £500. The Partnership Agreement is Exhibit "B" and it is dated 24th April, 1960. This partnership appears to have lasted until 30th May, 1960, for on that date the Defendant signed a letter addressed to the Manager of the Port Moresby Freezing Company Ltd. in which he announced the sale to him of the Ambrosia Restaurant by Terence Leonard Detton. This letter is Exhibit "A." He also signed what purported to be an Agreement of Sale of the Ambrosia Restaurant to the Defendant dated 30th May, 1960 (Exhibit 2).

Before the Defendant became a partner there was an amount of a debt contracted by Detton with the Plaintiff Company. It amounted to the sum of £297.6.7. In the letter (Exhibit "A") the following words were used: "I hereby undertake the responsibility of paying the account amounting to the sum of £297.6.7. incurred by the Ambrosia prior to my purchase of the said Restaurant."

This document (Exhibit "A") was not an agreement between Plaintiffs and Defendant whereby the Plaintiff undertook to pay Detton's debt. It was a notification to the creditors that for a certain consideration the Defendant had undertaken with Detton to pay the sum of £297.6.7.



which Detton owed.

Having received the letter addressed to them and signed by the Defendant and which was handed to them by Detton, the Plaintiffs were entitled to assume that the Defendant intended to honour the undertaking given to Detton, so they asked the Defendant to call and see them. The Defendant did call later in the day. There being no consensus regarding the undertaking between the Plaintiffs and Defendant, it was necessary to create a privity between them.

There was perhaps a right of action by Detton against Lee on the contents of Exhibit "A" but none by the Plaintiffs against the Defendant. (Price v. Easton (1833) 4 B. & Ad. 433). It has been established that no stranger to the consideration can take advantage of a contract although made for his benefit. The Plaintiffs have probably retained their original remedy against Detton. The right to sue must be found in the oral evidence relating to an agreement between the Plaintiffs and Defendant as to the payment of the sum of £297.6.7.

The Plaintiffs allege that there was a verbal contract made with the Defendant to be gathered from two conversations had between the Plaintiff Company's Manager, Carter, and the Defendant.

At the meeting which occurred on 30th May late in the afternoon Carter produced Exhibit "A" which had been given to him earlier in the day by Detton. Carter said to the Defendant upon his arrival, "Mr. Detton called earlier today and told me that you were responsible for the Ambrosia Cafe and have undertaken to pay the amount of £297.6.7. Have you any Partnership Agreement or arrangement?" Carter showed Exhibit "A" to Defendant and said, "Have you undertaken to pay this debt?" Defendant replied, "Yes, I have." After that Carter said to Defendant, "What business arrangement have you with Detton regarding the Ambrosia?" Lee then produced Exhibit "B", which is a document dated 24th April, 1960 purporting to be a Partnership Agreement. Prior to the 24th April, 1960 the debt of £297.6.7. had been contracted by Detton. Carter said to Defendant, "How do you propose to pay this sum of £297.6.7. and carry on the business in a normal manner?" Defendant replied, "I have not got a great deal of money and would require time to pay that amount." After some discussion Carter said to Defendant, "Providing you pay this debt over a reasonable time and keep the current purchases for the restaurant under thirty days' credit I would be prepared to assist you to carry on the business by extending credit and assisting you in any other way possible." Defendant said, "That's right, I agree to that and will pay the debt over a period and will keep current purchases to the credit period as laid down." There was no particular time specified



for the payment of the £297.6.7.

The Defendant denies this conversation. He said that Carter said to him, "I want you to enlighten me as to your intentions regarding the letter which Detton has given to me." Defendant says he said, "Mr. Detton approached me in the Ambrosia and asked me to sign this letter. I have no money and cannot meet the payment." And then Carter said, "Where is Mr. Detton?" Defendant said, "I do not know". Then Carter said, "I want you to get all the information you can regarding Detton." Defendant said, "Yes, I will do anything I can to help you." And that was all the conversation. Defendant says there was no conversation like that related by Carter at any time. There was, however, a second interview about two days after the first, by which time Detton had left the Territory. Carter asked the Defendant to call and see him. Defendant did so in the late afternoon of the same day. Carter said to him, "When will you be able to pay this debt?" Carter told Defendant that Detton had left the country, and Defendant was unaware of this at the time. They talked generally about how he was going to carry on the business. Defendant said, "I am very tired through the long hours involved carrying on the two jobs and hope to see a possible partner over the week-end." Carter said, "What assistance can we give you?" - and offered to send Mr. Godfrey to the Cafe. Carter also asked Defendant how he was going to finance the business and pay the debt. Defendant said, "I am prepared to sell my car." Carter said, "There is no need for that yet. Try and find another partner and I will give you every assistance to give you time to pay the outstanding debt." He said, "I will carry on and try to get a partner," and thanked Carter for the offer of assistance.

Defendant admits that at this second interview mention was made of the £297.6.7. He also admits that it was agreed that he would continue trading with the Plaintiffs on a credit basis, that the Plaintiffs would extend him credit under the fourteen days agreement.

The account was in the name of the "Ambrosia Restaurant." What credit arrangement Detton had with the Plaintiffs as the sole proprietor of the Amrosia Restaurant before the 24th April, 1960 does not appear. Upon the entering of the partnership a new credit arrangement was apparently come to with the Plaintiffs by the opening of a new ledger card by them for the Defendant's purposes by which the Defendant had a fifteen or thirty day credit for the month of May. This is what the Defendant refers to when he maintains that he already had credit. But this arrangement was made at the end of April and was for the current purchases and without relation to the outstanding debt of Detton's, but during the partnership with Detton. Detton on 30th May sold out his half share of the Restaurant to the Defendant and the Defendant as consideration undertook to pay Detton's old debt of £297.6.7. Here was a new situation confronting Carter, when he learnt that the



Defendant was the sole proprietor and had undertaken to pay the debt outstanding. Yet the Defendant says that at the first interview there was nothing said about arrangements for future trading on credit.

Under cross-examination he admitted that it was agreed that he would continue to trade with the Plaintiffs on a credit basis. This was credit to the new proprietor who had undertaken to pay the old debt to the Plaintiffs yet Defendant says that no mention was made of this old debt at the first interview. On the occasion of the second interview Defendant does admit that the amount of £297.6.7. was mentioned. At this interview he admits that he agreed to continue trading with Plaintiffs on a credit basis - it was agreed that the Plaintiffs would extend credit to the Defendant and he would continue to trade. On the Defendant's evidence the question of the debt of £297.6.7. was ignored altogether.

The Defendant says that at the first interview the sum of £297.6.7. was not mentioned but he goes as far as to say that Carter said at the first interview, "I want you to enlighten me as to your intentions regarding the letter which Detton has given me." This letter referred to the sum of £297.6.7. and the Defendant's undertaking to pay. It seems to me an evasion to say that the sum of £297.6.7. was not mentioned. Be that as it may; the Defendant denies that he promised to pay Detton's debt to the Plaintiffs and all that was arranged was the extension of credit upon continued trading.

The Plaintiffs, after one month's trading under the new arrangement, wrote a letter of demand to the Defendant, the letter dated 4th July, 1960 (Exhibit 3). It seems to me that the Plaintiffs were founding their claim on the agreement between Detton and the Defendant, but not being a party to that agreement, they had not the right to sue. There was no reference in that letter to a verbal agreement whereby the Defendant agreed to pay to the Plaintiffs the amount of Detton's debt.



To the letter of 4th July the Defendant's Solicitors replied denying liability and offering to accept service of process.

The plaintiffs continued to trade with the Defendant on the credit basis arranged, for four or five months and for a relatively long period after the Plaintiffs, through their Solicitor, demanded payment of the sum of £297.6.7. In my view the credit arrangement was referable to the continued trading. One is required to find the verbal contract from the conversations which were held on two different days. There was no clear-cut verbal contract. But out of the varying accounts of the conversations it does appear that the Defendant could not pay the Plaintiffs the sum of £297.6.7. at the time. The Plaintiffs could have sued Detton, and in turn Detton could have sued the Defendant, but as between the Plaintiffs and the Defendant he was not obliged to pay the Plaintiffs Detton's debt to them. All he could agree to do was to pay the debt with time. Where is the consideration flowing from the Plaintiffs for the payment of Detton's debt by the Defendant? The Plaintiffs were offering nothing in return.

I am unable to find that there was a suable verbal agreement between Plaintiffs and Defendant as alleged in relation to the payment of the sum of £297.6.7. by the Plaintiffs to the Defendant.

I give Judgment for the Defendant with costs to be taxed.

J.

11.15 a.m.

21/4/1961.