SUNKING ENTERPRISES LTD -v- S.I. ENGINEERING AND MACHINERY LTD

High Court of Solomon Islands
(Ward C.J.)
Civil Case No. 33 of 1990
Hearing: 27 March 1990
Judgment: 25 April 1990

J. Corrin for Appellant
T. Kama for Respondent

WARD CJ: The appellant company appeals against the decision of the learned Principal Magistrate in a case in which it was the defendant. The respondents had sued for $4911.84 due for materials and services rendered for repairs and installation of a water pump in a ship.

The plaintiff's case basically was that the job was urgent and so they did it in a hurry and submitted at the end, an overall bill for $3,790.09. The defendant asked for a breakdown of the charges and was sent, a few days later, a total bill of $4,911.84. The letter accompanying that invoice cancelled the earlier one and changed the number of hours worked and also the rate charged.

In a written defence, the appellant denied the plaintiff's entitlement to the sum and, alternatively, that the amount was not reasonable.

The first of a number of grounds of appeal is that "the Magistrate was wrong in proceeding on the basis that the onus of proof was on the Defendant as the onus of proving that a claim for quantum meruit is reasonable and proper is on the plaintiff."

In dealing with this part of the defence, the learned magistrate stated -

> "The second line of defence was contained in paragraph 6 of the defence that "the amount claimed is not reasonable, in that the charges for labour, material and the machine charges cannot be justified in respect of the job referred to in the Statement of Claim". In spite of that pleading, and although Mr Kunidau was cross-examined extensively as to the accuracy and completeness of time-records of the company's staff, it was never put to him that the hours expended or the amount claimed in the final account were unreasonable or unjustified in terms of the job actually done.

The defendants called Mr Sylvester as an expert witness. He had made only what he described as a "brief visit" to the vessel in which the plaintiffs had installed the gear-box with which this case is concerned, had not dismantled the engine to see what was involved, and had not produced a written report. Nevertheless he felt able to say that the hours charged were double that to be expected for a job of this type. Although the witness had relevant qualifications, his views rested on a flimsy basis and did nothing to offset the unchallenged evidence for the plaintiff. ..... Mr Katalako had kept a record of hours worked on the vessel but as the larger part of the work took place in the workshop I found this of no help. Thus the defence rests on ..... an expert witness who has not examined the subject matter in dispute."

I must disagree with the magistrate on his account of the defence put. Whilst it may be that it was not put in terms that the hours expended or the amount claimed in the final account were unreasonable or unjustified, the whole tenor of the cross examination was to that point.

It is clear that the burden is on the plaintiff to prove quantum meruit. In this case, the learned magistrate does not appear to have based his judgment on a consideration of the merits of the plaintiff's case but to have based it on a rejection of the evidence of the defendant. I feel the appellants are right when they suggest that was a clear shifting of the burden of proof onto the defence and in that the magistrate erred.

I feel on that ground, the appeal must be allowed and the judgment set aside. I do not feel the evidence is sufficient for me to make the decision as to the merits of the case and so I shall remit it to the Magistrates Court for hearing de novo before another magistrate.

In view of that, I also feel it would be inappropriate to deal with the remaining grounds of appeal.

Costs of the previous hearing and the appeal to be costs in the cause.

(F.G.R. Ward)
CHIEF JUSTICE