

IN THE SUPREME COURT OF SEYCHELLES

MS EDWINA HEENES

PLAINTIFF

VERSUS

MR DAVE SERVINA

DEFENDANT

Civil Side No 337 of 2003

Mr. P. Boulle for the Plaintiff

Mr. W. Lucas for the Defendant

JUDGMENT

Perera J

This is a claim for goods sold and delivered. Although a sum of Rs.42,049.62 is being claimed in the plaint, the plaintiff admitted in evidence that after the plaint was instituted, the defendant paid Rs.13,500, thus reducing the amount due to Rs.28,549.62.

The case for the plaintiff is that on 27th July 2003, the plaintiff who was trading under the business name of Hepilajora Store at Anse Louis sold the goods in stock to the defendant who was to succeed as the next Tenant, for a total sum of Rs.42,049.62. The invoices marked P1 and dated 9th August 2003 show that Rs.13,500 was to be paid immediately for a deep freezer, cheese freezer, a fridge and a cash register, and the balance Rs.28,549.62 for the merchandise to be paid later on a "*written agreement*". The plaintiff testified that the defendant checked each and every item in stock for about three days and a day or two later signed the invoices, marked (P1) on 9th August 2003. On 25th August 2003, about two weeks later, the plaintiff requested the defendant through her lawyer to pay the full sum due on the materials and stock (P2). The defendant, by letter dated 4th September 2003 (P3) replied stating that although he had agreed to pay Rs.13,500 for the equipment on a short term basis, the agreement for payment for the merchandise was by instalments on a long term basis. Hence he offered to pay Rs.28,549.62 in instalments of Rs.1500 over period of 18 months. By letter dated 23rd September 2003 (P4), the plaintiff agreed to receive monthly instalments of Rs3500 from 1st

November 2003 to 1st June 2004 and Rs.549.62 on 1st July 2004. However as no payments were made, the plaintiff instituted the present action on 23rd December 2003. The defendant, by letter dated 18th February 2004 (P5) informed the plaintiff that he would pay Rs13,500 (for the equipment) immediately, but offered to pay only Rs.15,827.49 out of the balance sum of Rs.28,549.62 in instalments of Rs. 5275 within three months, on the basis that the stocks contained expired goods to the value of Rs.12,722.13, which he had destroyed.

The plaintiff, in her testimony denied that the defendant informed her of any expired goods among the stocks she sold. She however admitted that subsequent to receiving the letter dated 18th February 2004 (P5) informing her about expired goods, the defendant reiterated his allegation before her lawyer Mr Boule, at a meeting held at his office. She further stated that no such allegation was made by the defendant earlier, either orally or in any of the letters sent to her.

Jeffrey Labiche, the husband of the Plaintiff testified that the defendant took three to four days to verify the goods one by one for the expiry dates and their condition. The goods were classified in different boxes and an inventory was made, with corresponding prices. The goods were not put back on the shelves but left in the boxes when the defendant signed the invoices. There were no items where the validity period had expired.

The defendant in his testimony however stated that the goods were taken over by him in a hurry and that he received only an inventory of the items in the invoices. He produced an informal statement (D1) listing items and quantities of goods which he claimed were "*expired goods*". He has also noted that there were only 54 pens, and not 654 as stated in invoice no. 6 of exhibit P1. The cost of the goods which he claimed were expired goods was Rs.10,322.13 and the over calculation for the pens was Rs.2400. Hence reducing Rs.15,827.49 from Rs.28,549.62, he was prepared to pay Rs.18,227.49.

Article 1584, of the Civil Code provides that "*a sale may be concluded either purely and simply or subject to a condition precedent or subsequent*". The only condition in the agreement was the payment of Rs.13,000 in "*short term*", and Rs.28,549.62 in "*long term*". In his letter dated 4th September 2003 (P3), the defendant stated -

"Concerning the merchandise, you have to note that I did not agree to

buy them from you due to financial problems, but after discussions, the two of us came to the agreement that if I take them, they can be repaid by instalment on a long term basis”.

In that letter he undertook to pay the full sum in instalments of Rs.1500 over a period of 18 months unconditionally. The plaintiff agreed to receive payment in nine instalments of Rs.3500. There is no disagreement as regards payment in instalments. Hence the sale was concluded.

There is no evidence before Court that in certain items of the stock sold, the validity period had expired. Even if that be so, there should be evidence of the actual dates of expiry so that the Court could determine whether the items were still valid at the time of the sale. Article 1625 states that *“the warranty by which the seller is bound to the buyer has two objects: The first is to ensure the peaceful possession of the thing sold; the second, to protect the buyer against any hidden or latent defects of the thing sold”.* Article 1641 provides that *“the seller shall be bound by the warranty against latent defects of the property sold which render it unfit to use for the purpose for which it was intended or which reduce its use so substantially that the buyer would not have bought it or would have paid a lessor price had he known of them”.* But Article 1642 states that the seller shall not be liable for apparent defects which might reasonably have come to the notice of the buyer. The list of *“expired goods”* furnished by the defendant includes items such as butter, sauces and soups which are perishable in nature and obviously have a validity period. On a perusal of the invoices issued by the plaintiff and signed by the defendant, I find that the list of *“expired goods”* indicate that the whole stocks of perishable goods received have been listed. Further items such as gift decorations, geometric sets, toothpicks, plastic forks and envelopes, which do not have expiry dates have also been included in the list. As a reasonable person, the defendant ought to have verified the items before receiving. In the absence of proof of some of the stock sold having passed the expiry date at the time of the sale, the plaintiff will be entitled to claim the full amount due to her on the sale of the merchandise.

Accordingly, judgment is entered in favour of the plaintiff in a sum of Rs.28,549.62 together with interest and costs.

A.R. PERERA

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JUDGE

Dated this 20th day of May 2005