

J A M A I C A

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO. 34/76

BEFORE: The Hon. Mr. Justice Zacca, J.A.  
The Hon. Mr. Justice Henry, J.A.  
The Hon. Mr. Justice Rowe, J.A. (Ag.)

BETWEEN The Attorney General - Defendant/Appellant

AND International Purchasing Co. Ltd.

AND

Worldwide Purchasing Co. Ltd. - Plaintiffs/Respondents

Mr. L. Ellis & Mr. Eugene Harris for the Defendant/Appellant

Mr. R. Williams Q.C. and Mr. D. Carberry for the Plaintiffs/Respondents

July 19, 1977

This appeal has been extensively argued before us and we have concluded that there should be a new trial for the following reason:-

The learned trial judge based his judgment on two main findings of fact. At page 9 of his judgment he said:-

"I find as a fact that there was an agreement between Morris and Millingen to substitute the sluice unit shown on Exhibit 6 and 7 when it was discovered that the ones then at George V could not be obtained and that the four invoices were drawn up to supply 25 of such units." Then at page 12 of the judgment he said:-

"I find as a fact that the invoices 295793-96 were brought into being for the two reasons given by Millingen and that when they spoke of "Sluice Units" they were referring to the ones agreed upon (as reproduced in Exhibit 6 and Exhibit 7 between Morris and Millingen."

At the trial the defendant-appellant had contended that Millingen's evidence ought not to have been believed in respect of his claim that there had been a change in the nature of the goods to be

supplied. The defendant-appellant relied upon an Import Licence Application prepared by Millingen on the 19th March 1974 and put in evidence as Exhibit 10, and submitted that the contents of that Import Licence totally discredited the plaintiffs' case as to when Millingen first knew of the existence of the goods ultimately supplied and of his alleged conversations with Morris about Exhibits 6 and 7 which conversations Morris denied.

It is unfortunate that the learned trial judge failed to deal with Exhibit 10 and with its relevance to Exhibit 9. In this connection the learned trial judge failed to deal with the evidence of the plaintiff as appears at pages 32 and 40 of the Record and therefore has given this Court no assistance as to how he resolved these important questions which arose on the evidence. This Court is of the view that no true determination can be made as to whether the goods ordered in Invoice Exhibit III dated 18/2/74 were subsequently changed by agreement (as contended for by the plaintiffs-respondents) to those described in Exhibits 6 and 7 without a proper evaluation of Exhibits 10 and 9 and that that evaluation ought to be done by a trial judge in the first instance.

In our view in relation to ground 1 of the grounds of appeal, the learned trial judge ought to have exercised his discretion to grant the amendment sought by the defendant-appellant to add the paragraph 8 to the defence and ought not to have prevented the defendant-appellant from leading evidence as to price. See page 70 of the Record.

Mr. Williams' main arguments, were based on the hypothesis that the goods delivered by the respondent were indeed the correct goods ordered by the appellant. Because of our decision to send the case back for a new trial generally, it is unnecessary to express any

opinion on those submissions.

The appellant is to have the costs of this appeal to be taxed or agreed. The costs of the trial in the court below to abide the re-trial.

Appeal allowed and new trial ordered.