

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. D-185/1991

BETWEEN	ALVES DEANS	PLAINTIFF
A N D	CARIBBEAN BROILERS (JA.) LIMITED	DEFENDANT

Miss Carol Davis for the Plaintiff
instructed by O.G. Harding & Co.

Mr. Alexander Williams for the Defendant
instructed by Myers, Fletcher & Gordon.

Heard: February 17, 18, 19, 20,
March 7 and June 27, 1997.

Reckord J.

The defendant is a company carrying on the business of producing chickens for sale. On the 5th of August, 1989, the plaintiff entered into a contract in writing with the defendant - the defendant was to supply him with 7480 chickens for him to grow and care and to return them at an appropriate stage. The plaintiff claims he had been informed by officers from the defendant's company that the financial returns from this venture were good - a Mr. Hamilton from the company had visited the farm, took measurement and informed him that the company would provide him with equipment and would deduct costs from flock payments. He refurbished the farm and claims it was ready for taking chickens in February, 1980. The field service officer Ms. Lyon inspected the farm, said she found no problems with the coop, but that she saw no facilities for running water. He advised her of his plans to truck in water or obtain supply from a nearby standing pipe and store it in 55 gallon drums or obtain water from a stream running through the property which he would chlorinate. During this visit Ms. Lyons informed him that the company no longer provides equipment to farmers.

In August 1990, he spoke to the Acting General Manager Mr. Channer who asked him to write to him concerning the amount of equipment he needed. He did so on the 22nd of August, 1990. Days later Mr. Channer confirmed that the company had stopped providing equipment.

In January 1991, the plaintiff tried to find funds to purchase equipment and proposed to Mr. Channer that he would take 5,500 birds then until he gradually reach his maximum. He also proposed that the company would loan him the necessary equipment for him to reach his maximum. Mr. Channer advised him to put his proposal in writing which he did on the 30th January, 1991.

Mr. Channer also advised him to purchase equipment for 5,500 birds and directed him to the company's outlet in Old Harbour where he could get them. He made the necessary purchases and in July 1991 he told Mr. Channer he was ready to receive 5,500 birds and asked for someone to visit his farm. He promised that Miss Lyons would, but she never did. She also never kept her promise to visit him in August 1991. He tried to get a contract from the other broiler company - Jamaica Broilers, but without success. They were not taking any new contracts. In September 1991, he went to his Attorneys to seek legal advice.

He got Mr. Michael Barnes a serviceman from Jamaica Broilers to inspect his farm. He found no problem with his farm. No one from the defendant's company told him what conditions had not been met by him. He had done all he was required to do. On the question of water supply the plaintiff said after discussion with Miss Lyons she had given the impression that she was satisfied with the plan he had given. He had spent various sums in getting the property ready and tendered several receipt as exhibits.

He was expecting to make a profit from the venture. However he suffered severe losses due to defendant's breach of contract.

Under cross-examination the plaintiff admitted that Clause 3 of the contract says that the farmer was to provide equipment. He also admitted that exhibits 2 and 3 copies of letters written by him to the company were asking for a loan. He was never told that the defendant never made loans to new farmers. The farm he took over had been damaged in the hurricane of 1988. He agreed he was not ready for chickens in August, 1989. He admitted getting complaint about running water. He denied that he suggested to Miss Lyons that he would use an old water tank on the property to store water.

He admitted that the contract provided for the delivery of chickens by October, 1989. "I would not be ready because of labour problems". He agreed he never told the defendant that he had hired Mr. Berry. He never met a Mr. Eric Gordon from the defendant company. He denied that Mr. Gordon visited him at the farm on 14.9.91 and advised him that the stream was not an adequate water supply and needed treatment and that the feeders were smashed and inadequate. He agreed he never had equipment for 7,480 chickens.

Mr. Michael Barnes gave evidence for the plaintiff. He is a chicken farmer, Minister of Religion, Graduate of the Jamaica School of Agriculture and Field Manager for 3½ years and one time Field Officer at Jamaica Broilers. The standards for both companies were basically the same. He knew the plaintiff's farm at Rhymesbury in Clarendon. He visited it in August 1991 as the plaintiff expressed interest in growing chickens for Jamaica Broilers. He checked the facilities and found it in an advanced state of readiness. The water source was a small stream on the farm - pump would be used to pump water into storage tanks which were there. The stream had to be treated by chlorinating the water in the tank. A stand pipe was in the area. He gave figures from which plaintiff could realize profits over the 3 years period 1991 - 1993. He saw creepers on the coop but these were being cleaned up.

Under cross-examination the equipment he saw was sufficient for 6000 chickens. The Rhymesbury area had problems with water supply. He agreed that the company had to be assured that the water situation was dealt with. He did not recall if the water pump was there when he visited. "When I visited plaintiff was not at the stage where he could take in chickens." He had never worked for Caribbean Broilers and was not familiar with their standard form contract.

When re-examined he said for the plaintiff to be ready basically what was left to be in place was brooder rings and bulbs. These could be easily put in when notice is received when chickens were coming.

This was the case for the plaintiff.

Mr. Garth Channer the Acting General Manager of the defendant's company said his company engaged contract farmers. The prospective farmer would make representation to the Field Staff who would visit the farm to look at the location and infrastructure. The company had a standard form contract which is used by the farmers. Under this contract the company provided feed, baby chickens, medication and technical services. When the serviceman indicates everything is in place, the company would deliver the chickens.

He recalled the plaintiff calling him in August 1990 asking for a loan to purchase equipment to complete house for chicken. He told plaintiff he could not be given any such loan, that it was against company policy and that farmers are expected to provide all necessary infrastructure. He advised the plaintiff to put it in writing and he would pass it on to the Field Department. He received the plaintiff's letter and sent it to Miss Lyons, the Field Manager asking what could be done for this farmer.

In January 1991, he received another letter from plaintiff (exhibit 3). The plaintiff had again telephoned him asking for loan and saying he had enough money to purchase equipment for 5,500 chickens - he advised him to put his request in writing.

He did not agree for plaintiff to supply 5,500 chickens. He received a letter from the plaintiff's Lawyers - he asked his Field Department for a full report as to the status of the plaintiff and based on the report he received he replied to the Attorneys. He denied sending the plaintiff to the company's outlet in Old Harbour.

Under cross-examination he admitted Mr. Hamilton was a Field Serviceman with the company in 1989. He agreed that following hurricane Gilbert the company was rebuilding - trying to help farmers including getting new farmers. He agreed that his company provided equipment to farmers, but not to farmers just starting. He never gave the plaintiff any undertaking that he could get the equipment he needed.

When the plaintiff spoke to him in August 1990 the plaintiff had told him his coop was ready but he disagreed. Several things were not yet in place

If conditions were right he would be in a position to agree for supply of 5,500 chickens but this would require a new contract. He agreed that the company had an outlet in Old Harbour for selling equipment to chicken farmers. Someone from the company would have to authorise these purchases.

Franklyn Hamilton worked at the company for 16 years. He testified he was a serviceman. He recognised his signature on the contract (exhibit 1). He had attended the Supreme Court on Tuesday 18th February, 1997 and was asked into the Court Room and saw plaintiff in the witness box. This was the first time he was seeing the plaintiff and he heard the plaintiff admit also that he (witness) was not known to him (the plaintiff).

He never visited the plaintiff's farm in June 1989 - never advised the plaintiff that returns in the chicken business was good - he never gave him go ahead to purchase equipment.

When cross examined he said any serviceman could sign the contract. Sometimes serviceman accompanied Field Manager to the farms. He knew nothing of plaintiff's farm. He was not present when Mr. Barrows was dealing with the plaintiff. Sometimes contracts are signed before a farmer is ready as the farmer needs something to take to the Bank.

Mr. Eric Gordon testified that he worked with the defendant company from 1990 as a Field Serviceman. On 14th September, 1991 he met the plaintiff at his farm in Rhymesbury. A chicken house was in place. He looked at the facilities and pointed out some short comings. He went to the irrigation canal to one side of the farm. There was running water. The plaintiff said he intended pumping water from there to use in the chicken house. He told the plaintiff that he needed to treat the water as it could not be used direct to the chickens. There were drums in the yard connected with pipes below which there was an old container which was very rusted. He advised the plaintiff that that container could not be used because of its condition. "In my opinion the farmer was not ready for the delivery of chickens based on Caribbean Broilers standards." He referred the plaintiff to the Clarendon P.C. Bank and advised him to get a bin. He was aware that the Rhymesbury area had water shortage.

Under cross examination he gave details of the system when a prospective farmer gets a contract. Generally the serviceman who signs the contract is the serviceman who did measurements and kept contact with the farmer. He did not recall the day of the week he visited the plaintiff. He did not visit on Saturday. If the 14th of September was a Saturday then he was mistaken as to that date. The serviceman he had taken over from was Mr. Hamilton. He never got the impression that the farm was ready for chickens in September 1991. The plaintiff needed a container in which to treat the water and the drums provided was totally inadequate for 7000 chickens. He made his report concerning his visit to the plaintiff's farm on the 17th September 1991.

Miss Paulette Lyons next testified. She worked at Caribbean Broilers between 1989 and 1993 as Field serviceman and then as Operations Manager. In about March 1990 she met the plaintiff who advised her he was a new chicken farmer but had not got any chicken as yet. They arranged to meet on his farm. That same month she visited the farm - plaintiff showed her the chicken house, equipment and his proposed water source. The roof and flooring were in need of repairs. The feeders were in state of disrepair and waterers were rotting and chicken curtains were torn. She enquired about domestic water and plaintiff informed there was none on the farm. She advised him he needed to build a tank. He indicated he never had the funds to do so. She advised him to buy 7 - 8 drums and how to hook them up. She told him other farmers in the area had water problems and had built tanks. They had discussions about source of water. The plaintiff showed her stream running nearby. She advised him that the water there was too polluted and dirty and would need serious treatment. He showed her an old tank from a fire truck which he planned to use to store water. She advised him it could not be used.

The plaintiff informed her he never had the funds and needed to go to the bank. She advised him to contact the defendant's office and a serviceman would be sent to make an assessment when necessary repairs were done.

In August 1990 after speaking with the Financial Controller she sent Mr. Eric Gordon, Field Serviceman, to the plaintiff's farm.

Under cross-examination she said she knew at that time the company assisted existing farmers with small loans.

The plaintiff had informed her that he never got the loan from the bank. She did not agree that all they discussed concerned facilities for water. She advised he needed two tanks if he used the water from the stream. The water would be led into first tank where it would be treated and then into next tank for storage.

That was the case for the defendant.

Counsel for both parties made their final submissions in writing. For the defendant Mr. Williams submitted that there was never any variation of the original agreement. On the several occasions that the plaintiff claimed he was ready to receive chickens, as it turned out on the evidence he was never ready. He pointed out that on the evidence of the plaintiff's own witness the plaintiff was not ready when he visited the farm in August 1991. On the question of water he saw no pump which was necessary to pump water from the stream into storage tanks. He did not regard stand pipe advisable as sale source or for long term. The plaintiff was not ready to receive neither 5,500 nor 7,480 chickens.

On the question of variation Defence Counsel submitted that there was no credible evidence to support the plaintiff. He could not be regarded as a witness of truth and pointed to the occasion where he denied seeing Mr. Hamilton who was brought in Court although he claims that Mr. Hamilton had in fact visited him at his farm. He again referred to evidence of the plaintiff's witness that he saw equipment for 6000 chickens.

Why would the plaintiff purchase expensive equipment for 6000 chickens if there was any agreement for him to prepare for only 5,500 chickens. This, he submitted, shows that the plaintiff was trying to fulfill the written agreement. He pointed out that there was no consideration for the alleged variation which was neither pleaded nor proved. He asked the Court to accept the evidence of witnesses for the defence as being clear and credible. He asked for judgment for the defendant.

Counsel for the plaintiff on her part submitted that officers of the defendant's company encouraged the plaintiff to enter the chicken business. He was promised advance in equipment. Based on these he signed the contract exhibit I on 5th August 1989. He said the coop was ready in February 1990 but admitted that the defendant serviceman had seen no facilities for running water.

He made some proposal for the supply of water. He was told then that the company no longer advanced equipment.

In August 1990, his request for equipment was turned down. In January 1991, he made proposal to Mr. Channer who agreed to him purchasing equipment for 5,500 chickens. The plaintiff purchased the necessary equipment but no one from the defendant's company visited the farm. The defendant never sent him any chickens and he lost his investment and the profit from it.

She submitted the plaintiff's witness was the only independent witness in the case. He found the farm in August 1991 in an advanced state of readiness save for a few items which is normally done when notice is received that chickens are coming.

Counsel made further submissions on the law. The plaintiff had claimed that there was an oral variation of a written agreement but agreed that for it to be binding there would have to be consideration which the plaintiff provided by actually purchasing equipment from his own resources. If, however, there was no consideration, the defendant would be estopped from relying on the strict terms of the contract. She referred to the 26th Edition of Chitty on Contract paragraph 209 to 217. Thomas Hughes v Metropolitan Railway Co. (1877 H.L. Vol. II P. 439.

She submitted that the plaintiff had actually relied upon the defendant's agreement to supply 5,500 chickens.

Counsel submitted that the fact that the plaintiff did not recognise Mr. Hamilton did not mean he was lying; it ought to be viewed as a case of forgetfulness of a meeting which took place some 8 years ago. All the important aspects of Hamilton's evidence were contradicted by defendant's witnesses.

The plaintiff was ready for chickens from February 1990, save for the equipment defendant was to supply. Mr. Barnes was satisfied with the arrangement for water in August 1991. Mr. Graham was not a witness of truth. He had contradicted his own evidence as to the date he visited the plaintiff's farm. His evidence ought not to be relied on as also that of Miss Lyons.

The only person likely to have authorized the variation was Mr. Channer. She addressed the court on damages and asked for judgment together with interest at commercial rate as set out in the statistical digest for September 1996 issued by the Bank of Jamaica.

General Comments.

It is clear from the evidence that the main issue is whether the plaintiff was ready up to the time when he went to his Lawyers to collect chickens on his farm. Secondary to this was how many chickens was he to have received from the defendant. Dealing with the last mentioned matter first, there is no dispute that the written contract provided for 7,480 chickens. Was there any subsequent change? The plaintiff says yes - Defendant denies this.

Paragraph 16 of the contract provides that "This agreement represents the complete understanding and agreement between the parties and any variations thereto must be in writing and signed by the parties hereto."

From the plaintiff's evidence he started preparing the farm but it was not until January 1991 after he heard from Mr. Channer that he proposed that the company supplied him 5,500 chickens instead of 7,480 - see letter dated 30.1.91 (exhibit 3). Up until this time he obviously was preparing to receive 7,480 chickens. He claims the Manager said he found no problems with his proposal and told him to proceed to purchasing equipment for 5,500 chickens. Why did he not insist on getting this approval in writing as required in the contract? There is no support for his evidence in this regard. It is his word against the defendant's Manager. It must be recalled that as far back as February 1990 the plaintiff had indicated that the coop was finished and ready for inspection and that Miss Lyons had, save for facilities for running water, found no problem with the coop. But the plaintiff had also said that between August 1990 and January 1991 "I started to try to get some money to buy these equipment." Would Miss Lyons have no problem with a coop which needed equipment? Not until July 1991, that the plaintiff said he told Mr. Channer that he purchased equipment for 5,500 chickens and was then ready to receive chickens.

However, the plaintiff's own witness Mr. Barnes said when he visited the farm in August 1991 "the plaintiff was not at the stage where he could take chickens."

I now return to the main issues:-

Was the plaintiff ready to receive chickens? By paragraph 1 of the contract the defendant was to deliver 7,480 chickens to the plaintiff's farm on or about the 15th of October 1989. He admitted that he was not ready to receive chickens in October 1989, the reason being because of labour problems. He agreed also that in August 1990 he was not ready, the reason being he had no equipment. He admitted that in September 1991 he had drinkers but they were not installed. They were in the storeroom. He admitted that the defendant had to be satisfied that the chicken house was ready before it delivered chickens. He admitted that he never had all the equipment for 7,480 chickens.

Mr. Eric Gordon said on his visit to the plaintiff's farm in September 1991 in his opinion the farm was not ready for the delivery of chickens based on Caribbeah Broilers standards.

Conclusions

The farm the plaintiff leased was in an area notorious for water shortage. It had been devastated by the hurricane of September 1988. Many of the equipment used by the previous leasee were damaged and scattered about the farm. He planned to use some of these equipment. The plaintiff entered into a written agreement as a contract farmer with the defendant. On his own admission the plaintiff was not ready to receive chickens in October 1989 as provided in the contract.

I find from the evidence that on none of the occasions when the plaintiff claimed he was ready that he in fact was ready. One of the most essential ingredients needed for the growing of chickens, a good source of water, was not provided. The domestic supply, a stand pipe some half mile away, was unreliable for long term supply - the drums provided were not sufficient and in any event depended on the same unreliable domestic stand pipe. A recommendation to build two tanks and to pump water from the stream for treatment and storage was ignored.

There was evidence from the plaintiff's witness that some farmers got water from the Mid Clarendon Irrigation Scheme. It does not appear that the plaintiff showed any interest in getting into that scheme. No pump was in place to pump the water from the stream. The company had to be assured that the water supply was satisfactory. It is clear that the company was not satisfied and in the circumstances it would be irresponsible for it to supply chickens to the plaintiff until that was settled. It could have led to the loss of the whole flock. By paragraph 3 of the contract the plaintiff agreed to provide all necessary labour, equipment, utilities including but not limited to water.

It is apparent from the evidence that the project was insufficiently funded. Efforts to fund it from his own private source were just not enough. This led to the plaintiff's failure to live up to the terms of paragraph 3.

On the question of the number of chickens to be supplied, it was admitted by the plaintiff that the defendant did not agree in writing to any variation as required under the contract. On the evidence presented I am not convinced that the defendant orally agreed to any variation and if it did, I find that there was no consideration and same would not be contractually binding on the company.

I find also that there was nothing in the conduct of the officers of the defendant's company which could reasonably have led the plaintiff to believe that the strict term of the contract would not be relied on - hence estoppel could not avail the plaintiff.

I have taken into consideration the demeanour of the witnesses, that their testimonies related to issues which arose as far back as 1989 and I have noted the conflicts. On the totality of the evidence I find on a balance of probabilities that the plaintiff has failed to prove his case against the defendant.

Accordingly, there shall be judgment for the defendant with costs to be agreed or taxed.