

NMLS

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. CL R048/1996

BETWEEN NEVILLE RANGLIN AND GARY RANGLIN CLAIMANTS  
(TRADING AS MONTANA SUPERMARKET)

AND NEAL AND MASSEY (JA) LTD. DEFENDANT

Ms. Gillian Mullings of Patrick Bailey & Company for the Claimant.

Maurice Manning of Nunes, Scholefield, Deleon & Co. for the Defendant.

**Heard: 7<sup>th</sup> and 14<sup>th</sup> May 2004 and 22<sup>nd</sup> July 2005**

**Campbell, J.**

The Claimants are brothers, who at the time of trial were overseas studying. The sole witness for the Claimants was their father, Mr. Alvin Ranglin, who had acted as General Manager of the business.

The brothers, along with Alvin Ranglin, had operated a supermarket, Montana, at 5 Hope Road. They bought goods for the supermarket from Neal and Massey, who were distributors.

On the 19<sup>th</sup> March 1996, the Claimants filed a Writ of Summons, in which they claimed the sum of five hundred and twelve thousand three hundred and seventeen dollars and one cent (\$512,317.01) had been overpaid to Neal and Massey, for goods supplied.

On the 9<sup>th</sup> July 1996, Neal and Massey filed a Defence and Counterclaim. They denied the Ranglin's allegations and contended that the trading relationships between the parties had commenced in 1988 and not 1992 as the Ranglins claimed. That relationship had ended on or about the 3<sup>rd</sup> of June 1994. They further alleged that the Ranglins were indebted to them in the sum of \$284,825.09, which sum represents a balance on the Plaintiffs' account as at the 31<sup>st</sup> day of August.

Mr. Ranglin, in his witness statement, stated that the indebtedness of Neal and Massey arose after Montana started buying from the Defendant in April 1992 and Neal and Massey allowed the Ranglins to "take goods on credit" in May 1992. In cross-examination, Ranglin said that credit meant he had a "Guarantee for payment" from a Bank. The goods would be delivered and the Claimants would be afforded thirty days in which to pay.

Mr. Ranglin, in his written statement, said that the supermarket discovered that they were paying for more goods than they had received. The reasons given for this overpayment was that "the Defendants had invoiced the Claimants for sums owed as far back as 1988, when they had only started trading with Neal and Massey in April 1992." By August 1992, Montana's accounts showed that the total goods delivered were \$442,828.37 and that they had paid out \$747,656.87. This constituted an overpayment of \$304,828.50 in the trading period from April 1992 to October 1992. However, annexed to the statement of Denis Lawrence,

financial controller of Neal and Massey, was their statement of accounts. This statement shows Montana's account 551311 had its first transaction on the 30<sup>th</sup> April 1988. I accept that the trading relationship between the parties began in April 1988.

Another reason given for the overpayment was that Neal and Massey would sometimes send Montana an invoice but the goods listed on that invoice would not be delivered. Montana would get credit notes for undelivered goods. Mr. Ranglin admitted that both himself and the Neal and Massey were responsible for making notes of these undelivered goods. The Court was not shown any of these notes. Ranglin admits that most months he would have sums outstanding for the Defendants.

Mr. Ranglin further claims his account was credited with only \$39,377.20 after a lodgement of \$60,000.00. Amounts in two NCB Cheques for a total of \$28,495.95 were similarly not credited. Two managers' cheques totalling \$300,000.00, drawn on the National Commercial Bank were not credited. A sum of \$300,000.00 made on the 17<sup>th</sup> February 1994 was said by the Claimant to be a prepayment on account. This sum is said by Neal and Massey to be debited as a returned cheque.

If the business was buying on credit, as Mr. Ranglin stated at paragraph 8 of his written statement, what was the reason for the prepayment? If Montana had

detected an overpayment of \$304,828.50, accumulated between April 1992 and October 1992, why were they prepaying the sum of \$300,000.00, whilst overpayment on the Claimants' account was still an issue of contention between the parties? Of the cheque for \$60,000.00, the financial controller testified that there are eight invoices, which represent the total expenditure of the \$60,000.00.

In respect of the Claimants' assertion that two managers' cheques were not credited, Mr. Lawrence's evidence was to the effect, the reason was that one of the managers' cheques, in the sum of \$300,000.00 was returned in January 1994. Whilst another cheque in the sum of \$300,028.00 was intended to replace it. The sum of \$28.00 was the bank's charges for handling the cheque. I find that the forwarding of the managers' cheque for \$300,000.00 is more consistent with the Neal and Massey's case. I reject the Ranglins' contention that the postings in the accounts of the two cheques were not credited to their account.

In cross-examination, Ranglin accepted that his cheques have been dishonoured and he has had to re-pay those dishonoured cheques by way of managers' cheque. He also admitted that Neal and Massey terminated the supply of goods to Montana on the 3<sup>rd</sup> June 1994. Curiously, having written a letter dated 27<sup>th</sup> December 1994 that "upon a proper accounting, the outstanding sum owed by the Defendants has been identified as \$222,284.60," admitted that he subsequently paid the Defendants two sums of \$150,000.00. I find that such payments were

inconsistent with the Ranglin's contention that they had overpaid, and supports Neal and Massey that Montana's account was in arrears.

The testimony of the financial controller was, there was a daily exercise to ensure that all monies received were lodged to companies' coffers. In respect of ex. 2, which was dated the 10<sup>th</sup> January 1994, Neal and Massey received it on the 12<sup>th</sup> January; there was a paid stamp on the front of the cheque dated 11<sup>th</sup> January 1994. There was no endorsement from Neal and Massey on the cheque. Mr. Lawrence admitted that.

It was argued by Counsel for the Ranglins, they were not given credit for payments made. She argued that Neal and Massey have alleged that the Ranglins have not paid for all goods supplied, but have been unable to verify the accuracy of their contention. That there was no proper account, and that Neal and Massey could have provided the Court with documentation in relation to cheque payment. None was provided. On Ranglin's case, Neal and Massey owed the Claimants \$461,065.95.

Mr. Manning submitted that the varying amounts presented by the Claimants as being owed to them by the Defendants, demonstrate the inability of the Claimants to prove their case.

Mr Manning, in support of the counterclaim, said that the payment by the Claimant of the sum of \$97,149.62 in September of 1995, and therefore not a

statement of account, indicates that there was a sum outstanding by the Claimant. He asked the Court to accept that the three invoices were cost invoices and did not relate to the credit arrangements between the parties. Ex 6 and 7 predates “the period of return cheques.” I accept that there was a discussion about the indebtedness of the Claimant to the Defendant and based on those discussions the payment of \$97,149.62 was made. The Claimants’ case is dismissed. Judgement for the Defendant on the claim and on the counterclaim in the sum of \$187,000.00. Interest at 12%.

Cost to the Defendant to be agreed or taxed.