IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. S398 of 1995

BETWEEN	STEVE STEADMAN	PLAINTIFF
A N D	FOREST INDUSTRIES DEVELOPMENT COMPANY LIMITED	DEFENDANT

Mr. Audel Cunningham for the plaintiff instructed by Nancy Tulloch-Darby.

Mrs. Donna Scott-Mottley for the defendant instructed by Scott, Boorasingh & Bonnick.

HEARD: 26th February, 1999 and 4th February, 2000

JUDGMENT

Reckord, J.

This is an action for breach of contract - the endorsement on the writ states:-

> The plaintiff's claim is against the defendant for damages for breach of contract - that there existed between the plaintiff and the defendant an agreement for the sale of a Franklin 170 PAB Forwarder to the plaintiff. That the defendant in breach of the agreement sold the said Franklin 170 PAB Forwarder to save other person other than the plaintiff.
>
> That by virtue of the defendnat's breach the plaintiff has suffered severe loss and damage and incurred expenses.
>
> The plaintiff therefore claims:-
>
> (i) Damages for breach of contract.
>
> (ii) Interest at such rate as this Honourable Court deems fit.

(iii) Costs

(iv) Such further and other relief.

The plaintiff is an engineer from Buff Bay in Portland. He had been involved in land clearing and other commercial enterprise buying and selling equipment.

In 1993, he was engaged in commercial enterprise travelling between Jamaica and Belize and Dover, Florida. He was a Belizian citizen owned lands there and decided to do some logging there. He had a survey done to determine what type of trees were on the land - It revealed a substantial amount of Mahogany.

He sought to acquire some logging equipment - tractor, bulldozer, log skidder, forwarders or long transporters. He identified these equipment at FIDCO - the defendant's company - they were for sale. He made enquiries and was referred to Mr. Bennett who was present in Court representing the defendant company. He entered into an agreement to purchase the machines from FIDCO through Mr. Bennett. Payment was to be made on a one to one basis.

Mr. Steadman said he paid for the tractor, log skidder and one Franklin Log Forwarder - The 170 Franklin was agreed at a price of $90,000.00. This was not paid for.

In 1994 he received a fax note from FIDCO informing him that he would be getting all the machines he needed. He told Mr. Barrett who was the general manager of FIDCO that he needed the machines for doing logging in Belize. They were not new machines. There was a great difference between the price of a new one and an old one. They needed repairs - some

parts were missing. He never got the 170 Franklin. He received a fax message from FIDCO informing him that it had been sold.

The plaintiff said he made enquiries from the Franklin Company in U.S.A. and found similar machines there valued between U.S. $25,000.00 and U.S. $75,000.00. He also made enquiries in Jamaica but found no machine of that type.

Mr. Steadman did not start his logging in Belize because of lack of sufficient funds. If he had received the 170 Franklin here his fleet would have been sufficient.

The plaintiff under cross-examination said he made the decision to go in the logging business early nineties, could be in 1991 - shortly after he went to FIDCO. He paid depositon some of the machines, he would have to complete the payments before he was allowed to take them. The equipment were all kept at the FIDCO premises. Even after he completed payment the equipment remained on the defendant's premises and he was repairing them there.

All payments were made by cheques. Payments were sent by post, or handed to Mr. Bennett or to the cashier. He completed payments on the other machines in 1994, he had taken a few years. He had sent a cheque to FIDCO for payment on the 170 Franklin but it was returned to him - this was the first payment on this machine. This was in 1994 or end of 1993. He called Mr. Bennett by telephone.

This was the first time his cheque was being returned to him. He denied that at the end of August, 1994, that Mr. Bennett told him that not having heard anything from him he

had sold the 170 Franklin. Because he never got the 170 Franklin he did not go through his plans to do logging in Belize.

This was the plaintiff's case.

Counsel for the defence elected not to call any witness on behalf of the defendnat. She submitted that the issue before the Court was whether or not there was an offer and acceptance - whether there was a contract which the defendant breached. She agreed there was an agreement for sale on several pieces of equipment in 1992. If there was no proof of any payment on the 170 Franklin she questioned whether there was a valid and existing contract.

Defence counsel further submitted that if there was a valid and subsisting contract, it must be concluded within a reasonable time - she referred to the case of Ramsgate Victoria Hotel Co. vs Montefiori (1886) L.R.1EX. C.L. 109.

Also to Cheshire and Fifoot - Law of Contract 8th Edition page 50.

On the plaintiff's own case the contract could have been revoked through lapse of time. The agreement was not binding since there was no consideration and none was proferred. The plaintiff had produced no evidence to show the damages which he claims he suffered. He had not attempted to mitigate his loss.

Mr. Cunningham, on behalf of the plaintiff submitted that the defendant in its defence filed admitted paragraph 3 of the statement of claim that there was agreement to purchase the 170 Franklin.

The defendant had not denied that the agreed price was $90,000.00. That being so there was a legally binding contract. The plaintiff had in fact attempted to make a deposit payment on the 170 Franklin but his cheque was returned to him. Counsel asked the Court to infer that the reason for the return was because the defendant had plans to sell the machine to someone else and did in fact sell.

On the question of damages Counsel for the plaintiff submitted that damages for a breach of contract was actionable per se. The measure of damages should be the cost of a new machine less the contractual sum of $90,000.00. The plaintiff had made out his case and he asked for judgment.

Findings

Was there a contract? The plaintiff claims there was one. The defendant in its defence filed admits there was an agreement between the parties that the defendant would sell to the plaintiff a Franklin 170 PAB Forwarder for the agreed purchase price fo $90,000.00. (See paragraph 3 of the defence).

There was offer and acceptance - There was consideration and undoubtably the parties had the necessary capacity and from the conduct of the parties in this commercial agreement there is no question that the parties intended to create legal relations. There has been no rebuttal to this effect by the defendant.

I therefore find that this was a legally binding contract.

The defenant has asked in the alternative for the Court to say that the offer made to the plaintiff by the defendant had lapsed due to the passage of time.

See Chitty on Contracts - 23rd edition, paragraph 73 page 75.

"Lapse of time. An offer may lapse owing to the passing of time. The parties may of course, agree upon a time within which an offer is to be accepted; in such a case the offer lapses when the agreed time has passed without an acceptance being made - if no definite time is agreed, the question then to be decided on the fact of the case is whether it is reasonable to regard the offer as still open. Thus in Ramsgate Victoria Hotel Co. v. Montefiore the defendant applied in June for shares in the plaintiff company and paid a deposit. He received no reply until November, when he was informed that the shares had been allotted to him and that the balance on them was due. The defendant refused to accept the shares and refusal was upheld by the Court; his offer had not been accepted within a reasonable time and had lapsed in consequence."

The plaintiff's evidence as to dates is uncertain. Date of agreements, date of completion of payments on other pieces of machinery; date of payment of cheque on the 170 Franklin and date of its return are all unknown. However, it appears all transaction took place in the period between 1993 to 1994. The first three pieces of equipment were completely

paid for by sometime in 1994. A cheque for first payment on the 170 Franklin was sent to the company. The arrangement between the parties as to mode of payment was very loose and there is no evidence that either party complained in so far as the payments on the first pieces of equipment were concerned. There is no evidence that any date was agreed upon to commence payment or to complete payment. Time was not the essence of this contract.

The defendant knew the purpose that the plaintiff needed this machine. The least it could have done was to warn the plaintiff that if payment not made by a certain date, the machine would be sold to another prospective purchaser. This it failed to do. I do not think that lapse of time is a necessary inference to be drawn from the facts to make the offer cease.

What is the measure of damages.

> "Where two parties have made a contract which one of them has broken, the damages which the other party ought to receive in respect of such breach of contract should be such as may fairly and reasonably be considered either arising naturally i.e. according to the usual course of things, from such breach of contract itself, or such as may reasonably be supposed to have been in the contemptation of both parties, at the time they made the contract, as the probable result of the breach of it." Per Alderson B, in Hadley vs. Baxendale (1854) 9 Exch. 341 at p. 354.

The damages recoverable is therefore the difference between the purchase price and the market value at the date of the breach of the contract.

There is no evidence of the value of the 170 Franklin at the time of the breach. There is however, evidence that a new machine would cost between U.S. $25,000.00 and U.S. $75,000.00. The lowest price of U.S. $25,000.00 at 37 Jamaica to $1 - U.S. = $925,000.00. The loss suffered by the plaintiff is therefore $925,000.00 less $90,000.00 = $835,000.00.

This would be the sum of money the plaintiff needed to place him in the position he would have occupied had he received the 170 Franklin he had contracted to purchase from the defendant.

However, on the question of the measure of damages, the principle is to effect a restitutio in integrum so far as the actionable damage is concerned. The object of damage is to compensate the plaintiff, not to punish the defendant.

The plaintiff had contracted to purchase a second-hand machine which needed repairing and new parts. He described them as "in pretty poor state". The sum mentioned above would be what is required to purchase a new machine. He would be receiving a vastly superiormachine than which he had contracted to purchase. The plaintiff admitted that there was a great difference in prices of a new machine and a second-hand one but there was no evidence of what is the value of a similar machine in similar condition in the open market at the time of the breach. None was available in Jamaica and there is no evidence of the value of such a machine on the American market.

I quote from The law of contract, by Cheshire and Fifoot, seventh edition page 555.

> "We have seen that in cases of frequent occurrence, such as a contract for the sale of goods; certain rules relating to the measure or assessment of damages have gradually been evolved, as for instance the rule that a defaulting seller must pay to the buyer the difference between the market and the contract price of the goods. But in general there is no specific rule upon the matter, and it is left to the good sense of the Court to assess as best it can what it considers to be an adequate recompense for the loss suffered by the plaintiff. The assessment may well be a matter of great difficulty, indeed in some cases one of quesswork; but the fact that it cannot be made with mathematical accuracy is no reason for depriving the plaintiff of compensation."

In the event I consider that half the value of the new machine less the contract price to be an adequate recompense for the loss suffered by the plaintiff:

$\frac{\$925,000.00}{2}$ - $90,000.00 = $372,500.00.

There will therefore be judgment for the plaintiff in the sum of $372,500.00 with interest @ 6% per annum from the end of August, 1994 to end of February, 1999.

Costs to the plaintiff to be agreed or taxed.

I sincerely regret the delay in delivering this judgment.