Butterworths

IN THE SUPREME COURT OF NEW ZEALAND
WELLINGTON REGISTRY

M.No.297/78

No Special Consideration

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BETWEEN SETAB ENGINEERING LIMITED a duly incorporated company having its registered office at the offices of Noel P. Hunt & Co. (N.Z.) Limited, 425 Cuba Street, Lower Hutt, Engineers

Appellant

A N D PAYNE BROS. LIMITED a duly incorporated company having its registered office at Auckland and carrying on business there and elsewhere as an Industrial Supplier

Respondent

Hearing: 8th May, 1979
1R

Counsel: J.R. Wilson for the Appellant
J.D. Atkinson for the Respondent

Judgment: 17 May 1979.

JUDGMENT OF ONGLEY J.

The appellant in this action is a company which in 1975 was engaged in the business of supplying industrial equipment including conveyor machinery. In March of that year it purchased a quantity of slat band chain from the respondent to be incorporated in machinery which it had designed and was about to manufacture for a third party for use in a pasteurising plant.

Two employees of the appellant, a Mr Bates and a Mr Harding, designed the machine on the basis that the slat band chain was to be of stainless steel. They believed stainless steel to be the most suitable component because of the very moist conditions under which the plant was intended to operate. The respondent quoted a price for the supply of stainless steel for the project and was requested to send a representative to discuss price, delivery dates and other incidental matters. The respondent's representative, a Mr Chapman, called on Mr Bates and Mr Harding and was fully informed by them about the design of the machine and the use to which it was to be put. In the course of discussion the use of carbon steel as opposed to stainless steel was mentioned. Both Mr Chapman and Mr Bates said in

evidence in effect that Mr Chapman advised them to use carbon steel and instanced its satisfactory quality by reference to its use by the Wellington City Council in its milk treatment plant in similar conditions to those in which the appellant's machine was expected to work. Mr Chapman had no recollection of the discussion and denied that he would have given advice of that sort. The learned Magistrate was satisfied that there had been a discussion about carbon steel and that Mr Chapman might have recommended its use but, as I read his judgment, did not find it proved that he had done so.

The appellant purchased from the respondent a quantity of slat band chain of carbon steel and incorporated it in the machine which it supplied to the third party. It corroded quickly in the conditions in which it was used and had to be discarded.

In defence to a claim for $658.03 for the price of the slat band chain the appellant invoked Section 16(a) of the Sale of Goods Act 1908 to establish that it was a condition of the sale that the goods were fit for the purpose for which they were supplied. That section is too well known for it to be necessary to set it out in full here.

It was well established that the appellant expressly made known to the respondent the particular purpose for which the goods were required. It is conceded by Mr Atkinson for the respondent that the goods were of a description which it was in the course of his client's business to supply and that the goods were not reasonably fit for the purpose of being used in the pasteurising machine. There is really only one issue remaining which is whether the circumstances showed that the appellant relied upon the skill and judgment of the respondent in purchasing the carbon steel product.

The learned Magistrate held that the appellant did not establish in the Court below that it had relied upon the respondent's skill and judgment. In reaching that conclusion he made an ancillary finding that the knowledge of Mr Harding and Mr Bates in relation to the subject matter of the sale was equal if not superior to that of Mr Chapman. There is evidence which, if accepted, supports that finding but it is attacked by Mr Wilson as disclosing an error in reasoning. He submitted that

it is the totality of the expertise and knowledge of the respondent company which is relevant, not that of Mr Chapman alone. As I understand his argument it is that the appellant in relation to Mr Chapman is to be regarded as dealing with a person having the collective knowledge and expertise of all his company's officers and employees. I do not agree with that proposition. I think that where one is looking at the comparative level of knowledge of two parties to a sale for the purpose of deciding whether mere disclosure of purpose is enough to show that there is a reliance upon the skill and judgment of the other party the knowledge of the agent or employee who is actually engaged in the transaction is a circumstance to be taken into account. Where the employees who are engaged in the dealing on either side are equally knowledgeable, as the learned Magistrate has found was the case here, then an inference of reliance of one upon the skill and judgment of the other will not be readily drawn by reason only of the mere disclosure of purpose.

Mr Wilson sought to distinguish this case from the case of Feast Contractors Limited v. Ray Vincent Limited (1974) 1 N.Z.L.R. 212 on the facts. He submitted that the parties are not equally knowledgeable as the respondent is a specialist in the goods in question whereas the appellant is not so well equipped. That is a question of fact and having found that the learned Magistrate adopted a correct approach to the question I am not prepared to disagree with his conclusion. Whether one looks at the two companies as entities or at the employees who were acting for them in this transaction it does not seem to me that there is much to choose between them as to knowledge of the goods in which they were dealing. One was a specialist in slat band chains, the other an expert in constructing machines which incorporated slat band chains. If the respondent had been told the nature of the machine and its work and asked to supply suitable material for it that might well have indicated reliance upon the judgment of the appellant. But that is not what the learned Magistrate found did happen. In the first place the appellant chose stainless steel; and in so doing exercised its own judgment. For some reason its employees Messrs Bates and Harding changed their minds. If that could be attributed to

their being expressly advised to do so by Mr Chapman, pretending to specialist knowledge, such as the mode of operation of the Wellington Milk Treatment Station, then he may well have made his employer liable. There is no finding as to just what was said on that topic however and if the evidence was insufficient for the learned Magistrate to decide that question after hearing the witnesses then clearly I am not able to do so at this stage.

The effect of the learned Magistrate's decision is to find that the appellant exercised its own judgment and did not rely upon the skill and judgment of the respondent. In the absence of evidence to establish that Mr Chapman affirmed the suitability of carbon steel for the appellant's machine I find myself in agreement with that conclusion. The appeal fails and is dismissed with costs of $75.00 to the respondent.

Solicitors:
Messrs Bell, Gully & Co., Wellington, for the Appellant
Messrs Hunt, Hunt & Chamberlain, Auckland, for the Respondent