

SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO. 35 OF 1995

BETWEEN:

**ARNOS VALE HARDWARE CENTRE
A DIVISION OF G.M.K. SUPPLIES LTD**

Plaintiff

and

FOX FURNITURE ENTERPRISES LTD

Defendant

Appearances:

Arthur F Williams Esq for the Plaintiff

R Theodore LV Browne for the Defendant

1999: October 26, November 11, 15

JUDGMENT

- [1] **MITCHELL, J.;** This is an action brought for goods sold and delivered. It commenced by a Writ issued on 2nd February 1995 and endorsed with a Statement of Claim for \$10,873.00 price due and interest for 172 pieces of mahogany supplied to the Defendant on 2nd June 1993. The Defence filed on 21st April 1995 denied that the Defendant ever transacted any business with the Plaintiff; that in the absence of the Director and owner of the Defendant Company the Plaintiff brought a quantity of wood and left it at the Defendant's premises; the wood was unsuitable for the making of furniture; the Defendant frequently requested the Plaintiff to remove the wood, but it refused to do so; no price for the lumber was ever discussed nor was the Defendant ever called upon to sign a bill.

[2] There was one witness for the Plaintiff and one witness for the Defendant. The Plaintiff is a hardware retailer and wholesaler, and its principal and only witness was Mr Daniel Richards. The Defendant was represented by Mr Randolph Fox its Director and principal. Their stories were diametrically opposed, and the function of the Court was to select the one that appeared more likely to be the truth. After having heard the witnesses and their counsel, I have no hesitation in finding that the version of events as given by the Defendant is more credible. I accept that what happened was that Mr Fox was approached by Mr Richards one day in the street and told that there was a consignment of Trinidadian Mahogany at the wharf, and that Mr Richards wanted Mr Fox to have a look at it. That was the first consignment of Mahogany that Mr Richards had imported, and he had no experience with Mahogany. Mr Fox is a master craftsman of nearly 30 years experience. He had his own suppliers of Mahogany, knew what types and cuts of Mahogany were suitable, and would not accept unsuitable wood as Mr Fox had found to his cost that unsuitable wood had many times in his early years caused him to have to remake items of furniture for unsatisfied customers. Mr Fox examined the Plaintiff's wood on the wharf and found it to be completely unsuitable for furniture making. Many months later, Mr Richards visited Mr Fox at his workshop in company with the Trinidadian supplier of the Mahogany and attempted to persuade Mr Fox to accept some of the wood to try it. Mr Fox declined to accept any of the Mahogany. The following day, Mr Fox discovered that the Plaintiff had delivered to his mother's exposed premises next door to his workshop what appeared to him to be the unsold remnants of the consignment of the Trinidad Mahogany. Mr Fox had not signed a delivery slip, nor a credit bill. He repeatedly

telephoned Mr Fox to come and remove his Mahogany, but Mr Richards pleaded with him to try some of it and that they would work something out over a price. They never agreed or even discussed a price. Mr Fox was adamant that he could not use any of the wood for furniture, and insisted that the Plaintiff come and remove it to a safer place as he did not want it and could not be a watchman for the wood. The Plaintiff did not remove the wood and left it where it was. Years afterwards, Mr Fox's brother demolished his mother's old premises and rebuilt it, and by now the pieces of the Plaintiff's wood have disappeared. The next thing that happened was that Mr Fox received the Writ in the action, there was no letter before action. The Plaintiff produced at the trial a delivery slip with the apparent signature of a "Fox" on it. It does not appear to be "Randolph Fox" or any abbreviation of that name. Mr Fox vehemently denied that he ever signed the delivery slip as he was not present when the lumber was delivered, and immediately he learned of the delivery he complained to Mr Richards. I believe him.

- [3] In the circumstances, I find that Mr Richards dumped the wood on Mr Fox. There was no contract between the Plaintiff and the Defendant, nor any unjust enrichment of the Defendant that would cause the Court to cause him to recompense the Plaintiff. The Plaintiff will pay the costs of the Defendant, to be taxed if not agreed.

A handwritten signature in black ink, appearing to read 'Ian Donaldson Mitchell', with a long horizontal stroke extending to the right.

Ian Donaldson Mitchell, QC
High Court Judge