

SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CLAIM NO. 212 OF 2003

BETWEEN:

D's SERVICES LIMITED

Claimant

v

JOEL PITT

Defendant

Appearances:

Ms. Mira Commissiong for Claimant

Mr. Emery Robertson for Defendant

2004: January 13, 23
April 30

JUDGMENT

- [1] **BLENMAN, J:** This is a claim by D's Services Limited (D's Ltd) against Mr. Joel Pitt (Mr. Pitt) for a debt due and owing as a result of a credit arrangement between the parties in relation to the purchase of a stove, air conditioning unit and supplies.
- [2] D's Limited is a limited liability company, incorporated under the Laws of Saint Vincent and the Grenadines, which is involved in the rental of office space in Molly's building. It also carries on commercial business.
- [3] Mr. Pitt is a Barrister at Law and Solicitor practicing within the State of Saint Vincent and the Grenadines. D's Ltd alleges that Mr. Pitt bought a four burner gas stove on credit, paid part of the purchase price and has refused to pay the balance of \$505.00. Further D's Ltd contends that he purchased, on credit, from it supplies for an air conditioning unit to the value of \$9,978.65 and has refused or failed to pay for them despite repeated requests. While he admits owing the sum of \$505.00, Mr. Pitt unequivocally denies that he had any

credit agreement with D's Ltd or that he owes it any moneys for the supply of air conditioning supplies. He contends that he rented the premises from the former owner of the Molly's building which he occupied for some ten (10) years. There were two air conditioning units in that part of the building. Sometime after D's Ltd had purchased the building one of the air conditioning units became faulty so he made representation to Mr. Hillary Da Silva the Managing Director who changed the unit. The units belong to the company.

[4] D's Ltd case was presented through the witness statements and testimony of three witnesses. Mr. Pitt filed a witness statement and gave evidence on his own behalf. The undisputed evidence is that D's Ltd caused an air conditioning unit to be installed in Mr. Pitt's office for which he did not pay, Mr. Pitt admitted owing D's Ltd the sum of \$505.00 on the stove.

[5] The issues to be determined are:

- (a) Whether or not Mr. Pitt purchased the supplies for the air conditioning unit on credit from D's Ltd,
- (b) If so, whether he has failed to pay the purchase price of \$9,978.05...

CLAIMANT'S CASE

[6] MARILYN SHORTTE -- Ms. Shortte is a clerk and cashier who has been employed with D's Ltd. since 1995. She stated that the company sells goods both on credit and for cash payment. The credit system employed by the company is that when the goods are delivered to the customer or his agent a delivery slip is completed by the person who takes possession of the goods. The company subsequently forwards an invoice to the customer which indicates the details of the sale. It is usual for a customer to visit the company to pay for the goods which they obtained on credit. Payments are made to her on behalf of the company and she issues receipts to the customer reflecting their payments and forwards the details of the payment to the accounts clerk for entry into the company's computer. She is responsible for entering the information from delivery slips in the

company's ledger when it sells goods on credit or on cash. Based on the exhibits she tendered in evidence and her personal knowledge, since she was present on various occasions and when Mr. Newton Samuel collected the supplies, Mr. Pitt bought the air-conditioning supplies on credit from D's Ltd. There is no doubt that Mr. Newton Samuel obtained the supplies on behalf of Mr. Pitt and signed the delivery slip in that capacity.

[7] She stated that she knew Mr. Pitt very well as the company's former tenant who had a charge account with the company for the purchase of a split level air conditioning unit together with supplies requested for its installation. Mr. Pitt formally paid her rents and moneys for the items he had purchased from the company on credit and she issued him receipts for his payments. Mr. Newton Samuel received from D's Ltd air conditioning units and components on credit on behalf of Mr. Pitt between 3rd November 1999 and 10th January 2000.

[8] Mr. Emery Robertson, Learned Counsel rigorously cross-examined her. She maintained that when the company sells its goods on credit delivery slips are written up and the person who collects the goods signs them either on his own behalf or on behalf of the purchaser if he is the purchaser's agent. She was responsible for the company's accounts for several years. Mr. Pitt's signature did not appear on the delivery slips, rather Mr. Newton Samuel who had collected the supplies on behalf of him and signed on the slips in that capacity. She transferred the information from the delivery slips into the company's ledger. She was also familiar with Mr. Newton Samuel who was not employed by D's Ltd but worked for various persons. At various times Mr. Samuel collected supplies from the company on behalf of Mr. Pitt in her presence.

[9] Mrs. Samuel, is a supervisor employed with D's Ltd, and was responsible for compiling the bills on behalf of D's Ltd. Ms. Shortte stated that while she was not responsible for the delivery of the goods, she wrote up the delivery slips. Mr. Pitt bought 5 air condition units on credit from D's Ltd; the units were delivered to him and received by Mr. Newton Samuel for transmission to his office. Two units were to be utilized in a proposed off shore bank and two other for Mr. Pitt's personal office. Two of the units were returned and his account

was not charged for the returned units. Mr. Da Silva was D's Ltd's Managing Director. During the period, different employees from D's Ltd authorized the delivery of the air conditioning supplies to Mr. Pitt. D's Ltd sent him the invoice for the units when the work was being done, but he failed to make good his indebtedness. This is so in spite of several notices being sent to him. It is absolutely untrue that the company arbitrarily debited his charge account.

LUCY FOSTER

[10] Lucy Foster is D's Ltd's accounts clerk. Her responsibilities include entering payments made to it from its customers, tenants and other clients. She supports Ms. Shortte's testimony as to the procedure that is followed when the company sells goods either for cash payment or on credit. Mr. Pitt was D's Ltd's tenant and had a charge account with the company for the credit purchase of a split level air conditioning unit with the supplies required for installation. She knew him well. The air conditioning unit was installed and D's Ltd gave Mr. Pitt an invoice for the unit and to date he has not paid for it despite several requests by the company.

[11] In cross-examination she admitted that she was not working at D's Ltd in 1999. In fact, she started working there in May 2001 and therefore was not so employed at the time of the alleged installation of the air conditioning unit. The information in relation to Mr. Pitt's indebtedness to the company was provided to her by Mrs. Samuel and from D's Ltd's records. While she did not send him the first bill, she sent him subsequent bills in relation to that charge account to the air conditioning units and he has not paid any money in relation to that bill. She tendered in evidence a copy of the bill to support D's Ltd's allegation of Mr. Pitt's indebtedness which indicates that the air conditioning supplies cost \$9,978.65.

NEWTON SAMUEL

[12] Mr. Samuel is a self-employed electrician, refrigeration and an air conditioning technician. At the request of Mr. Pitt, he installed a split level air conditioning unit together with its components, all of which he received from D's Ltd on behalf of Mr. Pitt, in his office. He

signed the company's delivery slips indicating that he received its supplies on behalf of Mr. Pitt.

[13] In cross-examination, he stated that he was self employed but also worked for D's Ltd. Mr. Pitt asked him to change the air conditioning unit in his office on a date he could not remember, to nine split level units comprising 6 evaporators and 2 condensers. He collected 3 evaporators and a condenser with Mr. Pitt's authorization for D's Ltd. In fact, it was Mr. Pitt who told him to go to the company and collect the units and to sign the bill. Initially, Mr. Pitt accompanied him downstairs to the Managing Director of D's Ltd, Mr. Da Silva deceased and spoke to Mr. Da Silva in his presence about the units. He installed three of the evaporators and one condenser in the area in which the offshore bank was identified to be housed. He charged Mr. Pitt \$1,200.00 E.C. for the work.

[14] He obtained the evaporators and condensers from D's Ltd on behalf of Mr. Pitt and installed them in his office. One unit carries three evaporators. The ones that he took out, Mr. Pitt placed in a store room he rented from D's Ltd downstairs of the building. Mr. Pitt bought the wiring and the gas for the unit since he owned the units and was responsible for providing these items. Mr. Pitt employed him to install the units and paid him \$600.00 for the work. He candidly stated that while on occasion he worked with D's Ltd he was not fully employed by the company but worked with it on a job basis. He also serviced the units for Mr. Pitt while he was a tenant in D's Ltd building. The documents tendered clearly show that he collected the goods on behalf of Mr. Joel Pitt.

DEFENDANT'S CASE

[15] JOEL PITT

Mr. Pitt occupied office space for the use of his chambers in the Molly's building which was then owned by Molly Arthur the latter who had air conditioning units installed in it. D's Ltd bought the building and he became its tenant. One of the air conditioning unit malfunctioned so he complained to Mr. H.B. Da Silva, the Managing Director of D's Ltd who changed it utilizing its technician to put in the new unit. He maintains that all of the

units belong to D's Ltd and states that it was their responsibility to maintain it. There simply was no credit agreement between himself and D's Ltd in relation to the air conditioning unit.

[16] Mr. Pitt vehemently denied that Mr. Newton Samuel worked for him or that they even had any agreement. He never paid Mr. Samuel \$600 as he stated and was clear that the storeroom downstairs belonged to D's Ltd. Mr. Samuel never maintained air condition units on his behalf. He stated that at one time he held the key to the store room but the landlord retrieved it from him. There never were six evaporators but admits that a split level unit was installed in his office; but it was faulty so he complained and a new unit was installed. He never took Mr. Samuel downstairs to the storeroom. Importantly, he stated that he "never received a bill at any time from anybody." His first knowledge of the bill was obtained when he received it from D's Ltd's solicitors.

[17] During cross-examination, Mr. Pitt stated that he was a tenant in that building for 10 years but vacated the building last year. He admits to being involved in the Offshore Business and hoped to open an offshore bank in Molly's building. It was his intention to rent another office space in the building to set up Trust Services. The office space he occupies had two windows. One of two air conditioning units in his office was changed by Mr. Da Silva after he had complained to him that it was faulty. All of the units in his office were owned by D's Ltd; one of which was not energy efficient so he changed that and installed one of his own. He never received an invoice or a bill from D's Ltd in relation to any alleged credit purchase. On vacating the building he left the units in the office.

ANALYSIS OF EVIDENCE

[18] The evidence in this case is diametrically opposed. The case is therefore reduced to whose testimony the court accepts. Having analyzed the evidence and the demeanour of the witnesses I have no doubt that Ms. Marilyn Shortte is a witness of truth. She was extremely candid and unhesitating in her testimony. Based on the credit system she explained to the court and the fact that she was present when Mr. Newton Samuel

accepted the goods on behalf of Mr. Pitt, I am persuaded that she has knowledge of the fact that the items were purchased by Mr. Pitt on credit. Her evidence is more plausible than Mr. Pitt's and I have no cause to question the veracity of her records.

[19] Mr. Pitt contends that it was D's Ltd who employed Mr. Samuel to install the air-conditioning unit in his office. He categorically denied employing Mr. Samuel to install the units and he was clear that he never sent him to uplift the air conditioning unit supplies. He definitely did not pay Mr. Samuel the sum of \$600.00 for his labour. I am not persuaded and far from convinced that this is so. Mr. Pitt maintained that D's Ltd installed the unit and that it belonged to them. Mr. Samuel testified that Mr. Pitt bought the gas and the wires for the unit. I accept that this was so. The question is: Why would he have done so if he did not own it? Mr. Samuel was clear that the owner provides those items and I am very inclined to accept Mr. Samuel's evidence.

[20] I am afraid that I cannot rely on Mr. Pitt's evidence where it conflicted with Mr. Newton Samuel's and Ms. Shortte's, the latter whose evidence was important to D's Ltd's case. Mr. Newton Samuel provided very important details in the matter which Mr. Pitt unsuccessfully tried to refute such as speaking to Mr. Da Silva about the purchase, taking the old unit and placing it downstairs, being employed by Mr. Pitt to service the unit. It is my view that Mr. Samuel is very truthful and has no axe to grind. Mr. Pitt agreed that it was his intention to set up an Offshore Bank. The inference is that the other units were meant to be used in that room.

[21] Mr. Newton Samuel is a very simple honest man and he was extremely convincing in court. His evidence was invaluable in that it corroborated Ms. Shortte's testimony in materials aspects on Mr. Pitt's credit purchase. He testified about Mr. Pitt speaking to him about installing the unit. Though apparently not well educated, he was very credible. Throughout his testimony I never for one minute disbelieved him, he provided much needed facts to the court. I have no doubt that Mr. Pitt retained him to install the air conditioning unit which he had collected on behalf of Mr. Pitt for D's Ltd. He was candid in saying that he also worked for D's Ltd but that in relation to that job he was retained and

paid by Mr. Pitt \$600.00. Where his evidence conflicted with Mr. Pitt's I accepted his evidence as being substantially more plausible. The inference is clear, that Mr. Pitt approached the Managing Director of D's Ltd to purchase an air condition unit on credit, and approval was given which he did. Having purchased the items on credit, I accept Ms. Foster's evidence that he still owes the company the sum of \$9,978.65.

BURDEN OF PROOF

[22] This is a civil case and the burden of proof rests upon the party who substantially asserts the affirmative on the issue PHIPSON ON EVIDENCE 15th Ed. para 4-03. The onus lies on D's Ltd. in this case to prove that it sold air conditioning unit supplies to Mr. Pitt on credit and he has failed to discharge his indebtedness to the company. It must adduce evidence to convince the court that Mr. Pitt purchased the supplies on credit from D's Ltd. for the sum of \$9,978.65 and has failed to pay for them despite requests.

STANDARD OF PROOF:

[23] In civil cases the standard of proof to be met by the party is on a balance of probabilities. Examining the facts as a whole, I am more attracted to Ms. Shortte and Mr. Newton's evidence both of which are more plausible than Mr. Pitt's. My view is reinforced by Ms. Foster's evidence. I have absolutely no doubt Mr. Pitt ordered the air conditioning unit on credit and obtained them.

DEFENDANT'S SUBMISSIONS:

[24] Learned Counsel, Mr. Emery Robertson submitted that there is no evidence before the court of the alleged contract being in writing and this omission is fatal to D's Ltd's case. He relies on Section 6(1) of the Sale of Goods Act Cap. 115 of the Laws of Saint Vincent and the Grenadines which states that:

"A contract for the sale of any goods of the value of forty-eight dollars or upwards shall not be enforceable by action unless the buyer shall accept part of the goods

so sold, actually receive same, or give something in earnest to bind the contract, or in part payments, or unless some note or memorandum in writing of the contract be made and signed by the party to be charged or his agent in that behalf.”

He submits that the statute requires the presence of written evidence not oral in order for a contract to be enforced.

[25] I do not accept that submission. It is manifestly clear that the section enables a person to enforce an action on a contract if any of the conditions are met; the word “or” is used to refer to the disjunctive whereas “and” is conjunctive. It is not necessary for the contract to be in writing in order to be enforced if the buyer has either accepted the goods or received same or made a part payment in relation to it.

[26] Mr. Robertson next submitted that there is no evidence of any agreement between the parties and the delivery notes that were tendered in evidence do not prove that Mr. Pitt authorized Mr. Samuel in writing to collect the items on his behalf. The company has a duty to prove that he either confirmed or adopted the contract. The signature “Newton Samuel for Joel Pitt’s Office” merely indicates where the goods went. Much was made about the fact that Mr. Samuel worked for D’s Ltd. and he laid great store that in oral testimony Ms. Shortte stated that Mr. Pitt bought 6 evaporators but in her witness statement he was alleged to have obtained 5 evaporators yet still the company general account states Mr. Pitt obtained 3 evaporators. He stated that the entire story was fabricated.

CLAIMANT’S SUBMISSION:

[27] Ms. Mira Commissiong, Learned Counsel, submitted that there is no dispute that the air-conditioning unit was installed in the defendant’s office and that he has not paid for, the Court only has to determine whether he purchased it on credit and if so, whether he has paid the purchase price of \$9,978.65. She submits that from the evidence Mr. Pitt bought on credit 3 evaporators and a condenser and has not paid for them. Mr. Pitt admits owing the sum of \$505.00 for the gas stove.

CONCLUSION:

[28] I find myself unable to accept Mr. Emery Robertson, Learned Counsel's submission in view of the very convincing and cogent evidence of Mrs. Shortte and Mr. Newton Samuel both of whose evidence as stated earlier I accept. Ms. Foster's evidence on the outstanding bill is very cogent. I have no doubt about the truthfulness of the company's case. Therefore based on the evidence and the inferences, D's Ltd has discharged the burden of proof placed on it and has proven on a balance of probabilities that Mr. Joel Pitt purchased air conditioning unit and supplies from it to the value of \$9,978.65 on credit. The supplies were obtained on his behalf by Mr. Newton Samuel and despite requests Mr. Pitt has not made any payments to the company in relation to that credit purchase.

[29] In the circumstances my order is that judgment be entered for D's Services Ltd. against Mr. Joel Pitt in the sum of \$10,483.65 together with \$750.00 costs.

[30] I thank both learned counsel for their assistance.

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Louise Esther Blenman
HIGH COURT JUDGE