

CBZ BANK LIMITED
versus
BONNET MASASA

HIGH COURT OF ZIMBABWE
CHAREWA J
HARARE, 9, 30 May, 6 July, 21 November 2016, 13 February, 3 & 22 March 2017

Civil Trial

TS Manjengwa & D Halimani, for the plaintiff
Defendant, *in person*

CHAREWA J: The plaintiff issued summons against defendant for the payment of \$47 714.24, interest at the rate of 28% per annum capitalised monthly from 1 June 2013 together with costs on a legal practitioner and client scale. The claim was based on a working capital loan and input facility scheme which the parties entered into on 18 October 2009.

Facts

It was not disputed that the working capital and inputs credit facility was entered into. Neither was it contested that defendant received working capital of \$10 000 in cash, and vouchers for him to collect inputs in the form of fertiliser. What was in contention was whether or not the defendant did in fact collect the inputs.

Parties' submissions

Plaintiff insisted that defendant had collected some inputs and was liable for their value together with all the associated costs including the costs of registering the security for the facility. The plaintiff produced a letter, entered into the record as exh 2, wherein it authorised defendant to collect, from the Grain Marketing Board's Chinhoyi Depot, 15 tonnes of ammonium nitrate fertiliser to the value of \$8 550. The same letter had the defendant's signature on the relevant portion, confirming that he had collected the fertiliser.

In addition plaintiff led evidence that actual collections could be done by anyone authorised by the beneficiary of the facility. Therefore it was not necessary that despatch vouchers had to have the defendant's signature.

The plaintiff further produced a statement of account entered into the record as exh 4, showing that the total due (less the working capital advance), on the value of the fertiliser defendant apparently collected, as well as other charges and costs amounted to \$29 114.40, a substantial reduction from the initial claim of \$47 714.24.

On his part, defendant denied collecting any inputs, alleging that they were availed late in the season, and because of the frustration arising from the challenges he encountered in accessing them in any event, he abandoned the inputs facility and surrendered the collection vouchers to plaintiff. While acknowledging the signature on one despatch voucher as his, defendant claimed that the fact that the other two despatch vouchers show signatures different from his proved that it was not him who made the collections, nor were they to his account.

Further, the defendant submitted that the fact that no details of persons who apparently made collections on his behalf are available, should exonerate him, as it raises questions as to who made collections on his account and whether the vouchers issued to him were misused. This, he submits, is further evidenced by the failure of plaintiff to produce one of the two vouchers he allegedly surrendered.

Finally, he asserted that the plaintiff breached the facility agreement by providing inputs late, and in any event, he has tendered fertiliser still due to him from the Grain Marketing Board in settlement of his indebtedness to the bank.

Issues

The issue for determination is therefore whether defendant collected any inputs in terms of the facility agreement, and if so, whether there is any outstanding payment due thereon and to what amount?

Analysis of the case

It seems to me that this is a matter which falls to be determined merely on the facts: *viz*, did defendant collect inputs? To what value? Has he paid for them? If not, what is the amount outstanding? What are the attendant costs due on the facility?

Exh 2 is a set of documents which, to me, clearly demonstrates that defendant collected inputs amounting to 300 x 50kilogram bags of urea and ammonium nitrate fertiliser valued at \$28.25 per bag. He apparently made or collections were made on his behalf on despatch vouchers 514756 dated 8 January 2010 for 100 bags of urea, 514929 dated 14 January 2010 for another 100 bags of urea and 521563 dated 4 February 2010 for 100 bags of ammonium nitrate. The letter dated 19 February 2010 summarises these collections and puts the value of the 300 bags at \$8 550. On 2 March 2010, defendant confirmed as his, the signature on this letter in confirmation of these transactions.

I note that the letter speaks only of ammonium nitrate when the dispatch vouchers speak of urea and ammonium nitrate. However the value remains the same, and such misnomer was in any case not queried by either party.

It seems far-fetched to me that the defendant would sign the letter dated 19 February 2010, on 2 March 2010, in anticipation of future collections as he alleges, when the letter clearly refers to despatch vouchers that had already been transacted prior to this date. I would have expected that when presented with this letter, defendant would then have raised the query that he had not accessed the inputs referred to in the despatch vouchers and would have consequently refused to sign on the letter. Or he would have written a letter of protest, at that time, that he was alleged to have collected inputs which he allegedly did not receive.

I am in agreement with plaintiff that had defendant not collected the inputs, he would in addition have sought confirmation, from plaintiff, of proof of receipt of the vouchers he allegedly returned at the time they were allegedly received by the plaintiff. I am even more astounded that defendant allegedly returned a signed voucher, (without confirmation of receipt), thus creating a security risk which only he could be responsible for.

I take note that two of the despatch vouchers do not contain defendant's signature, but nothing in the facility agreement prevented defendant from sending people to make collections on his behalf. Granted, the Grain Marketing Board may have been negligent in not recording the full particulars of the persons who made the collections, but the fact that several weeks thereafter, defendant confirmed such collections on 2 March 2010, absolves the Board from the consequences of its negligence.

In any event, defendant has not sought to lay the responsibility of the negligence of the Board on the plaintiff, nor sought to join the Board to the suit and counterclaim for such negligence. Neither has he counterclaimed against plaintiff for the prejudice apparently caused to him by the conduct of plaintiff's employees who dealt with his account.

It seems to me that the inescapable conclusion from the evidence adduced and produced is that defendant collected the inputs valued at \$8550 as alleged.

I do not think much turns on the fact that the evidence led in the trial caused the plaintiff to adjust its claim from \$47 714, 24 to \$29 113.40. It seems to me that this only proves that the defendant successfully defended the claim for the higher figure. In any event, the sum of \$47 714, 24 included the working capital advance of \$10 000 which the defendant admitted and entered into a deed of settlement with regard thereto.

It is neither here nor there that inputs were supplied late. As long as it is proved that defendant collected on the facility, then he is liable to make payment thereon.

Nor do I give much stock to the offer to pay the debt by setting off the fertiliser owed to defendant by the Grain Marketing Board as against plaintiff's claim. The defendant is still at liberty to negotiate with plaintiff in that regard.

I note that during the entire trial, defendant never adduced any evidence that he made any payment whatsoever towards the facility. Neither did he raise any issue regarding the claims for interest and costs with respect to the registration and insurance of the notarial general covering bond securing the facility as well as the scale of legal costs, presumably because this is contained in the terms of the agreement he signed.

It seems therefore that the plaintiff has proved its entitlement to payment of a capital of \$15 655.87 plus *in duplum* interest to the same limit. Further, in terms of the agreement, defendant bound himself to pay interest at a penalty rate of 28% per annum and costs of suit on a legal practitioner and client scale.

Accordingly, plaintiff's claim succeeds and an order is made in the following terms:

It is ordered that

- a. The defendant pays the plaintiff the capital sum of \$15 655, 87 and *in duplum* interest thereon in the amount of \$15 655, 87.
- b. The defendant pays interest on the whole of \$29 113.40 at the rate of 28% per annum from the date of judgment to the date of final payment.
- c. The defendant pays cost on the scale of legal practitioner and client

Wintertons, plaintiff's legal practitioners
Defendant, *in person*