

GRENADA

IN THE COURT OF APPEAL

MAGISTERIAL CIVIL APPEAL No. 2 of 2002

BETWEEN:

AZIM [aka DANNY] BAKSH

Appellant

and

JOHN HOPKIN [GRENADA] LIMITED

Respondent

Before:

The Hon. Sir Dennis Byron
The Hon. Albert Redhead
The Hon. Ephraim Georges

Chief Justice
Justice of Appeal
Justice of Appeal [Ag]

Appearances:

Mr. Dickon Mitchell for the Appellant
Ms. Lisa Taylor for the Respondent

2002: November 29;
2004: January 12.

[1] **BYRON, C.J.** This is an appeal against the decision of the Learned Magistrate ordering the appellant to pay \$4,030.16 and costs of \$371.00 being the price of tiles sold and delivered and dismissing a counterclaim for \$10,000.00 being damages for late delivery of the said tiles.

[2] The appellant was constructing a house that consisted of a private dwelling upstairs and a two-bedroom apartment downstairs. He established an open account with the respondent for the purpose of completing construction of the said house. Orders were placed from time to time. This dispute concerns an order for quality tiles described as 'Pave Melange.' The Learned Magistrate found that the Mr. Baksh placed an order for a quantity of these tiles, which were to be delivered in November of 1997. The tiles were to be ordered from

suppliers in Italy. However, they did not arrive at the stipulated time. In or about December of 1997 Mr. Baksh visited the Hopkin warehouse and had a discussion with its proprietor Mr. John Hopkin (referred to as 'Mr. Hopkin' from hereinafter). Mr. Baksh was given an option to have his deposit refunded for the respondent's inability to deliver the tiles by the stipulated date but he decided to wait for the late arrival of the tiles instead. There were discussions and correspondence between the parties including a letter from Mr. Hopkin indicating that the tiles would be delivered on 27th March 1998. They were eventually delivered on 7th April 1998 whereupon Mr. Baksh took delivery and had them laid in his house. On the 21st of January 1999, Mr. Hopkin made a written demand for the amount outstanding and Mr. Baksh admitted that he told Mr. Hopkin;

“ I owe you \$4030.16 if you give me \$1000.00. I would not be happy but I will feel good that you are trying to make amends.”

Mr. Baksh claimed that the delay in completing the construction caused him loss in tenant rental from the apartment downstairs but the Learned Magistrate found as a fact that he never told Mr. Hopkin that the apartment was for rent and that he never made any claim against Mr. Hopkin until these proceedings were commenced.

- [3] The legal principles applied to these facts were that Mr. Baksh waived the original conditions regarding the time for delivery by agreeing to the late delivery of the goods and he never told Mr. Hopkin that unless he received them within a stipulated time he would not accept delivery. These principles accord with the well accepted dictum of Denning LJ as he then was in **Charles Rickards Ltd v Oppenheim**¹

“It is a kind of estoppel. By his conduct he made a promise not to insist on his strict legal rights. That promise was intended to be binding, intended to be acted on and was in fact acted on. He cannot afterwards go back on it.”

- [4] This case was decided on its facts and there was ample evidence to support the well reasoned decision of the Learned Magistrate.

¹ [1950] 1 All ER 420 at 423.

[5] I would dismiss the appeal and order that the appellant do pay the costs of the respondent assessed at \$1,500.00

Sir Dennis Byron
Chief Justice

I concur

Albert Redhead
Justice of Appeal

I concur

Ephraim Georges
Justice of Appeal [Ag]