IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CIVIL)

GRENADA

CLAIM NO. GDAHCV 2022/0377

BETWEEN:

DADDY WAYNE'S GROCERY BAR LTD.

Claimant

and

GITA K.K. PASUPELETI
(Trading as "Kumar Department Store")

Defendant

Before:
The Hon. Mde. Justice Agnes Actie — High Court Judge

Appearances:
Mr. Ruggles Ferguson KC for the Claimant
Ms. Deborah St. Bernard with Ms Ssavanna Seales for the Defendant

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2024: April 16, 23

RULING

[1] **ACTIE, J.:** The main issue arising on this claim is whether the defendant is indebted to the claimant in the sum of $17,771.41.

[2] The claimant is a company which frequently supplied the defendant with wholesale items for resale. It is agreed that in or around July 2018, the parties entered into an oral agreement whereby the claimant would supply the defendant with 40 mattresses, 150 foams and 500 pillows (hereafter referred to as "the disputed order").

[3] It is the claimant's case that that the mattresses were delivered to the defendant on 28th July 2018, and the foams and pillows on 2nd August 2018. The claimant issued an invoice on the 21st August 2018 to the defendant for all the items ordered and delivered in the sum of $17,811.20 which was amended at the

instance of the defendant with respect to an error in the description of the foams. The claimant issued an amended invoice dated 11th September 2018 in the sum of $17,771.41 to reflect the suggested changes.

[4] The defendant concedes that he entered into oral agreement with the claimant for 40 mattresses, 100 foams (as opposed to 150 foams as per the claimant), and 500 pillows. However, the defendant states that the claimant presented him with a VAT invoice dated 9th July 2018 for the supply of 500 pillows and 40 mattresses for a total of $13,926.50, but that at the time the invoice was presented, only the mattresses were delivered.

[5] The defendant asserts that despite the promises given by the claimant to have the order fulfilled, the claimant failed to do so, and that the claimant only managed to deliver outstanding pillows and foams almost three weeks after on 2nd August 2018.

[6] The defendant contends that having already paid the claimant for the mattresses and pillows invoiced on 9th July 2018, he was only required to pay the claimant the total cost of 150 pieces of foam in the sum of $3,378.00 plus VAT on the amended invoice.

[7] The claimant asserts that the invoice of $13,926.50 relates to a previous order which had already been delivered to the defendant and settled.

Legal Analysis

Whether the defendant owes the claimant $17,771.41

[8] The resolution of this issue is strictly a matter of fact to which the court is to determine on the evidence before it. In the case of **Luis Jarvis v American Eagle Airlines**[1], Blenman J., as she then was, opined therein that the claimant had not seen it fit to produce sufficient evidence to corroborate his position, and concluded by dismissing the claim. The learned judge held the following:

[1] ANUHCV2004/0465

> "This is a civil case and he who asserts must prove. This is known as the burden of proof. It is the law that the standard of proof is on the balance of probabilities."

[9] The claimant's main contention is that the payment of $13,926.50 by the defendant of an invoice dated 9th July 2018 represented an earlier order and is irrelevant to the disputed order.

[10] It is the evidence that the usual business practice between the parties entailed the defendant placing an order for goods from the claimant, and upon delivery and verification of same, the defendant would take delivery of the goods and the invoice would be settled.

[11] The defendant in his witness statement states:

> "In the ordinary course of my dealings with the claimant, I would usually collect an invoice from the claimant after the delivery of an order and either myself, my wife or Mr. Brian Pope, an employee of mine, would verify the items ordered, then confirm same by signing the accompanying invoice and take possession of the delivered items".

[12] The defendant's case is that he had already paid for the mattresses in the 9th July 2018 invoice and therefore the insertion of the 40 mattresses in the amended August invoice is erroneous.

[13] The court having heard the evidence is of the view that the defendant is not a truthful witness as his pleaded defence and oral evidence goes contrary to the established mode of business with the claimant.

[14] In his pleaded defence, the defendant with reference to the 9th July 2018 invoice states:

> "At the time the invoice was presented, only the mattresses were delivered, and the claimant promised to deliver the remainder of the defendant's order consisting of five hundred pillows and one hundred and fifty pieces of foam during the following week. In keeping with their established practice, the defendant signed the invoice and made a contemporaneous note thereon that the five hundred pillows were to be delivered the next week. In addition to the foregoing, the defendant also on the said day, wrote the claimant a

cheque bearing number 1347 drawn on his Grenada Co-operative Bank Ltd. account for the full amount of the Claimant's invoice of $13,926.50."

[15] It is the defendant's evidence that he would usually collect an invoice from the claimant after the delivery of an order and then make the payment. However, the defendant during cross examination, states that he could not recall when he made the payment for the 9th July 2018 invoice. The court also notes that although the defendant asserts that the 9th July 2018 invoice reflects the order placed for mattresses, foams and pillows, the invoice does not reflect the order for the foams. Secondly, the defendant states that he made a contemporaneous note to reflect the delayed delivery of the pillows nevertheless no mention was made of the order for foams.

[16] It is the defendant's evidence that he took delivery of the items on 2nd August 2018. In keeping with their usual practice, therefore, an invoice would only have been issued after delivery. The defendant's assertion suggesting that he paid for the mattresses and pillows on 9th July 2018 even before receiving the pillows is not convincing and not in keeping with established practice.

[17] The court accepts the claimant's evidence that the 9th July 2018 invoice was an entirely different transaction for a previous order which had been delivered and paid for by the defendant.

[18] Collin Alexander, a truck driver and employee of Wayne's Grocery Bar Ltd, both in his witness statement and examination-in-chief confirmed the delivery of the mattresses on 28th July 2018 and the 150 foams and 20 bales (500) pillows on 2nd August 2018. He said that the order was prepared for delivery on 27th July and he drove the truck (Mazda T9178) to deliver the items to Kumar Department Store, along with the conductor, Shawn Thomas. This witness' evidence was not challenged during cross examination. The witness further stated:

> "Mr. Gita K. K. Pasupeleti said that he could not take the items on the 27th so we returned to base. The next day, July 28th, the forty mattresses were sent out for delivery to the store because Mr. Pasupuleti said that it was needed urgently".

[19] The defendant, Gita K.K. Pasupeleti's demeanour both in giving oral testimony and in answering specific questions in cross examination was defiant to directions issued by the court concerning the manner in which he responded to questions.

[20] There were several inconsistences in the defendant's evidence. In cross examination, he stated that he had never before trial seen the 21st August 2018 invoice. However, in his pleaded defence he states:

> "the claimant did deliver over to him an invoice dated 21st August 2018, a copy of which invoice is attached to the Statement of Claim".

[21] The defendant in cross examination seeks to make a radical departure from his pleaded defence and witness statement. This is unacceptable as parties are bound by their pleadings and evidence in their witness statements in support of the pleaded case. A party cannot succeed by seeking to make a new case or give contrary oral evidence at trial.

[22] The court taking all the evidence in the round is of the view that the claimant has satisfied the claim on a balance of probabilities. The invoice issued on the 21st August 2018 was corrected and reissued on 11th September 2018 as a result of a query raised by the defendant. The defendant when suggesting the change to the invoice did not challenge the insertion of mattresses and pillows which he asserts would have been paid on the 9th July 2018 invoice. The 21st August 2018 invoice could only be for items delivered after the payment of 9th July 2018 invoice in keeping with the parties' established business practice.

Conclusion

[23] In summary and for the foregoing reasons, it is ordered and directed as follows:

(i) Judgment is entered in favour of the claimant against the defendant.

(ii) The defendant, Gita K.K. Pasupeleti (Trading as "Kumar Department Store"). shall pay the claimant**,** Daddy Wayne's Grocery Bar Ltd, the sum of $17,771.41 with interest at the rate of 3% per annum from the date of the invoice, 21st August 2018 until the date of judgment and at the rate of 6% per annum from the date of judgment until payment in full.

(iii) Prescribed Costs pursuant to CPR 65.5 (2) (b) (Revised Edition) 2023 in the sum of $3,554.28 to be paid within thirty (30) days of today's date.

Agnes Actie
High Court Judge

By the Court

Registrar