

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE
(CIVIL)
A.D. 1996



Suit No. 436 of 1994

BETWEEN:

CASCO EXPORT SERVICES INC.
GENERAL ELECTRICAL CAPITAL CORP.

Plaintiffs

and

LEO TRIM

Defendant

Mr. D. Theodore for Plaintiffs
Mr. A. St. Claire for Defendant

1996: January 10 and 16.

J U D G M E N T

MATTHEW J. (In Chambers).

On June 17, 1994 the Plaintiffs filed a writ of summons indorsed with statement of claim asking for certain sums owing by the Defendant from the sale of one Pioneer Portable Jaw Crusher with accessories to the Defendant.

The Defendant entered appearance on September 14, 1994 and filed a defence on January 31, 1995 essentially denying that the Plaintiffs are entitled to the relief claimed and setting up a counterclaim to the effect that the crusher was not reasonably fit for the purpose for which it was purchased.

There has already been interlocutory proceedings between the parties and this Court gave a judgment on November 21, 1995 pertaining to further and better particulars.

On December 6, 1995 the Plaintiffs took out a summons for an interlocutory injunction to restrain the Defendant from selling or

CASCO
EXPORT
SERVICES
Ltd
&
Leo
Trim

otherwise parting with the crusher pending the determination of the action. In his affidavit in support of the summons Elmo Rodriguez deponed that he has been informed and believes that the Defendant intends to sell the crusher and may do so to a bona fide purchaser.

The Defendant did not put in an affidavit in reply and his Counsel did not indicate that he did not intend to sell the crusher.

In his submissions on behalf of the application learned Counsel for the Plaintiffs submitted that the Plaintiffs feared that if the crusher is sold to a bona fide purchaser and the Defendant had flittered away the proceeds the Plaintiffs could well find themselves having an empty judgment.

Counsel referred to the fact as contained in paragraph 4 (1) of the statement of claim that under the contract of sale the ownership of the crusher remains in the first Plaintiff until the crusher has been fully paid for by the Defendant.

Learned Counsel for the Defendant submitted that the application of the Plaintiffs is surprising for by their pleadings they were electing to sue for the full purchase price of the crusher rather than take proceedings for its recovery. Counsel submitted that by their pleadings they were relinquishing ownership of the crusher.

I do not agree with that reasoning. Because a person elects to sue for the value of goods rather than take proceedings to recover it does not necessarily mean he has relinquished the right to his ownership of the goods. In the first place he sold the goods. He wanted cash in return for the goods but he wants to protect himself if the cash is not forthcoming, so that at a subsequent date if the transaction is not fully carried out, he may not lose too badly if he can salvage something from a sale of the goods.

Defendant has not advanced any legal reason why the injunction should not be granted. It seems to me if the Defendant is setting up in his counterclaim that the crusher was defective from the start, it might be the better thing to be able to have it preserved for the purposes of the trial as contemplated by Rule 2 of Order 29 of the Rules of Court.

The Plaintiff claims arrears in the amount of \$769,938.20 and the Defendant has a counterclaim in the amount of \$826,799.30 for special damages.

I think the balance of convenience dictates that the status quo remains and that the crusher remains in the possession of the Defendant or the Plaintiffs until the determination of the action.

My order is that:-

Upon the Plaintiffs' undertaking to pay any damages should the Court later form the view that this injunction should not have been granted.

IT IS ORDERED that the Defendant whether by himself, his servants, agents, assigns or otherwise be restrained and an order of injunction is granted restraining the Defendant, his servants, agents, assigns or otherwise from selling or otherwise parting with the Pioneer Portable Jaw Crusher and accessories which said equipment forms the subject matter of this action, pending the determination of this action.

Costs shall be in the cause.

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A.N.J. MATTHEW
Puisne Judge