

IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NUMBER 872 OF 1994

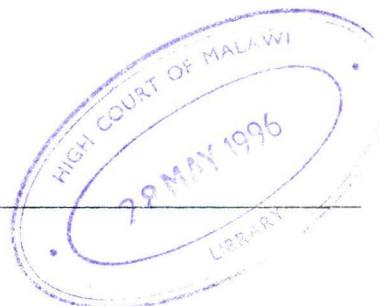
BETWEEN:

LANNER EXPORTS (PTY) LTD. PLAINTIFF

and

CITY MOTORS LTD. DEFENDANT

CORAM: E.B. TWEA, REGISTRAR
Nkhono, Counsel for the Plaintiff
Msiska, Counsel for the Defendant



RULING

I have heard both parties and read their affidavits.

There is no dispute between the parties as to the conduct of business between them. It is clear the pro-forma invoices were issued and that the defendant forwarded the foreign exchange control approval and goods were dispatched.

What is in dispute is the payment of the goods supplied and interest due on the outstanding principle. It is conceded in the plaintiff's submission in reply that whether interest was payable is an issue. This emanates from the way the defendant claim the contract is said to have been concluded - what was the offer and what was accepted; was there a meeting of minds on the interest payable on overdue payments?

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I have examined the parties views and I find that this is not an open and shut case as the plaintiff would put it. The foreign exchange approval was on 29 March 1992 PCAN 2; but dispatch of goods only started on 27 May 1992 almost two months later and spread to 15 July 1992 PCAN 7A: another three and half months. There was no payment up to 20 November 1992: PCAN 9. There is no indication whether at this that, time was of the essence to the plaintiff, or indeed the defendant: who claim late arrival of goods, although this action strictly would lie to the carrier and not the seller: Seated (Proprietary) Ltd. vs. Bhadurkhan (t/a A.H.B. Enterprises) p.444. One would, therefore, be at pains to establish at what point in time the parties felt that time was of the essence.

The second point is whether this contract is divisible so as to allow the interpretation sought by the defendants. If it is then the defendant have a point, otherwise the plaintiff's argument would be tenable.

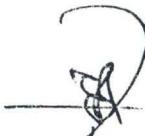
The last point is the legal effect of the plaintiff's counsel accepting payment from the defendant from which payment they remitted the bank draft through their own bankers as per Ex PCAN YA, YB, PCAN 2, PCAN8 and PCAN10. The parties have not addressed their minds to this and the legal effect thereof.

I would not wish to pre-empt anything but as matters stand in the present case, one would note that what I have before me is only part

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of the long story. I am inclined not to grant summary judgment therefore. The summons is dismissed with costs.

PRONOUNCED in Chambers this 23rd day of April, 1996, at Blantyre.



E.B. Twea
REGISTRAR