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13/1963

IN THE PRIVY COUNCIL

No. 44 of 1961

ON APPEAL

FROM THE SUPREME COURT OF THE BAHAMA ISLANDS

B E T W E E N : THE HONOURABLE SIR GEORGE
WILLIAM KELLY ROBERTS Trading
as THE CITY LUMBER YARD
Appellant

- and -

ALBERT SOLTYS Respondent

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
19 JUN 64
25 RUSSELL SQUARE
LONDON, W.C.1.

74063

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CASE FOR THE RESPONDENT

RECORD

1. This is an appeal by leave of the Supreme Court of the Bahama Islands from a Judgment of the Supreme Court of the Bahama Islands dated the 23rd day of March 1961 whereby it was adjudged that the Appellant (Plaintiff) recover nothing against the Respondent (Defendant) and that the Respondent recover against the Appellant his costs of defence to be taxed.

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p. 35

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2. The action was a claim by the Appellant for £323.6.10., the price of goods alleged to have been sold and delivered by the Appellant to the Respondent. The Respondent's defence was that he never ordered the goods from the Appellant and that no goods were delivered to him by the Appellant at his, the Respondent's, request or at all.

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p. 3

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3. The action was tried on the 16th day of March, 1961, by the Honourable Sir Guy Henderson, Chief Justice of the Supreme Court of the Bahama Islands.

4. The background to the action was, as follows. The Respondent had entered into a building agreement (Exhibit "1") with a Contractor named Pratt, whereby Pratt had agreed to build a house for the Respondent for the lump sum of £6,500. The Appellant's claim was in respect of goods delivered to Pratt. The Appellant appears to have based his claim on two contentions.

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RECORD

5. First, he alleged that the Respondent, in the course of a telephone conversation with one of the Appellant's employees named Thompson, expressly made an oral agreement to pay for these goods. The learned trial Judge held that the Appellant had not established this allegation. He said :

p. 36
L.37

"the Plaintiffs must therefore rely upon the telephone conversation and the onus of proof that it occurred is on them. I find that they have failed to discharge the onus and the suit must be dismissed with costs."

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p.36 L.20

6. Secondly, the Appellant appears to have contended that a Contractor has an implied agency to order materials from a builders' merchant on behalf of the building owner. The learned trial Judge rejected this contention in the absence of proof of any local custom to that effect. He further found no evidence that the Respondent had given the Appellant cause to believe that Pratt could pledge his, the Respondent's, credit as his agent, and found that there was no evidence of "holding-out".

p.36 L.23

p.36 L.30

p.36 L.36

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7. The Respondent respectfully submits that it is a pure question of fact whether or not he made the alleged oral agreement in the course of the alleged telephone conversation. He further submits that the learned trial Judge was justified in preferring the Respondent's evidence on a balance of probabilities and in holding that the Appellant had not established the alleged agreement. This finding of fact ought not to be disturbed on Appeal.

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8. The Respondent respectfully submits that the learned trial Judge was right in law in holding that a Contractor has no implied agency to order materials from a builder's merchant on behalf of a building owner. That was the only question of law which arose before the learned trial Judge.

9. The Respondent respectfully submits that this appeal should be dismissed with costs for the following (among other)

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R E A S O N S

- (1) For the reasons given in the Judgment of the learned trial Judge.
- (2) Because the learned trial Judge was not satisfied that the Appellant had discharged the onus of proving the alleged oral agreement.

- (3) Because on a balance of probabilities the Respondent's evidence was rightly preferred to the evidence called on behalf of the Appellant.
- (4) Because it would be wrong for an Appellate Court to interfere with the finding of the learned trial Judge on a pure question of fact.
- (5) Because the Contractor, Pratt, had no authority, express or implied, to order goods on the Respondent's behalf.

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DAVID KEMP.

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-- and --

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CASE FOR THE RESPONDENT

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