

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA

COMMERCIAL COURT DIVISION

HCT-00-CC-CS-0157-2003

British Airways PLC
Plaintiff

Versus

Fresh Grown Uganda Ltd
Defendants

Gabiro Emmanuel T/A Lusaka Growers

BEFORE: THE HONOURABLE MR. JUSTICE FMS EGONDA-NTENDE

JUDGMENT

1. The plaintiff is engaged worldwide in the business of air transportation. It brings this action to recover from the defendants, jointly and severally, US\$110,308.65, being charges incurred for the transportation of the defendants' cargo from Entebbe, Uganda to London, United Kingdom between August 2001 and January 2002. The plaintiff further seeks general damages for breach of contract, interest on US\$110,308.65 at the rate of 12% per annum from the date the cause of action arose till payment in full. The plaintiff further seeks interest on the award for general damages from the date of judgment till payment in full and costs of this suit.
2. The defendants deny that this action lies against them. Firstly defendant no.1 denies that the sums claimed are jointly and severally due from it or that it failed to pay the same when it was due. It contends that it paid for whatever services it received from the plaintiff and there is nothing owing from it to the plaintiff.
3. Defendant no.2 denied that it owed any sums to the plaintiff singly, or jointly and severally with defendant no.1. However, it admits that it had a contract with the plaintiff for airlifting its fruits and vegetables for credit limited to US\$20,000.00.

This agreement was made on 16th August 1997. Defendant No.2 relies on the said agreement.

4. Both defendants contend that the plaintiff's claims were fully settled by the defendants on account of endorsement on the airway bills attached to the plaint. Paragraph 7 of the defendant no.2's written statement of defence states,

‘The defendant avers the said endorsements on the airway bills is conclusive evidence that the plaintiff acknowledged receipt and accepted payment of each of the sums specified in each of the said invoices. Further, save for the two occasions evidenced in attachment F1 and F2 to the plaint, the consistent practice of the officials was to issue only airway bills to the said defendant. In that regard the defendant shall aver that the plaintiff [is] estopped from denying the truth and effect of their said endorsements.’
5. The defendants further denied that that any arrangements existed by which the two defendants would settle the other's bills and as such there is no contract between the first and second defendants. The defendants contend that they will produce evidence to show that the plaintiff's officials are the ones who carelessly prepared receipts and airway bills in the names of the defendant no.1 for orders of the second of the defendant.
6. At scheduling conference the parties agreed on one fact being admitted. And that is ‘the plaintiff transported the defendant's goods to the UK between August 2001 to January 2002.’ The basic issue is whether the defendants are indebted to the plaintiff as claimed. It is not in dispute that the plaintiff performed the services that it claims to have performed. This is admitted. What is denied, and is now in contention is whether the defendant no.2 who was the owner of the goods paid for the services or not.
7. It was contended for the defendants on the pleadings that the defendant paid for the services rendered, and the evidence of payment is the endorsement on the airway bill in the section 10 on accounting information ‘Prepaid’ or ‘PP’ or ‘Freight Prepaid’ which appear on all the airway bills. I propose to examine the evidence for each side with regard to payments which I presume would resolve this case.
8. PW1 was Tonny Small, a Finance Analyst, who was British Airways Manager for

- Uganda between August 2001 and August 2002. He testified that the defendants owed to the plaintiff US\$100,308.65 as reflected on Exhibit P3, the statement of account between defendant no.1 and the plaintiff. The plaintiff had a credit relationship with both defendants. No payments had been effected for the invoices issued by the plaintiff to the defendants in respect of this claim. If a customer made any payment receipts would be issued acknowledgment payment. The endorsement 'PP' in account information on the airway bill meant payment was due at the point of shipment. It was only a receipt that was proof of payment.
9. In cross examination he testified that the defendant no.2 owned both firms. At the request of defendant no.2 the plaintiff would invoice one company for services rendered to the other.
 10. PW2 was Beliz Kitibwa, a Cargo Accounts Manager for the plaintiff. Both defendants were known to him. The defendants were exporters of fruit and vegetable. The outstanding sums of money due to the plaintiff from the defendants was US\$110,308.65 as reflected in the statement. The transactions giving rise to these charges were documented. Airway bills and invoices were issued. With regard to the endorsement 'PP' on the airway bill it did not mean that payment had been effected. It meant that charges would be payable at point of shipment.
 11. PW3 was Ongwech Morris a clerk with ENHAS who was attached to the plaintiff. He would receive shipments from clients, label the same, and prepare a cargo manifest. 'PP' on the airway bill stood for charges prepaid. It meant that the amount was payable at point of shipment. Whenever he would receive cash from shippers he would issue receipts for it to the shipper and the cash would be banked. He would only receive payment when it was after normal working hours. Banking slips would be sent to head office Kampala. He would also submit at the end of the month a sales report data. Finance department would reconcile banking, banking statement, sales report and produce a statement of account.
 12. DW1 was defendant no.2. He stated that the evidence of the plaintiff was not true. He was a director of defendant no.1. Defendant no.1 did business with the plaintiff until December 1999 when it stopped. Defendant no.2 then started to do business with the plaintiff under the new names of Lusaka Growers from October

1999 to February 2002. Under Lusaka Growers he paid for his shipments in cash and evidence of payment was the airway bills which are endorsed 'PP'. It was only in respect of business conducted by defendant no.1 which had a credit agreement with the plaintiff that would ship goods on credit though the endorsement would still be 'PP'. Lusaka Growers had no credit agreement with the plaintiff and all its shipments had been paid for by cash.

13. In cross examination, on being shown Exhibit D1 the witness admitted that Lusaka Growers had a credit agreement with the plaintiff dated 16th August 1997. With effect from 2001 there was no credit agreement between Lusaka Growers and the plaintiff as exhibit D1 was terminated way back in 1997 after Lusaka Growers defaulted on some payments. That the agreement provided for automatic cancellation in case of a default.
14. The defendant was shown exhibits P6 (a) and P6(b) and he identified them as receipts from the plaintiff. Exhibit P6(a) was dated 24 May 2001 in favour of Fresh Grown for US\$2,000.00. Exhibit P6(b) was for US\$18,000.00, dated 24 May 2001. Initially he stated that it could not have been Fresh Grown paying as it had closed business in 1999. He stated that the payments were by Lusaka Growers but changed and stated that it could not have been Lusaka Growers as one payment was by cheque and Lusaka Growers could not have paid by cheque. These events happened a long time ago and he could not exactly remember what happened.
15. DW1 further testified that you could not tell by looking at accounting information box on the airway bill whether the payment was cash or credit. When he transacted business with the plaintiff on credit he would sometimes get a receipt when he paid.
16. At the conclusion of evidence for both parties I was addressed by counsel for each party who reiterated the position of their respective parties. As I noted earlier, it is the defendant no.2's contention that it paid for the services rendered by the plaintiff and this was in cash before shipment of each consignment. The defendant is not able to produce any receipts, contending that none were issued, but that in any case the airway bills was even better than receipts as evidence of payment.

17. The evidence of payment relied on is the endorsement 'Prepaid' or 'PP' on the box for accounting information on the airway bill which means in IATA rules as payment of cash at point of shipment. DW1 admitted that in some transactions for which credit was allowed the endorsement would still be 'Prepaid' or 'PP' even though no payment, cash or otherwise had been effected.
18. It was clear that the parties hereto have had a long relationship and defendant no.2 for whom all the services in question were rendered had a credit history with the plaintiff. It has also been established before me that whereas the goods shipped belonged to defendant no.2, the invoices were addressed to defendant no.1 as a result of practise established between the parties hereto. That is why in my view there were exhibits P 6(a) and P6(b) which were receipts showing defendant no.1 paying on account in 24th May 2001 while it had seized to send shipments in its names as far back as 1999. DW1 failed to explain these receipts when he was confronted with them in cross examination and vacillated from one position to another.
19. The claim that an airway bill serves as a receipt or evidence of payment is not supported in evidence or even conceptually. As the DW1 admitted one could not tell by simply looking at the endorsement 'prepaid' or 'pp' whether the charges for that airway bill shipment had in fact been paid for by cash or it was a credit transaction. He admitted the same endorsement was made for all the shipments of the defendants whether they had been on credit or cash payment.
20. Conceptually an airway bill is a document that in effect acknowledges receipt of goods by an airline, and contains shipment information as to point of origin, shipper, destination, quantities of the goods, and so on. It is not a receipt. A receipt is an accounting document that acknowledges receipt of a particular item such as cash, and indicates the sum received and mode of payment. An airway bill is no receipt for charges in respect of shipment of goods for which it is issued.
21. It has not been contested that the plaintiff rendered services to defendant no.1 for which it has sued. The plaintiff's witnesses testified that no payment was made for those services. The defendants' answer was that it had paid for these services. And the evidence of payment is the airway bill. Since I have found that the airway

bills relied upon as evidence of payment are in fact neither receipts nor evidence of payment, the defendant no.2 has failed in my view to answer the claim for US\$110,308.65.

22. I accordingly enter judgment for the plaintiff in the said sum against the defendant no.2, together with interest thereon at 11% per annum from 25 April 2002 till the date of judgment, and thereafter at court rate on the decretal amount till payment in full. The defendant no.1 shall also pay costs of this suit.

23. No case has been made out for the issue of general damages, and I award none. In my view, an award of interest will be sufficient to meet the loss the plaintiff has suffered in this matter.

Signed, dated, and delivered this 6th day of December 2007

FMS Egonda-Ntende
Judge