

FRIXOS CONSTANTINOU,

Appellant-Defendant,

v.

FYLAKTIS MINA,

Respondent-Plaintiff.

(Civil Appeal No. 4563).

Contract--Breach--Claim of damages for breach of contract of sale of goods--No reason for Appellate Court to interfere with trial Court's finding as to the breach of contract of sale.

Damages--Award of damages for breach of contract of sale of goods Trial Court's omission or error in assessing amount of damages--Issue remitted to trial Court for re-assessment.

Sale of goods--Contract of sale--Breach--See under "Contract" above.

Practice -Costs--Appellate Court's reduction of costs awarded by trial Court in view of amendment of pleading applied at late stage of hearing.

Pleading--Amendment of statement of claim at the hearing--Order as to costs--See under "Practice".

Respondent-plaintiff brought an action in the District Court of Nicosia claiming the sum of £592.900 mils as damages for breach of contract. In his statement of claim the respondent-plaintiff alleged that by an agreement in writing dated the 15th January, 1964, the appellant-defendant agreed to buy the respondent-plaintiff's whole beetroot crop at 20 mils per okc. Deliveries were to be made at the appellant-defendant's warehouses between 15th April, 1964 and 15th May, 1964. It was further alleged that the appellant-defendant agreed to extend the time of deliveries after the 15th May up to the time the said appellant-defendant accepted deliveries from other growers. It was further alleged in the said statement of claim that it was an express and/or implied term of the contract that the appellant-defendant would call for deliveries. The respondent-plaintiff further pleaded that although he was ready and willing to deliver the said crop, the appellant-defendant, in breach of the said agreement and despite repeated enquiries from the respondent-plaintiff, refused

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to take delivery of the plaintiff's crop, which perished in the fields.

The appellant-defendant denied the respondent-plaintiff's allegations and alleged that it was an express and/or implied term of the contract that the respondent-plaintiff ought to have informed the appellant-defendant of his readiness to deliver between the dates mentioned above. The appellant-defendant counterclaimed for damages for the respondent-plaintiff's failure to do so.

An application for leave to amend the statement of claim in order to bring it into line with the evidence adduced as regards agreement to extend the time of delivery of the crops was applied for at a very late stage of the hearing viz. after the completion of the hearing of the evidence of the three out of the four witnesses called for the defence and was allowed by the trial Court.

The trial Court gave judgment for the plaintiff as per claim with costs and dismissed the counterclaim.

The defendant appealed.

Held, 1. As to the breach of contract of sale under consideration :

As far as the breach of contract is concerned, we entertain no doubt whatsoever ; from the evidence accepted by the trial Court, no other conclusion could have been drawn other than the one arrived at, and indeed, there appears no reason for us to interfere with the decision of the Court as to the breach of contract of sale under consideration.

2. As to the amount of damages assessed :

It appears that the Court did not go into this item of the claim with care because what the plaintiffs were entitled to was the net amount of the beetroots when these were offered at the stores of the defendant. The expert witness spoke about the crop in the field and said it was not less than 40 tons and then the calculation was made on 40 tons at 20 mils per oke.

3. As to the order for costs :

Having regard to the amendment of the statement of claim applied for at a very late stage of the hearing, this Court will order a deduction of £20 from the costs allowed to the plaintiff.

Appeal allowed in part. Judgment of the trial Court varied accordingly. Order for costs as aforesaid.

Appeal.

Appeal against the judgment of the District Court of Nicosia (Stavrinides, P.D.C. 172et, D.J.) dated the 18th December, 1965, (Action No. 1371/64) whereby the defendant was adjudged to pay to the plaintiff the sum of £592.900 mils as damages for breach of contract.

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G. Tornaritis, for the appellant.

A. Pantelides, for the respondent.

The judgment of the Court was delivered by :

ZEKIA, P. : We have read the record with due care and have also followed the argument and addresses of learned Counsel with attention. As far as the *breach of contract* is concerned, we entertain no doubt whatsoever ; from the evidence accepted by the trial Court, no other conclusion could have been drawn other than the one arrived at, and, indeed, there appears no reason for us to interfere with the decision of the Court as to the breach of contract of sale under consideration.

The only point which remained was the amount of *damages* assessed. It appears that the Court did not go into this item of the claim with care because what the plaintiffs were entitled to was the net amount of the beetroots when these were offered at the stores of the defendant. The expert witness spoke about the crop in the field and said it was not less than 40 tons and then the calculation was made on 40 tons at 20 mils per oke

After deducting certain fertilizers and seed but without any other deduction as to the cost required for placing the goods in a marketable condition, i.e. cost of uprooting, transport, delivery—no allowance at all for these items—they awarded the full amount of £592.900 mils. That of course, must be considered as an omission or an error which escaped the attention of the trial Court.

The parties here do not agree as to any figure to counter this omission. In the circumstances, the judgment of this Court will be that the judgment of the trial Court will be varied as follows : The sum awarded as damages is set aside and the case is remitted to the trial Court for the purpose of making a fresh assessment, namely for ascertaining the costs that would have incurred for the beetroots to be uprooted

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and transported to the place of delivery, and having ascertained that amount to deduct it from the amount of the value of the goods.

The second point which remains is the order for costs. Having regard to the amendment of the statement of claim, applied for at a very late stage of the hearing, this Court will order a deduction of £20 from the costs allowed to the plaintiff; and as to the costs of this appeal each party will bear his own costs.

Parties will not be entitled to any costs in the proceedings before the trial Court for the re-assessment of damages.

Appeal allowed in part. Judgment of the trial Court varied accordingly. Order for cost as aforesaid.