

**IN THE HIGH COURT OF FIJI
(WESTERN DIVISION) AT LAUTOKA
CIVIL JURISDICTION**

CIVIL ACTION NO. HBC 80 OF 2020

BETWEEN : **PRINTERS ONLINE PTE LTD** a duly incorporated Company having its registered office at 17 Ramasre Street, Lautoka in the Republic of Fiji.
PLAINTIFF

AND : **KAMIL MUSLIM COLLEGE** an institute based at Ba, Fiji.
1st DEFENDANT

AND : **FIJI MUSLIM LEAGUE** a registered Charitable Organization located at 171, Ratu Mara Road, Samabula, Suva.
2nd DEFENDANT

AND : **MINISTRY OF EDUCATION** of Marela House, Thurston St, Suva.
3rd DEFENDANT

BEFORE : Mr. Justice Mohamed Mackie

APPEARANCES : Mr. Mohammed Yunus, for the Plaintiff
Mr. S. Singh, for the 1st & 2nd Defendants
Mr. Mainavolau, for the 3rd Defendant.

DATES OF TRIAL : 15th November, 2022.

DATE OF DECISION : 15th February, 2023

J U D G M E N T .

A. INTRODUCTION:

1. The Plaintiff , PRINTERS ONLINE PTE LTD , on 27th April,2020, by its writ of Summons and the Statement of Claim (SOC) filed this action against the 1st to 3rd Defendants seeking the following reliefs;
 - a. *Judgment against the Defendants in a sum of Ninety One Thousand Four Hundred and Forty Dollars and Twenty Cents (\$91,440.20) ,*
 - b. *Cost of this action on Solicitor Client basis ; and*

c. *Such other or further relief that may seem just and proper to his Honorable Court.*

2. The 1st and 2nd Defendants, by filing their joint Statement of Defence on 16th June, 2020, admitted the averments in paragraphs 3 and 4 of the SOC, which averred about the issuing of a purchase Order by the 1st Defendant to the Plaintiff Company for the supply of a SHARP BRAND MXM 7570 PHOTOCOPIER and about the delivery of the same on 5th July, 2019, and denied the rest of the averments in paragraphs 4 and 5 to 14 of the SOC.

Accordingly, the 1st and 2nd Defendants moved for the dismissal of the Plaintiff's action and, by way of counter claim, prayed for a judgment for damages under section 146 of Commerce Commission Decree 2010, together with costs.

3. The 3rd Defendant, through the Attorney General, on 16th June, 2020 filed its Statement of Defence (SOD) admitting the contents in paragraphs 3 to 5 and partially admitting the contents of paragraph 6 of the SOC, and moved for the dismissal of the plaintiff's action. The 3rd Defendant also specifically pleaded that there was no a sale and Purchase Agreement between the Plaintiff and the 1st Defendant.
4. After the Plaintiff filing the reply to the statement of Defence of the 1st, 2nd and 3rd Defendants and defence to the Counter claim by the 1 & 2 Defendants, parties attended pre-trial formalities and recorded 3 Agreed Facts and 31 issues to be tried basing on their respective pleadings.

B. FACTS IN BRIEF:

5. From the averments in the Writ of Summons, SOC and SOD, following facts can be conveniently figured out, in order to ascertain as to what caused the dispute between the parties leading them to the Court for adjudication.
 - a. On 14th June, 2019, the Plaintiff Company received a purchase order for a Multifunction Photocopier brand **SHARP MXM 7570** from the 2nd Defendant for the usage at the 1st Defendant College.
 - b. On 5th July, 2019, the Plaintiff delivered the said Photocopier to the 1st Defendant College for the price of \$18,000.00 and the same was made use by the Office of the 1st Defendant during the School hours.
 - c. The Plaintiff on 26th September, 2019, repossessed the photocopier. The reason for the repossession was that the executives of the 1st Defendant had decided not to go ahead with the purchase, and such decision was not made known to the Plaintiff for nearly 3 months.
 - d. Between 5th July, 2019 and 26th September, 2019, a total count of 410,410 copies were made by using the said photocopier, which included 379,206 photocopies, and 31,198 printouts.

- e. The charges quoted by the Plaintiff for the photocopies was 20 cents per copy and for the printouts was 50 cents per copy , which finally came to be in a sum of \$91,440.20 (Ninety one thousand four hundred and forty Dollars & cents twenty).
- f. Accordingly, the 1st Defendant owes the Plaintiff a sum of \$91,440 being the charges for photocopying and printing obtained utilizing the said machine.
- g. On 25th October, 2019 a letter of Demand was sent by the Plaintiff's Solicitor to the 1st Defendant, demanding the said sum, but the Defendants have failed and/or neglected to pay the same.
- h. Though, the 1st Defendant's affairs are duly monitored and controlled by the parent body, the 2nd Defendant , and the 3rd Defendant as the Ministry in charge of Education , they have not taken any step to ensure the payment for the photocopier, and thereby they too are liable for breach of contract.
- i. As all the Defendants had neglected to pay, they shall be liable for breach of the sale and purchase Agreement.

C. TRIAL:

6. At the trial held before me on 15th November, 2022, three (3) witnesses gave evidence for and on behalf of the Plaintiff Company. They are Ms. **Gulshad Begum**, the Director of the Plaintiff Company (as PW-1), **Mr. Nigel Lucas**, the Manager –JMIT Company, (as PW-2), through whom the Plaintiff supplied the Photo Copier to the 1st Defendant College, and finally Mr. Mohamed Zahir (as PW-3), who is the Manager at the Plaintiff's Company and the Husband of PW-1. Exhibits from "Pex-1" to "Pex-9" were marked at the trial to substantiate the Plaintiff's claim.

On behalf of the 1st and 2nd Defendants, Ms. Shabina Ali, the Principal of the 1st Defendant College, who had, admittedly, signed the relevant purchase Order marked as "Pex-1" on 14th June, 2019, gave evidence

7. Learned Counsel for the Plaintiff, at the commencement of the trial, informed that the Plaintiff does not wish to proceed against the 3rd Defendant and accordingly, the action against the 3rd Defendant, Ministry of Education, was discontinued, with no costs being ordered, by consent.
8. Learned Counsel for the 1st and 2nd Defendants too informed, at this juncture, that they are not proceeding with the counter-claim against the Plaintiff .Accordingly, this Court was absolved from the task of the adjudication of the counter-claim by the 1st and 2nd Defendants and the same accordingly stands dismissed.

D. DISCUSSION:

9. The Defendants in their respective SOD do not dispute the material averments in the SOC, in relation to the placing of the purchase order for the said Photocopier, the delivery of it on 5th July, 2019 to the 1st Defendant College, the usage of it and the repossession of it by the Plaintiff on 26th September, 2019 as averred in the SOC.
10. It is also observed that the Plaintiff, through this action, does not intend to recover, from the 1st and 2nd Defendants, the consideration for the said Photocopy Machine or any damages on account of the aborted sale and purchase of it. It is not prayed for as a relief in the SOC of the Plaintiff as well. Moreover, learned counsel for the Plaintiff, before the commencement of trial, has intimated that they are not demanding the purchase price as they have repossessed the Machine. Also see the evidence in chief the **PW-3** in page 34 of the transcript in this regard. Thus, the Plaintiff has forfeited its right to claim the sale price of the said Photocopier Machine.
11. In view of the above, this Court need not delve into the pleadings and evidence in relation to the placing of the purchase order for the Machine on 14th June, 2019, the delivery of it on 5th July, 2019 and the repossession of it by the Plaintiff on 26th September, 2019.
12. Similarly, this Court also need not try the majority of the issues raised, which revolve around the said purchase order, delivery of it and repossession as they are not disputed facts and no claim is made on it. Accordingly, this Court also need not endeavor to ascertain whether a sale and purchase Agreement of any nature was in place between the parties in that regard.
13. I find the issues Nos. 4, 7, 13, 14, 15, 16, 17, 18, 21, 22, 23, 24 and 25, which are in relation to the purported Agreement for the sale and Purchase of the Photocopier, are redundant and do not warrant the consideration by this Court. Only the rest of the Agreed issues Nos. 5, 6, 8, 9, 10, 11, 12, 19, 20, 26 and 27, which are on the purported claim for the usage of the Photocopier, warrant consideration by this Court. The rest of the issues from 28 to 34, except for the issue No. 32, also do not warrant consideration as they are related to the counter claim advanced by the Defendants, which is not proceeded with.
14. Accordingly, the pivotal issue that lies before the Court, for determination on the pleadings and the evidence adduced, is whether there was an Agreement, in any form, between the parties for the Plaintiff to charge the Defendants for the usage of the Photocopy Machine during the period it was in the custody of the 1st Defendant.
15. There is no even an iota of evidence before the Court to prove that there was an Agreement between the parties for the usage of the Machine and about the rate to be levied. Also, no evidence adduced to show that the Defendants were aware that they were to be charged and, if so, on what basis and rate? Vide the 1st four answers of the **PW-3** under cross examination in page 36 of the transcript, where he admits that the

Defendants were unaware of the charges, if any, involved for the photocopying, till the time of repossession of the Machine.

16. The Plaintiff did not adduce any evidence to the effect that at least it made a request from the Defendant for it to be charged for the copies it makes using the Machine in dispute, or to prove that it put the Defendants on notice warning that they will be charged for the service they obtain through the Machine at a particular rate during the time material.
17. In the absence of such an Agreement or a Notice given to the Defendants on the “would be charges” for the use of the Machine, this Court finds itself handicapped to adjudicate the issue in hand in favor of the Plaintiff relying on the evidence adduced.
18. There was no even a promise or undertaking by the Defendants that they will pay the charges for usage, at the rate claimed by the Plaintiff. The entirety of the claim by the Plaintiff is bound to fail as the Court cannot enforce a claim on a contract, which the Plaintiff did not have with the Defendants.
19. I don't see any cause of action accrued in favor of the Plaintiff, in the absence of an Agreement, Notice given to the Defendants, Consent or an undertaking by the Defendants, to enforce by a Court of law. The Plaintiff did not have any sort of contract with the Defendants in this regard.
20. The Plaintiff has not proved how a supply of a Photocopier for a sum of \$18,000.00 on 5th July, 2019 could have brought a benefit worth in a sum of \$91, 440.20 on 26th of September, 2019, within a short period of 2 months and 3 weeks' time.
21. If this Court was to delve in to propriety of the amount \$91,440.20, claimed by the Plaintiff as market rate, on account of the, purported, photocopying and printing charges, necessarily, this Court will have to inquire into as to who supplied the paper, ink, electricity and man-power to generate such a massive number of copies.
22. The Plaintiff received a Purchase Order from the 1st Defendant for the supply of the Machine in question for \$18,000.00. It was delivered and repossessed by the Plaintiff, for the Defendant to be issued with an invoice for a sum of \$ 91,440.20, which was a “bolt from the blue” for the Defendant. This, in my view, will not entitle the Plaintiff to claim from the Defendants.
23. As far as the claim for unjust enrichment is concerned, I don't find any issue raised on that line. However, this cannot be termed and enforced by this Court as an unjust enrichment and to do so would set a bad precedent.
24. However, the fact remains that the Photocopy Machine in question was used by the 1st Defendant College during the period it was with the 1st Defendant. The Defendants also do not dispute the extent of the usage or the volume of copies it obtained through this Photocopier Machine. The Defendant's conscience, as to some form of liability on their

part for making use of the Machine, was exhibited during the trial where the learned Counsel for the Defendants indicated that they had offered \$5,000.00 to the Plaintiff in consideration of such usage, but the offer was rejected by the Plaintiff.

25. This Court is not in a position to enforce an offer made by the Defendants to pay \$5,000.00 unto the Plaintiff, being the consideration for the usage of the Machine during the time material, unless the Plaintiff express its willingness to accept the offer.
26. Under the Sale of Goods Ordinance, the Plaintiff has had the opportunity to claim the sale price of the Machine, along with damages, if any, and interest. For reasons best known to it, the Plaintiff repossessed the Machine instead of claiming the sale price as aforesaid.

E. CONCLUSION:

27. In view of the above, this Court can answer only the issue Nos 5, 11 and part of the issue 12 in favor of the Plaintiff, which deals only as to the usage of the Machine.
28. The rest of the shortlisted issues, namely, issues Nos. 6, 8,9,10, 19, 20, 26 and 27 are answered against the Plaintiff. Other issue Nos. 4,7,13,14,15,16,17,18,21,22, 23,24 and 25 need not be answered for the reasons stated in the judgment. The Plaintiff's action is bound to fail.

F. FINAL OUTCOME:

1. The Plaintiff's claim against the Defendants fails.
2. The Plaintiff's action against the Defendants dismissed.
3. No costs ordered and the parties shall bear their own Costs.



A.M. Mohamed Mackie
Judge

At High Court Lautoka this 15th day of February, 2023.

SOLICITORS:

For the Plaintiff:

For the 1st & 2nd Defendants:

For the 3rd Defendant:

M. Y. Law – Barristers & Solicitors.

Shevin Singh Lawyers- Barristers & Solicitors.

The Hon. Attorney General.