

GHZ GZ

18, 1960

1.

IN THE PRIVY COUNCIL

No. 12 of 1959

ON APPEAL FROM
THE WEST AFRICAN COURT OF APPEAL

UNIVERSITY OF LONDON
W.C.L.
- 7 FEB 1961
INSTITUTE OF ADVANCED
LEGAL STUDIES

(GOLD COAST SESSION)

B E T W E E N :

THE CHEAPSIDE SYNDICATE LIMITED
(Defendants) Appellants

- and -

10082

G. STANLEY LEWIS (Plaintiff) Respondent

10

CASE FOR THE APPELLANTS

1. This is an appeal from a Judgment of the West African Court of Appeal, dated the 7th February, 1956, allowing an appeal from that part of a Judgment of the Supreme Court of the Gold Coast, Eastern Judicial Division, dated the 1st October, 1952, which dismissed a claim by the Respondent (hereinafter called "the Plaintiff") for £3,571.14.8d on an alleged account stated, with interest, and remitting the case to the Supreme Court for certain figures to be determined.

Record

2. The principal issues which arise for determination on this appeal are the following, viz :-

(1) Whether there was an account stated between the parties in respect of the sum of £3,571.14.8d claimed by the Plaintiff.

(2) Whether, if there was no account stated between the parties, it was open to the Plaintiff on the pleadings to prove an alleged agreement to pay that sum; and whether, in any event, the Plaintiff did prove any such agreement.

30

3. The Appellants (hereinafter called "the Defendants") are general merchants, and the Plaintiff

p. 81

Record
pp. 11; 29
p.137
p.30, 1.23

was employed by them from about 1935 or 1936 until the early part of 1950, when his employment was determined by a letter dated the 8th February, 1950. At all material times the Plaintiff was also a director of the Defendants.

p.16, 1.48
p.29, 1.30

4. The Plaintiff was employed at a salary which was not a fixed amount but which appears to have been in practice £400 or £500 per annum until 1949 but for the last year of his employment the Defendants have credited the Plaintiff with £700 as salary.

10

p.145

p.21, 1.33

In addition to his salary the Plaintiff was provided with residential accommodation on the Defendants' premises rent free.

p.29, 1.34
p.30, 1.3

5. In September, 1948, the Plaintiff spoke to the Defendants' Managing Director, one George Francois, about his remuneration and suggested that he should receive a share of profits instead of a salary. Mr. Francois then wrote to the Plaintiff a letter dated the 30th September, 1948, in which he put forward a number of matters for the Plaintiff's consideration in relation to the question of his remuneration and suggested 33-1/3% of nett annual profits as a "generous allocation" to the Plaintiff. In reply the Plaintiff wrote to Mr. Francois a letter of the same date in which he suggested that his remuneration should be 40% "share of proceeds". A further letter from Mr. Francois dated the 6th October, 1948, was therein described as "intended to probe a basis of agreement."

20

p.14, 1.15
p.30, 1.4
p.90

p.17, 1.32
p.30, 1.7
p.93
p.34, 1.35
p.93

30

p.14, 1.19
p.30, 1.10
p.95

6. Following the preliminary correspondence already referred to, Mr. Francois, on the 15th October, 1948, wrote to the Plaintiff a letter containing an offer in the following terms:-

"Dear Sir,

TERMS

The Cheapside Syndicate, Ltd. offers you the following terms :-

1. Quarters.....
2. Passages.....
3. Conveyance.....

40

4. Emoluments.....

Record

5. Nett Profits. This will be ascertained on the basis of deduction of all Company working expenses and reasonable provision for bad or doubtful debts from Gross Profits but will not include personal amount drawn by yourself or myself towards remuneration.

p.95, 1.34

.....

10

We hope you will find the terms acceptable when an Agreement embodying these and other usual terms can be drawn up.

Yours faithfully,
pp. Cheapside Syndicate Ltd.
(Sgd.) GEORGE FRANCOIS
Managing Director. "

20

The Plaintiff never replied to the letter of the 15th October, 1948, and on the 28th March, 1949, Mr. Francois withdrew the offer by a letter in the following terms :-

p.17, 1.21
p.30, 1.11
p.14, 1.20

"Dear Sir,

p.30, 1.14

The Company made you an offer of revised working terms on 15/10/49. As there has been no acceptance of the offer it is hereby withdrawn.

Yours faithfully,
pp. Cheapside Syndicate, Ltd.
(Sgd.) GEORGE FRANCOIS
Managing Director."

30

8. The withdrawal of the offer provoked the Plaintiff into further correspondence and he wrote to Mr. Francois a letter dated the 5th April, 1949, which contained the following passages:-

p.14, 1.29
p.30, 1.16
p.98

"The offer to which your letter of 28th March 1949 refers was in point of fact accepted in its broad terms by the fact of my continuance in the service of the Company since the offer

Record

was made. As the terms set out therein did not embrace all the terms which an agreement of employment should employ, the terms omitted as well as the details for adjustment were sic. left to be threshed but and put in their final form in an agreement at the close of the busy season. As a result I am unable to accept your alleged withdrawal of the "offer" which so far as I am concerned has long ceased to be still in the nature of an offer, but has been in fact a contract, the final details of which would be worked out when the agreement was being drawn up.

10

In all circumstances therefore be assured that you will in due course receive my detailed observations and conclusions on the points requiring adjustment and on the terms omitted."

p.15, 1.47
p.30, 1.17
p.99

This letter was followed by a further letter from the Plaintiff, dated the 8th April, 1949, in which he set out his observations as to certain matters which he considered ought to be included in the agreement proposed in Mr. Francois' letter of the 15th October 1948. Mr. Francois maintained the position which he had taken up, however, and wrote to the Plaintiff on the 9th April, 1949, a letter stating inter alia as follows :-

20

p.14, 1.30
p.30, 1.18

p.101

"I shall take an early convenient opportunity to place these letters and previous relevant correspondence before the Board of Directors as present constituted or an enlarged Board if the introduction of new blood in the directorate is practicable in the near future. I shall then act on the direction of the Board.

30

I have already informed you that my offer of 15/10/48 which, in any case, would have needed the approval of the Board of Directors is withdrawn."

9. The subsequent events which occurred during the year 1949 may be summarised as follows:-

p.30, 1.40

On the 1st May, 1949, a new Board of Directors of the Defendants was elected at a meeting of shareholders, and met on the same day. At that meeting it appears that the question of the Plaintiff's being remunerated by payment of one-third of the net profits was discussed and subsequently Mr. Francois prepared a balance sheet, which was circulated to

40

p.31, 1.10

members of the Board of Directors together with a Memorandum, dealing with the question of the Plaintiff's remuneration, prepared by Mr. Francois. A Memorandum prepared by the Plaintiff, dated the 20th September, 1949, was also circulated. The matter was considered by the Board at a meeting on the 31st October, 1949, at which the Plaintiff was present. In the meantime, Mr. Francois sent a balance sheet to the Commissioner of Income Tax, which included the appropriation of a one-third of net profits to the Plaintiff.

Record
p.31, 1.12
p.113
p.121
p.18, 1.15
p.31, 1.16

p.31, 1.38

10

10. The Defendants determined the Plaintiff's employment by a letter dated the 8th February, 1950, which was in the following terms :-

p.137

"Dear Mr. Lewis,

Owing to reorganisation in the work of Cheapside Syndicate Limited, I regret exceedingly that your long association with the Company has to come to an end.

20

The Company will prefer you to take Salary in lieu of notice and in all matters concerning your balance with the Company will you kindly put yourself in communication with the Secretary of the Company who will receive instructions."

This letter was acknowledged on the 9th February, 1950, by a letter in which the Plaintiff stated inter alia :-

p.137

"There can be no question of salary in lieu of notice as your letter suggests, since I am not on salary:"

30

p.138, 1.17

In the same letter the Plaintiff requested payment of certain sums which were set out as follows:-

"Arrears of salary to 31st March 1948
stated in your letter of 31st
January 1950 to be £627.18. 2
Remuneration by share of profits for
the year April 1948/March 1949 3571.14. 8"

p.138, 1.6

40

11. The Plaintiff's demand for payment for the sum of £3571.14.8d described as "share of profits" in his letter dated the 9th February, 1950, led to further correspondence. At the outset the Defendants, by a letter from their Secretary dated the

Record

10th February, 1950, said :-

p.139, 1.20

"The question of whether you are on a salary or on share of profits is a legal issue in which I am instructed not to enter."

Nevertheless, the Defendants took up the position that the Plaintiff had a share of profits to his credit but that it was not intended to be a share of cash profit but was a share of goods. The following are extracts from the relevant correspondence on this point :-

10

Defendants to Plaintiff, 10th February, 1950:-

p.139, 1.3

"Share of profits April 1948-March 1949. An amount of £3571.14.8 stands in your name in Suspense Account. At 31st March 1949 cash in Cheapside coffers could not meet even customers deposits and the profits were arrived at on the value of goods on the ground at Cost Price. You have had the job of realising cash for those goods up to 8th February 1950. It is a matter of mathematical computation to which your talents can be employed to determine what the 1/3 profits on ground stock actually realised. When the goods are still in stock the current sales prices can be determined or agreed upon."

20

Defendants to Plaintiff, 15th February, 1950:-

p.140, 1.27

"I am instructed to say that to implement the third paragraph of our letter of the 10th instant a start has been made to arrive at your 1/3 profits which formed part of our ground stock at 31st March, 1949. As only a fraction of the goods has been sold it will take some time to arrive at the final figure."

30

Plaintiff's Solicitor to Defendants, 17th February, 1950 :-

p.141, 1.15

"I am instructed by my client Mr. G. Stanley Lewis of Accra to demand of you immediate payment to me for and on his behalf the total of the amounts due and owing to him according to our books and comprising :-

40

- (a) His arrears of salary up to and including 31st March, 1948.

(b) His ONE THIRD share of profits for the year April, 1948 to March, 1949."

Record

Defendants to Plaintiff's Solicitor, 23rd February, 1950:-

"This 1/3rd profit was not a Cash profit but was arrived on the Ground stock value of goods at Cost Price on stocktaking at 31/3/49."

p.142, 1.32

The Defendants enclosed with their letter dated the 23rd February, 1950, three statements of account including a Suspense Account relating to the Plaintiff which consisted of one item in the following terms :-

pp. 145, 146

10

p.146

"31/3/49 1/3rd. profits of £10,715.4.7.
being goods in stock reckoned
at Cost Price and unrealisable
at Cost Price £3571.14. 8"

12. The Plaintiff's Solicitor by a letter dated the 25th February, 1950, pressed for payment to the Plaintiff of a share of profits in respect of the year ending March, 1948, and made suggestions as to how a proper figure should be arrived at. The Defendants by a letter from Mr. Francois to the Plaintiff's Solicitors, dated the 30th March, 1950, requested that the Plaintiff should clear goods allocated to him as his share of profits for the year in question before the 30th April, 1950.

p.147

20

p.150

13. As regards the claim for salary, the Defendants by their letter dated the 23rd February, 1950, and by a Salary Account enclosed therewith, acknowledged salary due to the 31st March, 1950 (although the Plaintiff's demand was only for salary to the 31st March, 1948); a cheque for £960.18.10d in respect of salary was enclosed with that letter. The cheque was returned by the Plaintiff's solicitor in view of the failure to agree as to the one-third share of profits.

p.142, 1.21

30

p.145

pp. 138, 141

p.142, 1.26

p.148, 1.40

14. On the 27th February, 1951, the Plaintiff instituted the present suit in the Supreme Court of the Gold Coast. By his Amended Writ of Summons, dated the 12th March, 1951, and his Statement of Claim, dated the 6th April, 1951, the Plaintiff claimed the sum of £4,217.5.8d as

40

p.2

p.4

"money found to be due from the Defendants to the Plaintiff on an account stated between them."

p.2, 1.28

p.4, 1.9

Record
pp. 2-3
p.4

The particulars pleaded were as follows :-

"Particulars:-

23rd February, 1950.

Balance of arrears of the Plaintiff's salary computed up to 31st March 1949 acknowledged in the Statement of Account attached by the Defendants to their letter of this date addressed to the Plaintiff's former Solicitor Mr. J. Sarkodee-Adoo

£ 645.11. -

10

23rd February, 1950.

The Plaintiff's one third (1/3) share of the profits computed up to 31st March 1949 also acknowledged in the Statement of Account attached by the said Defendants to their letter dated 23rd February 1950 addressed to the Plaintiff's former Solicitor Mr. J. Sarkodee-Adoo

£ 3571.14. 8

20

TOTAL £ 4217. 5. 8 "

pp. 3, 4

The Plaintiff also claimed interest.

p. 5

p.5, 1.15
p.5, 1.28

15. The Defendants by their Statement of Defence dated the 19th April, 1951, inter alia pleaded their offer of a cheque for £960.18.10d for salary and the return of the cheque, and as regards the claim in respect of a share of profits they stated as follows:-

p.5, 1.21

"4. The Defendants further aver that the Plaintiff's recommended share of profits was in goods and a list of goods showing quantities and values was prepared and forwarded to his said Solicitor under registered cover dated the 23rd day of February 1950. Plaintiff was requested to collect his goods.

30

5. The Plaintiff returned the cheque for undrawn salary. Plaintiff made no attempt to collect his goods.

.....

7. The Defendants are prepared to account for the Plaintiff's goods sold through their organisation and for the residue handed to an Auctioneer."

Record

By an Amended Defence, dated the 25th January, 1952, the Defendants further pleaded that by reason of the provisions of Clause 21 of their Articles of Association and Clause 61 of Table A of the Companies Ordinance Cap. 156 the one-third share of profits claimed by the Plaintiff is "without authority" and the offer by Mr. Francois "which was withdrawn and upon which the Plaintiff's claim is based" was ultra vires the Defendants and void.

p.7, 1.10

p.89

p.8, 1.1

16. At the trial in the Supreme Court (cor Acolatse J.) the Plaintiff gave evidence in support of his case. He stated inter alia as follows:-

pp. 11-29

"The dispute between us was that I insisted on taking 1/3 share in cash and not in goods."

p.12, 1.19

.....

"I did not go to collect the goods in lieu of payment in cash because there was no understanding to that effect. I was demanding payment in cash. I did not accept the tender of payment of £960.18.10d. by cheque purporting to be salary up to 31/3/50. I returned the cheque as I feared its acceptance would prejudice my claim."

p.13, 1.46

.....

"I am relying on my claim on my statement of Account submitted to my solicitor Sarkodee-Adoo."

p.14, 1.43

.....

"This claim before the court is not based on a contract. I based my claim on an account stated."

p.17, 1.6

.....

"There has never been any Agreement or Contract drawn up between myself and the Defendants from the time I began my employment."

p.17, 1.13

.....

Record
p.17, l.21

"I did not reply to Exhibit "S" (i.e. the letter from Mr. Francois dated the 15th October, 1948, containing an offer of terms) up to 28/3/49."

.....

p.18, l.39

"I refused to take the 1/3 share in goods because that was not the understanding."

.....

p.21, l.30

"I have no salary apart from the 1/3 share of the net profits. My emoluments are the 1/3 share of the net profits. My emoluments included rent."

10

.....

17. The Defendants' evidence, apart from the documents, was that of Mr. Francois. He stated inter alia as follows :-

p.31, l.25

"I understood the Board to agree on 1/5/49 that they would be prepared to pay Mr. Lewis 1/3 of the net profits and after that I prepared the balance sheet. It is on p.31 of the Minute Book in Exhibit "8". The balance sheet was prepared showing Plaintiff receiving 1/3 of the net profits placed in Suspense Account from 1/4/48 to 31/3/49 - pending final decision of the Board and the Shareholders. When I read the Minutes of the Board of Directors where they stated they were not competent to make the award because they, the Board, were not in existence at the time, that financial year - 1948-9 - I was in a personal dilemma because in the meantime the Balance Sheet had gone to the Income Tax Authorities and there was no final authority for the £3,571.14.8d. as showing in favour of Plaintiff and myself."

20

30

.....

p.33, l.44

"I gave the Plaintiff no agreement to pay him £3,571.14.8d. as his 1/3 share. The Plaintiff and I never sat together to go into the figures between us. We owe Plaintiff in salary £960.18.10d. more than he claimed on the writ. I did not at any time get the sanction of the Shareholders to the 33-1/3 per cent offered to the Plaintiff which offer was not accepted by the Plaintiff and I withdrew it."

40

	<u>Record</u>
.....	
"I was prepared to allow the Plaintiff his share as prepared on the balance sheet."	p.35, 1.22
.....	
"It was never understood that the one third share had to be paid in cash."	p.38, 1.29
.....	
10 "The Plaintiff's remuneration for the financial year 1948-49 was £500 a year plus what the Directors might allow."	p.42, 1.1
18. After both parties had closed their cases and at the conclusion of the addresses of counsel, the Plaintiff, on the 26th September, 1952, applied for and was granted leave to amend his claim by adding an alternative claim in the following terms:-	p.50, 1.1
"The work and labour done for the Defendants, the Plaintiff claims £3571.14.9d. in the alternative for the period 1948-9."	p.50, 1.1
20 19. The learned trial Judge gave judgment for £645.11.0d for arrears of salary for the financial year 1948-9 (the right to which, as the learned Judge observed, was not disputed by the Defendants) together with interest at 5 per cent., but held that the Plaintiff's claim in respect of the £3,571.14.8d failed. The grounds upon which the latter claim was rejected were:-	pp.50-51 p.55, 1.19 p.54, 1.20
30 (i) That the Plaintiff's remuneration as to one-third share of net profits for the financial year 1948-1949 was never adopted by any lawful authority under the Defendants' Articles of Association.	p.55, 1.
(ii) That the meeting of the Board of Directors held on the 31st October, 1949, did not commit itself on the suggestion of a one-third share of profits and in respect of this question merely "held out its opinion in an advisory capacity."	p.55, 1.7
(iii) That therefore on the evidence there was no contract subsisting between the parties on the one-third share.	p.55, 1.12

Record
pp. 56-57

20. The Plaintiff stated his grounds of appeal against the said judgment as follows:-

- (1) The learned trial Judge failed to direct his mind fully and systematically to the issues before him regarding the Plaintiff's remuneration as to 1/3rd. (one-third) share of the net profits of the Company for the financial year 1948-49. The said issues were
 - (a) Whether or not there was an account stated between the parties i.e. whether or not there was a contract implied by law to pay the said remuneration. 10
 - (b) Whether or not the Board of Directors had power under the Companies Articles to award such remuneration.
 - (c) If so whether or not on the facts of this particular case the Board of Directors and even the Defendants must be deemed to have exercised this power or to be estopped from denying that they had exercised this power. 20
- (2) The learned trial Judge had no justification for placing any credence on the Defendants' Minutes Book
- (3) The findings of the trial Judge as based on the evidence of the Defendants' managing director are inequitable
- (4) The learned trial Judge failed to deal with the amendment by which alternatively to the said claim for 1/3rd (one third) share of profits on an account stated a claim based on a quantum meruit was added. 30

p.58, 1.30
p.59, 1.20

(At the hearing of the appeal Ground 1 (a) above was "broadened", on the Plaintiff's application, by the addition of the words "or whether there was a contract at all to pay the said remuneration of one third (1/3rd) share of the net profits for the said year.")

p.57, 1.30

21. The relief sought by the Plaintiff in his Notice of Appeal was that judgment should be entered 40

for him in respect of his claim for £3,571.14.8d plus interest at 5 per cent. and that the judgment of the Supreme Court should be varied accordingly.

Record

22. On the appeal the Plaintiff applied to amend his claim further, by adding to his two alternative pleas an account stated and a quantum meruit a third alternative plea based upon express agreement. This application to amend was refused.

p.58, 1.12

p.64, 1.20

10 23. In the Court of Appeal (cor. Coussey P., Korsah J.A. and Ames Ag. J.A.) the principal judgment was delivered by Ames Ag. J.A. In the said judgment the Plaintiff's case is summarised (erroneously, it is submitted) as follows:-

pp. 70-77

20 "The case concerns his remuneration for the year 1948-49. (The accounts were from April 1st to March 31st). In the previous years he had been on a salary, which in 1947-48 was £400. He was dissatisfied with this and during 1948-49 there were negotiations by him with the Managing Director for some better remuneration. His case is that the negotiations ended in agreement to remunerate him by payment of 1/3rd share of the net profits."

p.70, 1.30

30 The learned Justice of Appeal, although he expressed the opinion that the learned trial Judge appeared to be wrong in his view as to the meaning of certain of the Defendants' Articles of Association, affecting the question of the authority of the Directors to remunerate the Plaintiff, agreed with the learned trial Judge that there was no agreement to vary the Plaintiff's remuneration arising from the events up to and including the meeting of the Board of Directors on the 31st October, 1949, and said:-

p.74, 1.24

p.75, 11.10-38

"Had the matter ended there, I would have come to the same decision as the learned trial Judge. But the matter does not end there. It goes further. Unfortunately the learned Judge did not consider these further matters."

p.75, 1.39

40 The "further matters" to which the learned Justice of Appeal referred were the letters written by the Defendants to the Plaintiff dated the 10th and the 15th February, 1950. He referred also to paragraphs 4, 5 and 7 of the Defence, which the learned Justice of Appeal stated (erroneously, it is submitted) "seems to me to conclude the matter", i.e.

p.75, 1.44

pp. 139, 140
p.5

p.76, 1.11

Record

p.76, 1.40

in the Plaintiff's favour.

The learned Justice of Appeal concluded that he would allow the appeal. As for the relief to be granted, he said that he would order that the case be sent back to the Supreme Court to ascertain and determine the market value on the 31st March, 1949, of the goods referred to in the Suspense Account. From the figure so determined the sum of £500 (representing salary) should be deducted and the balance so found should be added to the sum of £645.11.0d. awarded to the Plaintiff by the learned trial Judge: the reason for the deduction of £500 was that the learned Justice of Appeal took the view that on the evidence the Plaintiff ought not to have both salary and a one-third share of profits.

10

Coussey P. and Korsah, J.A. concurred.

24. Final leave to appeal to the Privy Council was granted to the Defendants on the 28th May, 1956.

25. The Defendants humbly submit that the said judgment of the West African Court of Appeal should be set aside and the judgment of the Supreme Court restored and that this Appeal should be allowed with costs, for the following, amongst other,

20

R E A S O N S

1. BECAUSE the Judgment of the Supreme Court was right for the reasons therein stated and other good and sufficient reasons.
2. BECAUSE the matters relied upon by the Court of Appeal, namely the letters dated the 10th and the 15th February, 1950, and the Defendants' pleading, do not justify a reversal of the conclusion arrived at by the learned trial Judge.
3. BECAUSE the Plaintiff failed to prove an account stated between the parties.
4. BECAUSE the Plaintiff failed to prove his alternative claim based upon a quantum meruit.
5. BECAUSE the judgment of the Court of Appeal is not in accordance with the Plaintiff's case as pleaded.

30

40

6. BECAUSE the Court of Appeal having refused to allow the Plaintiff to amend his pleading by adding a claim based upon an alleged express agreement, it was not open to that Court to pronounce judgment in his favour upon the basis of such agreement.
7. BECAUSE the conclusion arrived at by Ames Ag. J.A. in the Court of Appeal was inconsistent with his finding that there was no agreement to vary the Plaintiff's remuneration arising from the events up to and including the Directors' Meeting on the 31st October, 1949.
8. BECAUSE there are concurrent finding in both Courts that there was no agreement to vary the Plaintiff's remuneration arising from the events up to and including the Directors' Meeting on the 31st October, 1949.
9. BECAUSE there is no finding by the Court of Appeal of any agreement which would support their judgment.
10. BECAUSE no agreement such as would support the judgment of the Court of Appeal was proved.
11. BECAUSE if and in so far as the judgment of the Court of Appeal is upon the basis of alleged admissions in the Defendants' pleadings, it was neither justified by the terms of the pleadings nor correct in the light of the evidence.
12. BECAUSE if and in so far as the judgment of the Court of Appeal is upon the basis of an estoppel it was not justified either on the pleadings or the evidence.
13. BECAUSE the relief granted by the Court of Appeal is inconsistent with the Plaintiff's case as pleaded and as set out in his Notice of Appeal.
14. BECAUSE even if the reasoning of Ames Ag. J.A. is right the Court of Appeal ought to have given judgment in favour of the Defendants.
15. BECAUSE the judgment of the Court of Appeal is wrong.

No. 12 of 1959

IN THE PRIVY COUNCIL

ON APPEAL FROM THE WEST AFRICAN
COURT OF APPEAL

(GOLD COAST SESSION)

B E T W E E N :

THE CHEAPSIDE SYNDICATE
LIMITED
(Defendants) Appellants

- and -

G. STANLEY LEWIS
(Plaintiff) Respondent

CASE FOR THE APPELLANTS

T.L. WILSON & CO.,
6, Westminster Palace Gardens,
London, S.W.1.
Solicitors for the Appellants.