

IN THE SUPREME COURT OF SOUTH AFRICA
(APPELLATE DIVISION)

CASE NO. 45/89

In the matter between:

JAN PAULUS BEAN

APPELLANT

AND

APELDOORN LIGHTHOUSE NET & TWINE (Pty) LTD

RESPONDENT

CORAM: HOEXTER, VIVIER et GOLDSTONE JJA

DATE HEARD: Thursday 28 February 1991

Transcript of extempore judgment delivered by Goldstone JA and
concurrented in by Hoexter and Vivier JJA on Thursday 28 February
1991.

J U D G M E N T

GOLDSTONE, JA:

The respondent, Apeldoorn Lighthouse Net and Twine (Pty) Limited ("Alnet") instituted an action against the appellant, Johannes Paulus Bean ("Bean"). The trial was heard by Esselen J sitting in the Transvaal Provincial Division. Alnet claimed payment of damages arising from the delivery by Bean of allegedly defective industrial knitting machines. The learned Judge a quo held in favour of Alnet and ordered Bean to pay to it the amount of R23 478,97, interest thereon at the rate of 20% per annum from date of judgment to date of payment and costs. When it opposed Bean's application for leave to appeal,

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Alnet conceded that interest should have been allowed at the rate of 12% per annum and to that extent abandoned the higher rate awarded in the judgment. In the event, leave to appeal was refused by Esselen J and Bean was ordered to pay the costs of the application therefor. An application to the Chief Justice for leave to appeal succeeded. The costs of the application as well as the costs of the application for leave to appeal in the Court a quo were reserved for decision by this Court.

It was common cause between the parties that on 24 July 1985, at the farm of Bean in White River, they entered into an oral agreement relating to the purchase by Alnet from Bean of six second-hand Karl Mayer industrial knitting machines. The purchase price was R9 000,00 for each machine, ie a total consideration of R54 000,00. Alnet alleged in its particulars of claim that it was an express or alternatively an implied term of the agreement that the machines, upon delivery thereof, "would be complete". It alleged further that in breach of that term of the agreement, four of the machines were without gearboxes and

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that a fifth machine was delivered with a defective gearbox. According to the plea filed on behalf of Bean, the sale related to the frames ("raamwerk") of six Karl Mayer knitting machines together with a large quantity of loose and damaged parts which were in a number of heaps on Bean's farm and all of which was sold "voetstoots" as they were. It was specifically denied that the agreement related to six "complete" machines. At the trial it was not in issue that four of the machines were without gearboxes and that a fifth was delivered with a defective gearbox.

Alnet calculated its damages on the basis of the costs of repairing the defective gearbox and purchasing four new gearboxes from Karl Mayer in Germany. The cost of the former was agreed in the amount of R1 562,60. It was further agreed that the cost of four new gearboxes was R26 119,49. Esselen J considered that the last-mentioned amount should be reduced by 20% because in terms of the agreement Alnet was entitled to second-hand and not new gearboxes. On the basis of those

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amounts the quantum of Alnet's damages was assessed in the
aforementioned amount of R23 478,97.

On appeal, counsel for Bean raised three issues:

1. That Alnet did not establish the terms of the agreement
alleged by it;
2. That Alnet failed properly to establish the quantum of its
damages; and
3. That Esselen J conducted the trial in a fashion prejudicial
to Bean and on that account the entire proceedings should be
set aside.

The learned Judge a quo decided the first issue, one of
fact in favour of the respondent. He did so having regard to
both the demeanour of the witnesses and the probabilities. In
my opinion there is no basis for criticising the assessment by
Esselen J of the credibility of the respective witnesses. The
probabilities were clearly in favour of the respondent. In

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particular I would refer to the following factors:

1. If the purchase related to six frames and an unspecified number and type of parts, the parties would not have expressly agreed to a specified number of "machines".
2. There is much to be said for the point made during his evidence by Rose-Innes that at all times the subject-matter of his negotiations with Bean related to complete knitting machines. Whereas initially they were to be assembled and commissioned by Bean, the agreement placed the responsibility upon Alnet.
3. The written documents of both Bean and Alnet, i e the purchase order and invoice, both refer to a specific number of "machines". No reference is made to the purchase of frames and parts. These documents, therefore, afford strong support for the version of Alnet.

4. It is unlikely that Alnet would have purchased loose parts without any knowledge of what they were. It was common cause that neither Rose-Innes nor Clauss had any knowledge of the contents of the piles of loose parts that they saw on Beans' farm in May 1985. Furthermore those piles would hardly have been described as "six machines".
5. It is unlikely that Bean would have looked for and delivered the additional gearbox casing if he was under no obligation to do so. Indeed, according to the witnesses of Alnet he had expressly accepted such an obligation.
6. It is unlikely that Bean, faced with repeated written demands for the gearboxes, would not have recorded his version if, indeed, he was not obliged to supply the gearboxes. Furthermore, if Bean, as alleged by him, had repeatedly denied liability orally, it is unlikely that in

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its letter, Alnet would not have referred thereto. It did not do so.

With regard to the quantum of damages, there is also no reason to interfere with the finding of the Court a quo. If anything the appellant was treated generously by the reduction by 20% of the expenditure incurred by the respondent importing four new gear-boxes.

Finally, with regard to the manner in which the trial was conducted, I have given my careful consideration to the submissions made on behalf of the appellant. Although the learned trial Judge played an active role in the proceedings, in my judgment, he did not thereby prejudice either of the parties and in doing so he did not display any bias one way or the other. There is no basis for setting aside proceedings on this ground.

The appeal is dismissed with costs.

A handwritten signature in dark ink, appearing to read "R. J. Goldstone", is written over a horizontal line.

R J GOLDSTONE