

CIVIL JURISDICTION

BEFORE MR. JUSTICE SHEPHERDSON

BRISBANE, 24 MARCH 1982

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BETWEEN:

COLIN ALFRED DASCOMBE

Plaintiff

- and -

C. LISGOS, H. LISGOS and MICHAEL LISGOS

Defendants

JUDGMENT

HIS HONOUR: In this action the plaintiff has claimed against the defendants the sum of \$15,788 for the price of goods, namely newspapers, books and periodicals, sold and delivered by him to the defendants at the defendants' request.

It has emerged at the trial that the actual amount of the claim is now \$15,599.32, being the amount certified in Exhibit 7 - namely \$15,782.25, less credit for a payment of \$182.93 which appears on the third page of Exhibit 3. These dealings with which I am concerned occurred between May 1972 and August 1976, during which time the plaintiff was a newsagent carrying on business under the name of Highgate Hill News, firstly with his wife but then, after she died on 1 July 1975, on his own account.

The defendants were subagents of the plaintiff, and they conducted a shop from which they sold newspapers and periodicals, at the corner of Hardgrave Road and Dornoch Terrace, Highgate Hill. Dealings are admitted between the parties, and on the pleadings it is also admitted by the defendants that they owe the plaintiff the sum of \$2,511.65, being the total of the items on page 3 of Exhibit 3, described as "admitted". The issue really is whether or not the defendants have paid the balance of the plaintiff's claim. As I have said, the plaintiff and his wife ran this newsagency until the wife died on 1 July 1975. The plaintiff then continued on until early July 1976 when he became ill and went into hospital for 10 days from 10 July. Up until then, he had been in charge of the business. Exhibit 1 contains a book kept by him, and Exhibit 2 contains invoices or duplicates of invoices written out by him or his wife, or an employee, Mrs. Bartlett.

Now, while the plaintiff was ill - that is from about 10 July 1976 up until the first or second week of September 1976, his daughter and son-in-law, Mr. and Mrs. Breitkreuz, helped out. They came from North Queensland to help him. During that time there were, as I find, some dealings between Mr. Breitkreuz and Mr. and Mrs. Lisgos.

The plaintiff has satisfied me that, in respect to the items the subject of this action, his newsagency did sell and deliver the goods referred to. I am also satisfied that the plaintiff did, until he went into hospital on 10 July 1976, deliver to the defendants invoices for the goods sold, and that he invariably delivered these within 10 or 11 days of the end of each week. I find that the defendants did not pay every time the plaintiff gave them an invoice. I find also that the defendants paid by cheque in respect of all payments which they have made, save for the payment in cash evidenced by the docket, Exhibit 4. This payment which was made to Mr. Breitkreuz some seven or eight months after the date of the invoice is, in my view, a good example of the regular late payment by the defendants. I

accept the evidence of the plaintiff and Mr. Breitkreuz and Miss Chessell and am satisfied that the combination of Exhibits 3 and 7 accurately sets out the state of the plaintiff's account which it had with the defendants.

I was not impressed with Mr. or Mrs. Lisgos and I do not accept their evidence. Where their evidence conflicts with that of Mr. Dascombe or Mr. Breitkreuz I prefer the latter two.

I am satisfied that the plaintiff spoke to Mrs. Lisgos several times about the account and that the versions of those conversations as given by him are correct. I am also satisfied that Mr. Breitkreuz spoke to Mrs. Lisgos and then Mr. and Mrs. Lisgos and demanded payment of outstanding invoices and that the conversations were as given by him.

The defendants were, in my opinion, untruthful witnesses. Quite a bit of cross-examination of the plaintiff was directed to alleged forgetfulness by him resulting from his illness. The defendants, it seemed to me, attempted to escape liability for their debt by hiding behind this alleged forgetfulness, but the plain fact is that they had an obligation to seek out the plaintiff as their creditor. Over the years they were constantly late payers, as I find, and as Exhibit 3 shows. They produced no documentary evidence of which they spoke, for example, the exercise books and the receipted invoices and their excuses for non-production were, in my view, just too incredible for me to accept. I say this bearing in mind that they were at all material times people engaged in commerce. I should add that there were claims by them that Mr. Dascombe and his son-in-law at times partly filled out cheques, but no attempt was made to produce these cheques although I have little doubt that they must still be in existence. The non-production of the cheques does not in any way affect the earlier finding which I have made on their credibility.

In the result, therefore, I am satisfied that there should be judgment for the plaintiff against the defendants, and I do give judgment for the plaintiff

against the defendants in the sum of \$15.599.32 with costs to be taxed.

There is a claim for interest and I allow the plaintiff interest on the amount of the judgment from the date of issue of the writ of summons up to the date hereof, such interest to be at the rate of 10 per cent per annum.

I further order that moneys in court and accretions thereto, if any, be paid out to the solicitors for the plaintiff in part satisfaction of the judgment and costs.
