

**IN THE HIGH COURT OF NEW ZEALAND  
AUCKLAND REGISTRY**

**CIV-2013-404-004456  
[2014] NZHC 2540**

BETWEEN INTERNATIONAL NEW ZEALAND  
TRADING LIMITED  
Plaintiff

AND LEYDA WOOD  
First Defendant

FRESH FRUIT TRADING LIMITED  
Second Defendant

Hearing: 15 October 2014

Appearances: J A R Cox for Plaintiff  
No appearance for Defendants

Judgment: 15 October 2014

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**ORAL JUDGMENT OF VENNING J**

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Solicitors: Blomkamp Cox Solicitors, Auckland

[1] The plaintiff is an importer and exporter. The first defendant is one of two directors of the second defendant company. The first and second defendants filed statements of defence and counterclaim to the plaintiff's claim, which was in relation to the supply of Philippine bananas by the defendants to the plaintiff.

[2] The first defendant applied for summary judgment against the plaintiff on the basis that she was not a party to the contract for the supply of the bananas. In a judgment delivered on 13 February 2014 Associate Judge Abbott dismissed the application by the first defendant.

[3] The first and second defendants are now legally unrepresented. The second defendant was struck off the Companies Office Register on 21 May 2014. It has subsequently been reinstated.

[4] Neither defendant attended case management conferences or mentions during 2014. On 11 July 2014 Associate Judge Doogue made an order striking out the defence and counterclaim of the first defendant. Today's date was allocated for a formal proof hearing of the plaintiff's claim against the first defendant. There is no appearance of or on behalf of the first and second defendants.

[5] Given the lack of steps taken by the second defendant I make an order striking out its statement of defence and counterclaim and proceed to consider the formal proof sought by the plaintiff against both first and second defendants.

[6] On the evidence before the Court Mr Ali, the sole director of the plaintiff, contacted the first defendant to inquire about the supply of bananas to Iraq. A sample order of two container loads was supplied and delivered. The purpose of the sample load was to confirm the ability of the defendants to supply the specified quality of bananas. The first two sample container loads were in good condition and acceptable. The parties then negotiated for the supply of further bananas to the plaintiff. The sale and purchase agreement was drafted by the first defendant, apparently prepared initially by her accountant and completed by her and executed on 24 August 2012. The plaintiff was described as the buyer.

[7] The seller was described as:

Leyda Wood, New Zealand, of legal [sic] and residing at 129/A Reeves Road, Pakuranga Auckland hereinafter referred to as FRESH FRUIT TRADING LIMITED a Limited Liability company duly organised under the law of New Zealand, with business address 129/A Reeves Road, Pakuranga, Auckland New Zealand, represented by its Managing Director Leyda Wood hereinafter referred to as “SELLER”; of Banana.

[8] The essential terms of the agreement included amongst other provisions a reference to:

If seller (Leyda Wood of Fresh Fruit Trading Ltd.) fails to deliver 40 containers of banana per month with the price agreed on this contract a penalty of 30 thousand nz dollar to be paid to the buyer ...

[9] Under the contract a total of 31 containers of Philippine bananas were packed and loaded by the defendants and consigned at the plaintiff's direction. The plaintiff's claim is that the quality of bananas supplied by the defendants was consistently poor. The bananas did not meet the specifications in that they were not of merchantable quality.

[10] The defendant accepted that the fruit from the first consignment was not fit for purpose and agreed to supply a replacement container. Further shipments were also, however, defective. The evidence before the Court satisfies me that the defendants supplied defective bananas to the plaintiff in breach of their conditions of contract and in breach of the defendants' obligations under the Sale of Goods Act 1908.

[11] The plaintiff's claims raises a number of causes of action, including breach of contract, breach of the Fair Trading Act, and breach of various provisions of the Sale of Goods Act.

[12] It would seem that the representations made in relation to the quality of the bananas to be supplied were clearly made by the first defendant. That supports the causes of action under the Fair Trading Act against her.

[13] For the reasons noted above and on the evidence before the Court I am satisfied that the defendants delivered defective bananas and bananas not complying

with the sample to the plaintiff under the contract and in doing so breached the terms of the contract and breached the relevant provisions of the Sale of Goods Act as to the bananas not being in keeping with the sample, not being merchantable quality and not being fit for purpose.

[14] The principal defence apparent on the papers before the Court is that of the first defendant's argument that she was not a party to the contract.

[15] In dismissing her application for summary judgment Associate Judge Abbott noted that the description of the seller is unhappily drafted. The Judge however noted that the first defendant had not been able to give a persuasive explanation for her name being inserted at the start of the description of seller.

[16] On the basis that the contract was completed by her and she was responsible for the insertion of her name as seller and her name is repeated in another part of the contract identifying her as seller and, in the absence of any further evidence on her behalf, I accept that on the balance of probabilities both she and the second defendant were effectively the sellers under the contract.

[17] The Court therefore is satisfied that the defendants have no defence to the plaintiff's claim. The plaintiff is entitled to judgment.

[18] The issue then is the quantum of that judgment. Mr Ali has sworn an affidavit and prepared information before the Court to support the claim. As discussed with counsel the Court is not able to accept his bare assertions in relation to the sums claimed for loss of profits and loss of business opportunity. It would also be rare for general and exemplary damages to be awarded for breach of a contract in what is a straightforward commercial transaction. I would not on the material before the Court be prepared to find fraud.

[19] For those reasons the plaintiff's claim, which I find proved, is for:

the purchase price of the bananas	\$249,157.88
together with shipping costs of	\$140,362.22

together with carriage of	\$29,689.52
customs charges in Kuwait	\$13,906.86
experts' reports of	\$10,349.29
The penalty payable by the defendants under the contract in New Zealand of \$30,000 per month for a period of five months, for the reasons discussed with counsel:	\$150,000.00
Plus the penalty payable to the plaintiff's Iraqi customer of	\$32,341.52
	<u>\$625,807.29</u>

[20] From that sum must be deducted the credit for moneys received on the sale of the salvageable bananas as steps taken by the plaintiff in mitigation of damage of \$174,913.45, which leads to the judgment sum of \$450,893.84.

[21] Judgment for the plaintiff against both defendants jointly and severally in that sum of \$450,893.84.

[22] The plaintiff is also entitled to costs. Costs on a 2B basis together with disbursements to be fixed by the Registrar.

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Venning J