

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2008 – 03362

BETWEEN

MICON MARKETING LIMITED

CLAIMANT

AND

LAPTOP CITY LIMITED

DEFENDANT

BEFORE THE HONOURABLE MR JUSTICE R. BOODOOSINGH

APPEARANCES:

MR RAVINDRA NANGA INSTRUCTED BY MRS SAVITRI SOOKRAJ-BEHARRY FOR THE CLAIMANT

**MR DONALD SEECHARAN INSTRUCTED BY MRS FARIZA SHAAMA SEECHARAN FOR THE
DEFENDANT**

DATED: 27 FEBRUARY 2013

JUDGMENT

1. This is a claim for the sum of \$214,458.41 representing the cost of goods supplied to the defendant by the claimant. These goods were cellular phones and equipment supplied by the claimant to the defendant on the instructions of Digicel, a local mobile phone company. There was a counterclaim by the defendant for the sum of \$406,771.42 which the defendant says represents an overpayment to the claimant regarding phones supplied.

2. The claimant says it supplied the goods and the defendant was to pay for it.

3. One of the main contentions of the defendant was that they had assigned a debt owed by Digicel to them to the claimant.

4. Two witnesses gave evidence for the claimant namely Mr Keemal Ali and Michael Conyers. For the defendant, Mr Larry Barkmeyer gave evidence.

5. **Section 49 (1)** of the **Sale of Goods Act, Chap. 82:30** provides for a seller being able to maintain a claim where property in goods passes to a buyer from a seller and where the buyer has not paid for them.

6. The first question is, did goods pass to the defendant? At the relevant time, Digicel would dictate to whom phones should be given and in what quantities. The claimant says based on these instructions they provided or delivered phones to the defendant and, importantly, these phones were not refused. They maintained an account of what was sent and what was returned and what was paid for and what was not paid for. Based on this evidence, which I accepted, I find that goods did pass and that this was an appropriate case to be brought under the Sale of Goods Act.

7. The defendant has said, in any event, that it assigned a debt owed by Digicel to the claimant by letter of 8 February 2007. The claimant says there is no assignment. First, they say they have not been paid by Digicel. Second, Digicel has not acknowledged any debt. Third, the defendant has not proved that Digicel owes them anything. In such circumstances, the claimant says the defendant has at best a revocable mandate. I agree with this submission. **(See Chitty on Contracts, Volume 1, 29 Edition, at page 1172, para 19-022.)**

8. The question that remains is whether moneys were owed and how much.

9. Mr Ali's witness statement sets out that based on the accounts of the claimant the figure arrived at is the sum claimed. He was the credit manager. He sets out in detail in

his witness statement by reference to the accounts attached how the sum was arrived at. The defendant contended that Mr Ali is not an accountant and therefore cannot give that evidence. I do not think it is necessary for a person to be an accountant to provide such evidence to the court. The maintenance of an account is not the sole competence of an accountant. It requires no more than knowing what items have been delivered to a customer, what is the cost of the items, which of the items supplied have been returned, what items have been paid for and what items were not paid for. It involves having a system to track these matters and being familiar with them. The claimant is a company and must act through its senior officers who would have access to the records and can therefore give evidence about their records. I found that to be the case with Mr Ali.

10. The matter came down to the claimant's version as opposed to the defendant's. The claimant's version is set out at paragraph 10 of Mr Ali's witness statement which sought to deal with the various queries raised by the defendant in order.

11. In both the defendant's witness statement and in the cross examination of Mr Barkmeyer, I was in much difficulty to understand on what basis he was disputing the account. His version was confused at best. It also tended to be at variance with correspondence. In a letter dated 2 October 2007 to attorney for the claimant and in an email dated 5 June 2008, Mr Barkmeyer seems to acknowledge monies are owed.

12. Based on Mr Barkmeyer's evidence I found no cogent basis to upset the version of Mr Ali about what was owed.

13. I compared the explanations set out in the witness statements of Mr Ali to that of Mr Barkmeyer. Mr Ali's witness statement was clearer. He justified the sums in detail as disputed by the defendant.

14. Mr Ali's evidence was more specific. It was supported by the evidence of Michael Conyers, Managing Director of the claimant. In particular, Mr Conyers noted that the defendant acknowledged on 5 June 2008 that it would forward a cheque for the sum of \$160,434.24 but it never did. He also made enquiries of Digicel who indicated that money was not owed to the defendant by them.

15. A further critical issue was whether the debt was \$214, 458. 41 as contended for the claimant or whether it was the sum of \$160,434.24. By letter of the claimant's attorneys before the claim was filed they had written to the defendant that this was the sum owed.

16. Mr Ali at paragraph 11 of his witness statement sought to explain this. He said it was an error in calculation which he had discovered afterwards and the correct sum due was the figure of \$214,458.41. The question was whether I accepted this explanation.

17. The defendant said the sum of \$54,024.17 was tied to Invoice number 5412 in the amount of \$54,024.17 which had been acknowledged as paid in the attorney's letter. Mr Ali's explanation was that moneys were not applied generally to specific invoices but to the account as a whole. He said when they reconciled the defendant's account, this additional sum was found to be outstanding. It seems curious that the balance or error coincidentally amounts to the same figure as the invoice in circumstances where there had been a prior assertion that the sum was paid. A more detailed and clearer explanation would have been necessary for Mr Ali to persuade the court on a balance of probabilities about the circumstances of this inconsistency when they would have clearly instructed their attorneys to the contrary. Mr Barkmeyer, in his witness statement, on the other hand, was categorical about this amount being paid.

18. I have also considered the witness statement put forward by Mr Barkmeyer on behalf of the defendant regarding the counterclaim. He speaks of the sum alleged to be owing by the defendant to the claimant. He speaks of the arrangement with Digicel. He speaks of assigning the Digicel debt to the claimant. He said at paragraph 9 that he saw an account where the claimant owed him \$293,936.36 on 31 October 2006. He said the

claimant was to issue credit notes. He said at paragraph 17 he sent an email saying Micon had owed him money and not the other way around. He then noted a claim was filed against his company. At paragraph 23 he stated commissions were owed to him in the sum of \$305,650.20. He said the attempts to reconcile the accounts were ongoing. At paragraph 26 he then said he received credit for \$406,367.10. No where, however, in his witness statement is there any explanation, supporting evidence, or facts, upon which the court could conclude that he is entitled to any sum on a counterclaim for \$406,771.42. All there exists are bald statements of monies being owed without any support.

19. Further, neither the letters nor email communication by the defendant to the claimant raised this sum as being owed. That arises in the claim.

20. I find therefore the counterclaim has not been proved on a balance of probabilities and it is therefore dismissed.

21. I find the claim proved to the amount of \$160,434.24. There is judgment for the claimant on this amount. Interest on this sum is to be paid by the defendant to the claimant at the rate of 6 percent per annum from 5 January 2007 which is 14 days after the last set of goods were supplied by the claimant to the defendant on 22 December

2006. Payments were due 14 days after supply. Prescribed costs are to be paid by the defendant to the claimant for the claim in the sum of \$33,065.14. The counterclaim for \$406,771.42 is dismissed. The defendant must also pay two-thirds of the prescribed costs of the counterclaim to the claimant in the sum of \$41,451.43.

Ronnie Boodoosingh

Judge