

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE  
(CIVIL JURISDICTION)

BETWEEN:

FAZIR MOHAMED, trading under the name of F.  
MOHAMED AND SON HARDWARE and whose  
address for service and place of business is at Rose  
Hall Town, Corentyne, Berbice.

Plaintiff

-and-

SHAZAM HUSSAIN

Defendant

The Honourable Justice Navindra A. Singh, Puisne Judge

Mr. Ramesh Rajkumar for the Plaintiff

Mr. Ian Anamayah for the Defendant

**Delivered October 19<sup>th</sup> 2017**

DECISION

BACKGROUND

The Plaintiff's case is that he sold and delivered to the Defendant, at the Defendant's request hardware items to the value of \$4,178,150.00 on credit between September 23<sup>rd</sup> 2010 and July 8<sup>th</sup> 2011 and this is evidenced on a record produced by him at the time the purchases were made, which is tendered and marked as exhibit "B" into the evidence.

Further, pursuant to liquidating the debt, the Defendant made payments to him, the Plaintiff, totalling \$600,000.00 between November 16<sup>th</sup> 2012 and November 30<sup>th</sup> 2014.

The Defendant admits that he did purchase hardware items from the Plaintiff, however he testified that he had created a spreadsheet to document the transactions and according to that spreadsheet, which is tendered as exhibit "E" into the evidence, he has documented that he received goods to the value of \$3,610,135.00. In addition it is the Defendant's case that the grand total of \$4,178,150.00 reflected in exhibit "B" is inaccurate in so far as the value of items that he did not sign next to ought to have been deducted since those items were never delivered. It is noted

that this was never mentioned in his affidavit of defence, which he admits was sworn to after receiving particulars of the items delivered from the Plaintiff.

The Defendant further testified that he made payments to the Plaintiff between September 27<sup>th</sup> 2010 and December 24<sup>th</sup> 2010 totalling \$2,125,000.00 and therefore according to his calculation he owed the Plaintiff the sum of \$1,485,135.00 as of December 31<sup>st</sup> 2010.

He then made payments towards that sum between November 16<sup>th</sup> 2012 and December 30<sup>th</sup> 2013 totalling \$550,000.00, leaving a balance at that time of \$935,000.00.

Notwithstanding all of the above, the Defendant pleads that since his last payment was on December 30<sup>th</sup> 2013 and this action was commenced on January 23<sup>rd</sup> 2017, this action is statute barred, more than 3 years having elapsed since the debt was last acknowledged, that being the last payment made to the Plaintiff.

### **ISSUE I**

Is the Plaintiff's claim statute barred?

### **LAW**

The Limitation Act, CAP 7:02 of the Laws of Guyana;

section 6 provides in relevant part that any action to recover for goods sold and delivered shall be brought three years after the cause of action has arisen.

section 10 provides, in relevant part, that where a payment is made towards the debt, the cause of action is deemed to have accrued on the date of the last payment.

### **FACTS/ ANALYSIS**

The Plaintiff contends that the Defendant paid \$50,000.00 towards his indebtedness on November 30<sup>th</sup> 2014.

The Defendant testified that the last payment he made was on December 30<sup>th</sup> 2013.

The Court considered the following facts in order to make a determination of fact.

The Defendant testified that the Plaintiff gave him a lot of “graces” and that he told the Plaintiff **after** November 2014 that he will try to pay him.

The Defendant accepted Exhibit “B” as accurate of the items ordered albeit not accurate as to what was delivered.

The Court tediously added together the values of the items **not signed** to by the Defendant and the total came up to \$1,149,565.00.

Deducting this figure from the total of all the items, which is \$4,178,150.00 results in a total of \$3,028,585.00 whereas according to the Defendant’s record, Exhibit “E” he was supplied goods to the amount of \$3,610,135.00.

The Defendant failed to explain why he did not at any time ask for an adjustment of the balances at the bottom of each page of Exhibit “B”, since items on those lists were not delivered. In fact the Defendant testified that he expected that at some point in time the Plaintiff would deliver those items to him.

It is noted that the Defendant also testified that the items that were not delivered, were not delivered because he would have obtained them elsewhere.

The Court found the Defendant deliberately evasive in answering questions on several occasions.

The Defendant produced a purported record of payments he made to the Plaintiff with respect to the payments made November 16<sup>th</sup> 2012 and December 30<sup>th</sup> 2013, which was tendered into the evidence as Exhibit “C”.

Firstly, it corresponds perfectly with the record of the Plaintiff regarding the said payments (the last two pages of Exhibit “B”) except for the payment of November 30<sup>th</sup> 2014. The Court took a dim, distrustful view of Exhibit “C” since, it appeared differently prepared from Exhibit “E” and in addition the last line of Exhibit “C” appears “forced” in, which suggests that the record was, on a balance of probabilities continued on another page. Since, the Plaintiff alleges that the next payment was November 30<sup>th</sup> 2014, that would be the next record.

On the other hand the Court found the Plaintiff's testimony and his records to be logical, frank and forthright and believable.

### **CONCLUSION**

In the circumstances the Court finds that the Defendant made a payment to the Plaintiff on November 30<sup>th</sup> 2014, therefore, in accordance with section 10 of the Limitations Act, the Plaintiff's cause of action is **not** statute barred.

### **ISSUE II**

What was the value of goods delivered? \$4,178,150.00 as claimed by the Plaintiff or \$3,610,135.00 as claimed by the Defendant?

### **FACTS/ ANALYSIS**

In addition to the FACTS/ ANALYSIS set forth in ISSUE I, the court finds that, firstly, the fact that the deduction of the items not signed to leaves a balance of \$581,550.00 less than what the Defendant has admitted to further makes the Defendant's account unbelievable.

Secondly, the Defendant did not provide a logical explanation for not asking the Plaintiff, at any time, to adjust the balances to reflect the fact that items were not delivered.

### **CONCLUSION**

The Court finds that the value of the goods delivered to the Defendant is \$4,178,150.00.

### **ISSUE III**

Did the Defendant pay the sum of \$2,125,000.00 to the Plaintiff between September and December 2010?

### **FACTS/ ANALYSIS**

In addition to the FACTS/ ANALYSIS set forth in ISSUE I and ISSUE II, the court finds that the Defendant is not a witness of truth nor is Exhibit "E" a reliable record of the transactions stated therein.

Further, despite requiring the Plaintiff to sign for monies received November 16<sup>th</sup> 2012 and December 30<sup>th</sup> 2013, he did not obtain any signatures for payments allegedly made in 2010.

**CONCLUSION**

The Court finds that the Defendant made no payments to the Plaintiff in 2010.

In the circumstances, judgment is awarded to the Plaintiff against the Defendant in the sum of \$3,578,150.00 together with interest at the rate of 6% per annum from January 23<sup>rd</sup> 2017 to October 19<sup>th</sup> 2017 and 4% per annum thereafter until fully paid.

Costs to the Plaintiff in the sum of \$100,000.00

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Justice N. A. Singh