

IN THE HIGH COURT OF THE WESTERN PACIFIC

(CIVIL JURISDICTION)

BEFORE: The Honourable Mr Justice J. Bodilly,
exercising jurisdiction under the
provisions of the Western Pacific
(Courts) Order in Council, 1961.

HOLDEN: At Honiara in the British Solomon Islands
Protectorate on *Monday* the *twenty second*
day of *July* 1968, at *09.00*
o'clock in the *fore* noon.

BETWEEN (1) LABINA NAGO
AND (2) SILVANO

Plaintiffs

AND DICK TOVE

Defendant

CORAM: J. Bodilly, Chief Justice

PRESENT: *Both parties in person unrepresented*

INTERPRETERS: (1) Ezekiel Alibua, (Tolai language)
(2) Millie Kai, (Langalanga language)

Settlement of Issues.

Claim: Para I:

Plf: I claim as in para I: The repairs then were concerned with the boat only, not engine.

Def: I deny I sold a boat. Plfs asked me to build them a boat and gave me \$600 as a deposit towards price. The boat itself would have cost a lot more than \$600. When I was paid the \$600 there was no boat at all. I say that I received the order and the \$600 in 1958. I started building in 1958 and finished it in 1960.

Plf : I admit the transaction took place about 10 years ago. I deny I ordered the boat. I paid the money when I saw the completed boat.

Def: I join issue with whole of Para I.

Claim Para 2:

Plf: when I first saw the boat it had no engine. I paid \$600 for boat only. In 1966 There was an engine in the boat. Def. said it was no good. Then I went to E.V. Lawson and deposited \$2600 for a new engine. Def was not present but Lawson sent him a note.

Def. I admit the deposit. I deny Lawson sent a note. Plf 2 told me the same day as the deposit was made. I admit I then told Lawson the kind of engine required for the boat. I admit that at that time there was an old 2nd hand engine in the boat which I bought from a Mission. It was a dud.

Claim Para 3:

Plf 2: When Def amended order to Lawson he withdrew and returned to me \$200. I then gave this back to him on the wharf towards the price of the boat. I admit he had my authority.

Def: I admit above.

Claim Para 4.

Plf 2: In Feb 1967 Def told me that he had countermanded the order with Lawson, drawn the money and reordered through P.A.

Def: I admit the above.

Claim para 5.

Plf 2: Def. has failed to us either the boat or the engine. I have seen no engine.

Def: I admit the boat is still with me and the engine is now with the P.A. I need more money to get it out. I need another \$1000. I have asked the Plfs for that money. They told me to pay it.

Plf I : We admit that. I did not pay because I did not ~~know what Def. wanted it for.~~ know what Def. wanted it for. He did not say that it was for the balance of the price of the engine. Had I at the time known it was balance of price of engine I would have handed over the money. I do not now want the boat. When I gave the money to Lawson that was the exact price for that first engine asked for, I knew of the change to P.A. but not what the price of the new engine was going to be.

Def: I deny that I did not tell the price of the new engine, Gardener Deisel, to the Plfs. I told Plf I. The price was \$3000. Plf I told me, never mind the price, you get the engine.

Plf I: I deny I was told the price and agreed to it.

Def. I say I have completed the boat and got the engine and it is up to Plfs pay the balance of price. ~~The total cost of the boat is \$3200 and the engine \$3000 ; total \$6200. I admit receipt of \$600 and \$2600; total \$3200. Balance due \$3000 and I will deliver the goods.~~ The total cost of the boat is \$3200 and the engine \$3000 ; total \$6200. I admit receipt of \$600 and \$2600; total \$3200. Balance due \$3000 and I will deliver the goods.

Issues drawn as attached and explained to parties.

ISSUES

- (1) Did Plaintiff purchase a cutter-boat for \$600 in or about 1960

Plaintiff to prove
- (2) Did Plaintiff order Defendant to build a boat in or about 1958 and pay \$600 as part price

Defendant to prove
- (3) If yes at (1) did Defendant fail to deliver boat

Plaintiff to prove
- (4) Plaintiff deposited with E.V. Lawson \$2,600 for purchase of Lister diesel. Did Plaintiffs authorise Defendant to change the order to a Gardener diesel ex Ports Authority

Defendant to prove
- (5) If yes at (4) was the additional cost of the Gardener diesel over the Lister diesel communicated to and accepted by Plaintiff and in what amount

Defendant to prove
- (6) If yes at (4) and/or (5) did Defendant fail to deliver

Plaintiff to prove
- (7) Is Plaintiff entitled to repudiate and recover monies already paid to Defendant

Plaintiff to prove
- (8) Is Defendant entitled to specific performance or damages in lieu

Defendant to prove

Plf I: Sworn on Bible.

My name is Labina Nago. I live at Makaruka Island . It is far from Honiara.

I went in about 1958 to Malaita and there I saw a cutter boat. It belonged to Def. I decided to buy and I gave \$600 to Defendant. I did not see the defendant himself but another man. He was called ~~Abraham~~ Abraham. Abraham said the boat was for sale. I gave Abraham the money to give to Def. Abraham did not tell me the price of the boat. I gave \$600 towards the price. I knew that the price would be more than that. It was a new boat. It had no engine in it then. I did not see the Defendant till about 1966. I admit that for about 8 years I did not meet or communicate with Def. at all. In about 1966 I went again to Malaita and then I saw the boat and it had an engine in it. But the engine was no good. That was the first time I saw Def. Himself. I did not talk with anyone about the boat for 8 years. I was waiting to talk with Def. himself. In 1966 I at last saw him. I then asked Def. if I could take the boat away. Def. said the engine was not working and that it was 2nd hand. I did not ask what the balance of the price was. Def. did also not tell me what the balance of the price was. We then discussed the engine and Def. agreed to buy a new one. The Def. told me to buy the engine. The Def. suggested that I should give the price of the engine to E.V. Lawson & son and that when the engine arrived he, def., would fit it into the boat for me. I did that. ~~Then Def. told me the kind of engine to order. He~~ It was Brother Shanel of Buma mission who told me the approximate cost of the engine. It was the Def. who recommended me to buy a Lister Deisel. I myself did not go over to Honiara to see Lawson. Plf 2 did that. Plf 2 is my nephew. I gave Plf 2 \$2600 to give to Lawson. Later on I saw Def again. He came to ask me for more money to pay out ^{to} the Ports Authority. He came to my home. He asked for more money to pay for the engine. I refused to pay the money then because I wanted to see the receipt for the payment of the engine. Def. showed me a piece of paper but I was not sure whether it was the price of the engine or the amount of the duty on the engine. I did not know which engine we were talking about- the Lister or the Gardener. On that same visit Def told me that he had ordered the Gardener through the Ports Authority instead of

through E.V. Lawson. I admit that the Defendant said that he had taken the order away from Lawson and given it to the P.A. because the P.A. were much quicker. I did not know that the engine ordered through P.A. would be more than the amount I had deposited with Lawson. I agree I did not know what the price of either engine was. I gave Lawson \$2600 only because Br. Shenel of Buma said the engine would cost about that. I admit that when Def came to me at my home I was quite prepared to pay the price balance for an engine, I only was not clear what the paper was about. I also admit that I was quite prepared to pay the outstanding balance for the boat. I did not ask Def what the total balance for boat and engine was. I admit I was at that time prepared to pay the total cost whatever it might be. I admit that Def. told me the engine had arrived and the boat was ready. All he had to do was to ~~put it in~~ get the engine from the P.A. and put it into the boat. I now say that by 1966 when Def. came to ask for the balance price I no longer wanted the ~~boat~~ ^{boat} money. The people did not want the boat then. I had collected money from ~~my~~ the people of my home island with which to buy the boat. It was to belong to the people. I was acting as agent for a lot of people, myself included. I say that during the eight years when I did nothing the Def. was using the boat himself. I admit we did nothing for eight years. We were waiting for Def. to bring it to us. We did not for 8 years have the transport to get to Malaita. No one on the island can write a letter either.

Court adj till 2 p.m.

2 p.m. Parties as before.

XX by Def:

I admit that no date for the delivery of the boat was fixed.

You yourself told me that you had been using the boat. I did not ask you to stop using the boat because when you told me of it the engine was already out of action.

It was you who told me to go to Mr Lawson.

Abraham came to Makaruka after Plf I had been to Malaita. I do not know why Abraham visited Makaruka.

In 1966 at last I and Plf I went to Malaita. There we saw Def. and also the boat. The boat was up on the beach and it was old. There had been a 2nd hand engine in it but that had been taken out and stored. It was no good. Def told us that. We still wanted the boat then. We then discussed the engine. Def asked that if we wanted the boat we must buy an engine and he would put it in. He never told us what the price of the boat would be. I understood that the price of the boat without the engine would be more than \$600. We did not discuss the price of the engine, I agree that we were not interested in the cost then as we were to buy it. - Not Def. I was not present at any discussion about the engine. Plf I and Def discussed that in my absence. I was also not present when Brother Shenell of Buma stated the approx price. This all happened in Malaita. After this we both went home. We then told all this to the people and they agreed to buy the engine and put up more money. The boat was no good to us without the engine. We all then raised \$2600. ~~I cannot remember~~ I cannot remember how much I contributed. I am not interested in getting my money back. If we recover our money it will remain as a community fund to be used for something else. We don't know how much we each contributed and no accounts were kept of contributions.

After the \$2600 was collected for the engine I went to Honiaa. I went alone. I had the \$2600. I there went to see Mr. Lawson. I went to see Lawson alone. I had not then met Def. I did not know he was in Honiara. I met him by chance that same day when I was on my way to the post office to post a letter from Lawson to Def. I had instructions to order a Lister Deisel. The villagers them selves decided to buy a Lister because Plf I had told them that Def. had recommended one. I had ordered a three cylinder Lister. I did not know what size of engine to buy so I simply told Mr Lawson that we wanted a three cyclinder deisel. Mr. Lawson looked up some papers and showed me a picture of a three cylinder Lister. It looked good so I said that was the one we wanted. Lawson then wrote a letter and told me to send it to Def. I do not know what was the contents.

On my way from Mr. Lawson to the post office I happened to meet Def and I gave him the letter. I had already deposited the \$2600 with Mr. Lawson. And I had told Lawson that when the engine arrived it should be sent to Def. to put straight into the boat. We did not discuss what name the money was to held in with Lawson. All we agreed was where the engine was to be sent on arrival. Lawson told me that the cost of the engine would be just \$2600. He did not say anything about freight or import duty etc.

I gave the letter to Def. He read it. He told me at once that the engine which I had ordered was too big for the boat. I and Def then went back to Lawson. Def. told Lawson that the three cylinder engine was too big and that only a two cylinder Lister would do. Lawson then said that a two cylinder engine would cost two hundred dollars less. We did not look at any more pictures of engines. I then told Lawson to get a two cylinder Lister and not a three. Mr Lawson then wrote an authority to the Bank and sent us along with it. I understand what a cheque is. It was a cheque drawn to Def. Def. cashed the cheque and gave me the two hundred dollars. We then walked together down to the wharf. There Def asked me to give him back the \$200 to put against the rest of the price of the boat. I gave it to him. He did not say how much the price of the boat was. That made \$800 in total towards boat and \$2400 towards engine. That same night I went home. I do not know what happened after that.

XX by Def.

I cannot say if it is possible to buy a new cutter boat for \$600.

I did not know that Lawson had opened an account with the Bank in Def's name. I only know that I told Lawson to send the engine to you when you got it. I agree that I authorised you to deal with Lawson thereafter direct.

I agree that that is the paper Lawson gave to me to send to you. (Put in Ex A for identification). I only saw Lawson on those two times on the same day.

Ex A

I deny that I said " it is up to you to get the engine quickly for us". I did not ask Def to help us to get the engine. I cannot say why Lawson receipted the money in your name.

No X by Plf 2.

X by Court.

I had no talk with Def about a Gardiner Deisel at all.

Mr Lawson knew about this matter before I went there. Plf I had discussed the matter with D.C. Central and D.C. Central had telephoned Lawson. Plf I told us about the Lister back at home before we collected the money.

Truly Yours

PW I: John Soaba,
Makaruka Island.

Sworn on Bible.

I contributed to the \$600. We contributed to buy a boat. I was told that the boat had already been built. That was about 10 years ago.

I also contributed towards the sum of \$2600 to buy an engine. Plf I told us what kind of engine it should be but I have forgotten. I did not know about engines. I just contributed my share to buy one for the boat. I never ^{knew} how much the total cost of the boat would be or the engine. I did ~~not~~ know that the \$600 was not the whole of the price of the boat. I never enquired what it might be.)Plf I is the head of the community.

No XX.

Truly Yours

PW2: Tanasio

Makaruka Island. Sworn on Bible.

I know about the purchase of the boat at \$600. I contributed. I do not remember how much I gave, I knew the \$600 was not the total cost. I never knew what the whole would be.

I also contributed afterwards for an engine. It was to be a Lister

but I did not know what it would cost.

No XX

Truly Truly

PW3: Ronald Alexander Lawson.

Honiara.

Director E.V. Lawson and Son.

Sworn on Bible.

My books show that on the II. ~~7~~⁷. 1966 Def, Dick Tove, paid to us \$2600 and on the same day was refunded \$200. (Shown Ex A- That is our receipt covering both transactions.) The \$2600 was a deposit on the purchase of a three cylinder Lister Marine engine with stern gear and shaft. I cannot say why the \$200 was refunded. The price was only a deposit against price for adjustment when the price was known. At the time we had no knowledge of the true price. I myself was present during part of the negotiation but not all. I cannot now remember whether Plf 2 and Def were both there when I was or not. We did not in the end import this motor. We could not get particulars or shipment and in the end the client called the deal off and wanted his money refunded. The sum of \$2400 was refunded on the 20th February 1967.

I think that it was Def who handed the money to us in the first place as the receipt Ex A is in his name, but I cannot specifically recollect. If the engine had arrived it would have been handed over to Def. The \$2600 was only what we guessed would be a reasonable deposit on the engine. The chief negotiations were conducted by my father though I was in the office for part of the time.

XX by Def.

If the engine had been shipped I agree I would not have refunded the money.

The cheque we gave to Def for the \$2400 is ⁱⁿ my fathers writing and not my own. I know nothing about the purchase of any other engine through the Ports Authority.

Ms Re x

Truly Truly

PW4: Kooli
Makaruka Village.
Sworn on Bible.

About 10 years ago I contributed some money and gave it to Plf I to buy a boat. It was Labina who told us about the boat. I cannot now remember wht I contributed. Later on I also contributed towards the engine. I also cannot say how much I contributed the second time. It was a Lister that we were to buy. Plf I told us that it was to be a Lister. That is all I know about it.

No XX.

Tracy Botney

5 p.m. Court Adj: to 9 am. 23rd July 1968.

9 a.m. 2rd July, 1968. Parties present as before.

Plf I (recalled by Court.)

In 1960 when I went to Malaita and saw the cutter boat in this case, I had already collected \$600 from the people as they wanted to buy a communal boat. They wanted any boat but when I saw this one I wanted to buy it for them.

XX by Def:

What happened was this. I went without any money to Mx Malaita intending to find a boat. I found this boat and Abraham then came back with me to Makaruka and we collected the six hundred dollars and I gave it to Abraham. We thought that six hundred was enough as a holding deposite.

It was my intention then to negotiate with Def as to the final price.

Tracy Botney

DEFENCE.

Def: in person.

DICK TOVE.

Sworn on Bible.

I live in Malaita at Nawlasi.

In 1958 Plf I came over to Malaita and was looking for a cutter boat. He came to Lawlasi and met me there. I am a boat builder. He asked me to build a cutter boat for him. We discussed the matter. No money passed hands then. He said that he would go back to Makaruka and collect some money and send it to me to start work on the boat. I made it clear to Plf I that I wanted to see some money first before I would start work. He then said "all right. I will get some money and then you can start".. He then went away and later in the same year I received from the hand of Abraham \$600. When Plf I came to see me in 1958 there was already a boat on my slip but that I had built for someone else. That was a new boat not quite finished. When I received the \$600 I thought Plf I really wanted a boat so I started to build one for him. The boat would have been the same as the one on my slip because I can only build to one style. The total cost of the boat would have been about \$3200. I told Plf I, during our discussion, that that would be the approximate final cost. I knew that because I had built boats before and I knew what it worked out at. On receipt therefore of \$600 I began to build. I completed the boat in 1960. I did not ask for more money during the building. I had enough capital to complete it myself.

In 1960 when the boat was finished I asked Abraham to write the Plf I a letter. He can write Plf's language. I can't. Abraham is not my agent or my relative but we sometimes work together. I only asked him to write the letter from me because I could not do it myself. That letter was posted. We can post from Lawlasi. I got no reply. In 1963 I myself wrote a letter. I wrote that one in pidgin English. I posted that letter also. I got no answer. The boat was still there and it still had no engine. In 1965 I got a 2nd hand Thorneycroft engine from a Mission and put it in the boat but the engine was no good and so I took it out again. I put the boat in the water to

test the engine. The engine ran but it was not powerful enough. I did not use the boat for my own purposes. The boat was lying in the ^{water} for about 5 months. I did not use the boat during those five months at all. Then I pulled the boat out again and took the engine out of it. That was about the beginning of 1966 when I pulled her out again.

About February 1966 Plf I came again. He came to Lawlasi. I saw him. Plf 2 was with him. I then showed them the boat. I only actually showed the boat to Plf I as Plf 2 was not present at the showing. I told Plf I that the cost of the boat was \$3200. Plf I replied that he wanted the boat and would pay the balance. We then started to talk about an engine. We agreed that Plf I would buy the engine and that I would install it for him when it arrived. I recommended that they should ^{buy} either a Lister Deisel or a Gardiner Deisel as they were the best. I said they would need a two cylinder engine. I knew the size of the twin cyclinder engines and I knew that either would fit the boat. I had installed them before both kinds. Then they went away. I did not tell them in detail what the landed cost would be. I merely said that the price might be about \$2000 dollars or more ^{never \$3000}. That talk ^{about} the engine was in Plf 2's presence and he said " we will go and buy one.".

After that I met Plf 2 in Honiara. He told me that he had been to see E.V. Lawson & Son. I had not recommended Lawson or anyone else for the purchase of the engine. We met by agreement for during the disaussion regarding the engine at Lawlasi it was agreed that I would go to Honiara to specify the engine. I went to help them select the right type of engine. So when we met in Honiara that day Plf 2 told me he had already been to see Lawson. He gave ^{me} a piece of paper. (W: shown Ex A) That is the paper. Plf 2 said he had ordered the engine already but he did not know if it was the right kind. I saw on Ex A that he had ordered a three cyclinder Lister.

When I saw that I said the engine ordered was too big. So we went straight back to Lawson to amend the order. We went together. It was the "old" Mr Lawson whom we saw. We told Lawson that the engine was too big and that we wanted a two cylinder engine. I preferred a Gardiner rather than the Lister and I mentioned to Lawson that he might order that but Lawson said he only ~~handles~~ handled Listers. When I spoke with Lawson about getting a Gardiner, Plf 2 made no objection. I knew how much had been deposited against the engine. I saw it in Ex A. When we changed to the two cylinder engine Lawson said it would cost less. He gave me a cheque for \$200. Plf 2 and I then left and went to the Bank where I cashed the cheque and gave it to Plf 2. Then we both went down to Point Cruz where I was staying. While there I asked Plf 2 to give me the \$200 back again as part of the ~~price~~ balance due on the boat. I was short of cash at the time. He gave me back that sum. Plf 2 then went away. It was arranged with Lawson that when the engine arrived he was to deliver it directly to me.

The engine never came. I waited 8 or 10 months and still no engine came. I frequently visited Lawson to enquire—nearly every month. Finally Lawson told me that ^{as} they still had no confirmation he would prefer to give me back the money. So I took the money and ~~when~~ went to see Mr Ramsay of Port Authority. ~~I communicated with~~ Before I withdrew the money from Lawson I went over to Makaruka and explained the Plf I that the engine was not coming and that it would be better to withdraw the money and get one else where. Plf I agreed and said "the money is in your name ^{as} you can deal with it". That conversation took place in Plf I's house. No one else was there at the time. After that I withdrew from Lawson and went to Ramsay and through him I ordered a Gardiner two cylinder Diesel. I did not know the difference, if any, between the cost of the two engines delivered. I deposited with Ramsay \$2000. I put in the receipt (Ex B). The balance of \$400 I put ⁱⁿ in my deposit account in Honiara Bank. I kept the \$400 in Reserve. Ramsay said that he was happy with \$2000 deposited but that on arrival the cost would be more. Ramsay did not tell me what the final cost would be.

After that I again visited Plf I at Makaruka. I showed him the receipt which I had from Ramsay. (Plf I admits seeing Ex B). I told him what I had done and also that I was still holding the \$400. I also said that ~~xxxxxxx~~ they would have to find more money when the engine arrived. Plf I agreed to that. I said that the amount required would be between \$600 and \$1000 more. Plf I agreed. Plf I ~~said that~~ asked me at that meeting if I would put up the extra money and when the engine was fitted he would arrange to pay the whole amount for boat and engine. I said that I could not do that. I had not enough money. During that meeting no mention was made that the people of Makaruka no longer wanted the boat. I am certain of that. I then went away. Finally the engine arrived and I needed more money to clear it from the P.A. I sent a message to Plf I to meet me in Honiara and bring more money. I then knew that \$1000 more ~~dollars~~ were wanted to clear the engine. I got no reply from Plf I and he did not turn up. I waited for him to come. I have heard nothing more from Plf I till I received the summons suing me for the return of the money.

I say the engine is now ready and the boat is there and all I want is the balance price and they must take the boat.

XX by Plf I:

Abraham introduced you to me in 1958.

I deny that in 1966 I told you about a storm at sea on a trip to the Western District in that boat. I also deny that I told Plf 2 about that (Both Plfs working out questions together for interpreter to put- best way to get along.)

I admit that when I went to tell you about the change from Lister to Gardener you were not there. I understood from ^{you} his wife that ^{you} he had flown out from Marau airfield to go to Hospital. I waited for ^{you} him to come back. I waited in Makaruka. I waited about a month in Makaruka.

After I had waited I returned by air from Marau to Honiara.
I deny that I left Marau on the same plane that you came in
on. I went out on the next plane after you arrived.
The planes call once a week at that airstrip.
I deny I said I wanted \$2000 dollars but I admit that I said
the engine would cost more than \$2000 possibly \$3000.

(Both Plfs have no further Qs).

Kyby Court:

I say that at that meeting I only asked for \$1000, not two.
I wanted that \$1000 to hold so that when the engine arrived
I could clear it and take it straight away to Malaita and
install it for them. I explained that that was what I wanted it
for but they did not give it. They said that they did not have
the money available at that time. The first I knew that they
did not want the boat was when I was served with this summons.

Joseph Botley

DW I: TOVE

Laulasi

Pagan- Sworn on Devil.

I am the Def.'s father.

I was present in 1958 when Plf I came to Lawlasi.

I was present when he looked at another boat on the slip and
asked ~~Def~~ to build a boat for him. Plf I had no money with
him and he said he would go back to his Island and send some
money. ~~Pl~~ Def. did not start to build the boat until he received
some money. I know that he received \$600. Abraham brought the
money. The money came about one month or so after Plf I's visit
to Lawlasi.

Plf I and 2. No XX.

Joseph Botley

12 noon Ct adj to 2 p.m.

2 p.m. Ct resumed. Parties as before.

DW 2: William David Ramsay:

Manager Port Authority, Honiara.

Sworn on Bible.

At the outset I did not know that there was a third party. Before 20.2.67 Def came to see me. I remember that date because that was the date upon which I wrote to Sydney for quotations. On 6.3.67 I received quotations. On 23rd March I placed a firm order. Some days before 23.3.67 Def satisfied me that he had a sufficient deposit. On 4 4 67 Def paid P.A. the sum of \$2000. (W: shown Ex B) I correct. The money was paid on the 3.4.67. This is unusual for the P.A. but we did this for Def because he is well known to us and has worked with us for years. We do not usually do this kind of business for the public. The engine according to our Sydney agents had to come from U.K. It was in fact sent via Sydney. It arrived on 29.10.67. on MV Serang. The engine is still at the P.A. It is cleared from customs and is free from all incombrance except the payment of the price. The total cost cleared is \$3441.21. That is what we want before we release the engine. We hold a deposit against that of \$2000 So we still want \$1441.21.

When Def. ordered the engine he did not disclose his principle. He also did not indicate that he was ordering for an undisclosed principle. It was only after the engine had arrived that I sent for Def to say the engine was there that he then told me that he was buying for someone else. I found it rather difficult to understand what had been going on but I gathered that Def had not got the money to complete but that there was a third party mixed up in all this. I gathered that there was a long delay and a court case was likely to arise. I was not aware whether or not Def had been served with a writ at that time. ~~or not.~~ I merely held the engine as an unpaid seller.

The engine is still in its packed condition. It has not deteriorated or ~~the~~ the case ^{has} even opened.

If I have to exercise my unpaid sellers lien, there is

a sporadic market for these engines, or I could return it to Australia.

I put in the sellers invoice. (Marked Ex C).

Plf 1. No XX.

Plf 2 . No XX.

Lyn Boring

Def. That closes my evidence.

Def. I say I built the boat to order and the boat is there for them to take. On payment of balance price. I say I will not pay back the money. I hold against the boat in total \$1200. My price for the boat delivered was \$3200. I want \$2000. Or else I want the damages for failure by Plf to take delivery and pay price.

Plf I: I dont want the engine. I want my money back. I don't want to take because of the delay and the people have in the meantime changed there minds . I admit that in 1966 they had not then changed there minds. The reason why the people changed their minds was that after 1966 they understood that the extra money was more than they wanted to pay. I dont know what Def is going to do with a boat he doesnt want. I also don't know what Mr. Ramsey is going to do with an engine he doesnt want.

I want my money back.

Lyn Boring

Oral judgement delivered.

Action dismissed. No order as to costs.

Defendant dilatory and unbusinesslike. I will not allow his expense ~~xxxxxxxxxxxxxxxxxxxxxxxx~~ of journey from home to Honiara to defend.

LB

23.7.68. In Chambers after delivery of Judgement.

Present: Manager Port Authority.
Defendant in person.
Plf I and 2 in person.
Both interpreters.

Judge calls above meeting to endeavour to help parties to best way of arranging affairs to avoid further ^{confusion and} loss. < Loss. Position as they all stand and their rights against each other explained in simple terms.

or
Port Authority may sell engine to third party ~~and~~ sue Def. for damages as he did not disclose his principal so far as engine is concerned. *Def. may sue Plf in turn.*

Defendant may sell boat to third party or sue Plfs for damages, *also for damages paid to P.A. on engine.*

~~Mr Ramsay for Port Authority after discussion with Def says he will not prefer to sell engine. Thinks he can not~~

Both plfs say they cannot complete as the people of their village will not pay up any more money and now don't want the boat or engine.

~~Mr Ramsay says he does not~~

Def. says that he has not the money to buy out the engine from Ramsay. Ramsay says in those circumstances he will sell engine which he ~~thinks~~ he can at no loss or if he has to return the engine to Sydney at only loss of freightage. Ramsay undertakes to do that and pay the balance of the deposit after deduction of any loss into court for return to Plfs with account.

Def. says he does not know if he can get rid of boat or not. Promises to try and report back to court in three months. Explained that he cannot keep the deposit and the full price of boat. If he keeps boat for himself must be valued. Does not ~~want~~ want to sue Plfs for his part as only waste of money. Undertakes to pay any balance ~~into court~~ from deposit received on boat into court for Plfs with account.

Plffs say they are content with this arrangement.

J.B.

23-2.68

Note of Oral Judgment:

This is an action between the two Plaintiffs firstly Labina Nago and secondly Silvana against the Defendant Dick Tove.

What part Silvana has actually played as a second Plaintiff is not clear. It appears that he contributed a certain sum of money towards the purchase of the articles concerned in this case and apart from that he has merely helped the first Plaintiff, Labina, in the transaction. The first Plaintiff it is admitted is the leader of the local community at Makaruka.

From the evidence what happened was this:

In 1958 the community in Makaruka decided that they thought they would acquire a communal cutter boat. The first Plaintiff, acting for the community as such, went to Laulasi with the intention of searching for a boat. There he saw a boat which was not quite finished, but otherwise substantially built, lying on the Defendant's slip. The Defendant is a boat builder and this I believe was already known to the first Plaintiff and that is why he went to Laulasi to seek a boat. While he was there he inspected the boat which was on the slip and he said to the Defendant in effect "I want a boat like that.". Now, the first Plaintiff was very unsatisfactory in his evidence regarding that, but I do not consider that he has been in any way endeavouring to prevaricate. He is an old man and I think only that his memory of the affair is not very clear. The Defendant's evidence, and also that of his witness, convinced me that what really happened was that the first Plaintiff inspected this boat which was already in fact on order to somebody else and stated to the Defendant that he wanted a boat similar to that. There is no difficulty about understanding why the boat had to be like that because Mr Tove has said that it is the only kind of boat he can build. However, the first Plaintiff had no money at that stage so the Defendant said to him, in effect, "If you will let me see the colour of your money I will start building.". At that stage the matter was one of negotiation. There was an offer on the one side but no acceptance on the other and so the parties separated. About a month later or thereabouts the Plaintiff raised money in his village from the community and sent \$600 by the hand of a man called Abraham who appears in these proceedings merely to have been a conduit pipe or go between, to the Defendant. That money was accepted by the Defendant and the offer made was accepted and the contract completed. It was a part performance and an acceptance at the same moment. Thereupon the contract was concluded. It was a contract to supply goods, the price of which was to be paid for when ascertained at the end.

I find therefore against the Plaintiffs on the first issue and in favour of the Defendant on second.

Now, the Defendant says that it took him about two years to build the boat. When it was built he says that he sent several messages to the first Plaintiff to say that it was ready and that he could take it away on payment of the balance price. Not until 1966 did either Plaintiff respond to this. The first Plaintiff then came along and saw the boat and there it was with no engine and, of course, he thought that it was not much good to him without an engine. There was an engine which in fact Tove himself had acquired secondhand from a Mission, but it was not a satisfactory engine and he had taken it out of the boat

again and laid it aside. The contract however was for the purchase of a boat and not an engine. The Plaintiff was, clearly on the evidence, quite satisfied at that stage with the boat and the next transaction which took place concerned the purchase of an engine. The Defendant told the first Plaintiff that he must buy an engine and the Defendant agreed that he would install it for him if he did. It is perfectly clear from the second Plaintiff's evidence that there was no question whatever of the Defendant buying the engine, and what happened after that confirms this. The Defendant after discussing what kind of engine would be required for the boat recommended a two cylinder Lister or Gardner diesel whichever they liked and then the parties went away. Shortly after that the Plaintiffs raised more money in the village and then the second Plaintiff went over to Honiara, not accompanied by the first Plaintiff, taking with him \$2,600 as a deposit against the ultimate price of an engine to be bought. He went to Messrs E.V. Lawson Pty Ltd. Messrs E.V. Lawson Pty Ltd are, inter alia, a firm of Importers, in Honiara, and the second Plaintiff ordered a three cylinder Lister diesel engine and deposited the sum of \$2,600, and instructed Lawson to send the engine on arrival directly to the Defendant for installation. Mr Lawson deposited this money in the bank in the Defendant's name. It is not clear why he put it in the Defendant's name and not the Plaintiff's name. Presumably the reason was because of the instructions to Mr Lawson to send the engine direct to the Defendant. Therefore presumably Mr Lawson put the money in the name of the Defendant and not that of the Plaintiff. I think the point is immaterial. Mr Lawson then gave a receipt to the second Plaintiff and told him to give it to the Defendant. The second Plaintiff left Mr Lawson's office and, on the way to post the receipt to the Defendant, he met the Defendant and gave him the receipt by hand. Immediately, from the terms of the receipt, the Defendant saw that the engine which had been ordered was a three cylinder and not a two cylinder engine and he told the second Plaintiff that the engine was too big. They then together went back to Mr Lawson and changed the order for a two cylinder Lister. The Defendant says that he suggested a Gardner diesel instead of a Lister but was told by Mr Lawson that he only handled Listers. However that may be, Mr Lawson said that the price of the Lister two cylinder, as opposed to the three cylinder, would be a little less and he refunded \$200. He gave a cheque for \$200 to the Defendant because the deposit was in his name. The Second Plaintiff and the Defendant went to the bank and cashed the cheque and the Defendant gave the \$200 to the second Plaintiff. They then went off and later the same day the Defendant asked the second Plaintiff to give him back those \$200 as a little bit more against the price of the boat. The second Plaintiff agreed so that then the Defendant held not \$600 against the boat but \$800 against the boat. That is all admitted. They then parted company. After about eight or ten months during which time Mr Lawson had been unable to get particulars or shipment of a two cylinder Lister diesel as required, the Defendant went to Lawson and with his agreement withdrew the deposit of \$2,400 as it was now and took it away. He went straight across to Ports Authority to see Mr Ramsay. He arranged with Mr Ramsay for the import of a two cylinder Gardner and he paid a deposit of \$2,000 and put \$400 into his own bank account. So now the Defendant held \$1,200. I must make it clear that as far as the Defendant was concerned at all times he was merely acting as agent for the two Plaintiffs with regard to the engine and on their own evidence

there can be absolutely no doubt about that. The Defendant, having made his arrangements with Mr Ramsay, then went back to Makaruka and told the first Plaintiff what he had done, and that he had ordered a Gardner instead of a Lister and he showed the first Plaintiff the receipt from Mr Ramsay's office for the deposit of \$2,000. The first Plaintiff was perfectly content with that. The Defendant then said that the engine would cost about \$3,000 in total and asked for a further \$1,000 to clear it when it arrived. The first Plaintiff admits that conversation in substance but he refused to hand over any more money. He said he did not understand what the paper shown him was about, but the Defendant says the reason he gave was that more money would have to be raised first. I accept the Defendant's evidence as to that. It is clear that the first Plaintiff did not have any more money in his possession at the time and the Defendant accepted the position and returned to Honiara. But the important thing is that at the meeting nobody in the village and certainly not the first Plaintiff indicated for one minute that they no longer wanted the boat. In fact the Plaintiff although he suggested that in his evidence conceded that whether or not the villagers still wanted the boat he never told the Defendant that. So the Defendant went back to Honiara again and there the matter appears to have rested. The engine arrived and is waiting to be cleared with a total of \$1,441.21 balance of price and clearance charges to be paid. The boat is sitting on a slip in Malaita waiting to be taken away: the balance of price of \$2,000 to be paid. The engine arrived at Honiara on 29th December, 1967. The Defendant sent a message to the Plaintiffs to inform them and again to request the balance of price. But in the meantime the villagers had changed their minds and wanted their money back, so the Plaintiffs made no reply to the Defendant and did not themselves collect either the engine or the boat. So the matter stood till June, 1968, when without any further communication the Plaintiffs served the Writ in the action upon the Defendant.

Now, of course, this action has started on the wrong foot. It is the two Plaintiffs who are asking for their money back quite regardless of the fact of their own liability in the matter. I have no alternative whatever but to dismiss their action because at this stage they are not entitled to their money back and the deposits can be held by the sellers who are at election to hold the Plaintiffs to their bargains or exercise their liens on the goods and sell and reimburse any loss out of the deposits.

The Plaintiffs' action is therefore dismissed. There will be no Order as to costs.

Tracy Rosling
Chief Justice
23rd July, 1968