IN THE SUPERIOR COURT OF JUDICATURE

SUPREME COURT OF GHANA

ACCRA

CORAM : ATUGUBA,JSC, (PRESIDING).
DR. DATE-BAH, JSC.
ANSAH, JSC.
BAFFOE-BONNIE,JSC.
ARYEETEY,JSC.

CIVIL APPEAL
NO.J4/22/2011
20th JULY, 2011

GOLDEN GRACE LIMITED … **PLAINTIFF/APPELLANT/APPELLANT**

VRS.

TAKORADI FLOUR MILLS LIMITED …. **DEFENDANT/RESPONDENT/RESPONDENT**

J U D G M E N T

ARYEETEY, JSC

The plaintiff company was a registered distributor of flour supplied by the defendant company and it surrendered additional documents to the defendant company, pursuant to a supposed mortgage transaction they entered into, so as to secure payment for the increase in the supply of flour to the plaintiff company.

However, the defendant company did not supply additional quantities of flour to the plaintiff as presumably envisaged because the plaintiff was already indebted to the defendant. When the plaintiff company demanded the demanded the return of its documents the defendant refused to do so. Therefore, for his remedy, as per his amended writ of summons, the plaintiff sued the defendant for following reliefs:

a) The return of the following documents unlawfully detained by the defendant.
    i) Document No.B3289 registered as document No. 89/43 relating to House Number 327/1 Ashanti Road, Cape Coast, executed between E.C Wryter and Elizabeth Derby and her children.

    ii) Uncompleted House No. GHWA4 on Plot No.3 documented as CR 71/95 and stamped as LVB/CR/1331A/95 in the name of Bontena Ltd Green Hill, Cape Coast.

    iii) Document No. 70A/95 stamped as LVB/1330-1330A/95/ Plot No. 12 A situated at Green Hill Cape Coast in the name of Bontena Ltd.

    iv) Document No. CCT682/83 stamped as LVB/CR/633A-633A/94 on Plot Nos. 96, 97, 98, 99, and 1090 at Elwn.

b) Damages for unlawful detention of the documents of the Plaintiff mentioned supra, to be determined or calculated as at the date of judgment.

The defendant pleaded and gave evidence that it had surrendered the documents to the plaintiff when it obtained judgment for the recovery of the debt owed it by the plaintiff.

The substance of the present suit at the High Court was the recovery of one of the documents surrendered to the defendant but which was not returned to the plaintiff company when the defendant returned the others to it, namely the original of document, No. G27/1, Ashanti Road, Cape Coast. In actual fact the defendant company did return a certified true copy of that document to the plaintiff company and not the original one. At the end of a trial, the High Court, Sekondi, presided over by His Lordship Mr. Justice Anthony Oppong, entered judgment in favour of the defendant company, in a well reasoned judgment.

The plaintiff was dissatisfied with the judgment and appealed to the Court of Appeal, which affirmed the judgment of the High Court and dismissed the appeal before it. The defendant once again appealed to this court on the original grounds that:

> "i. The finding that the defendants promptly returned the four documents to the plaintiff is not supported by evidence on record.
>
> ii. The Court of Appeal failed adequately or at all to consider the loss to the plaintiff/appellant of the continued retention of the appellant's title.
>
> iii. The Court of Appeal erroneously applied Section 3 (i) (b) of the Mortgages Decree, 1972, (NRCD 96).
>
> iv. The conclusion of the Court of Appeal to the effect that the continued retention of the appellant's documents is inconsistent with its finding that "the defendant promptly returned the four documents to the plaintiff."

Pursuant to leave granted by this court on 11/01/11 the plaintiff filed additional grounds of appeal on 14/1/11, namely:

> "1. That the holding that the plaintiff deposited the four documents in addition to the previous two to secure the payment of debt arising out of flour supplied to her by the defendant on credit is not borne out from the evidence.
>
> 2. That the Court failed to adequately or at all to (sic) consider the case of the plaintiff/appellant that the four documents the subject of this appeal were deposited in anticipation of future supply and not in respect of flour already supplied.
>
> 3. The holding that the plaintiff's complaint for the production of the original document forwarded to the defendant/respondent is a moot one is erroneous in law.
>
> 4. That the Court of Appeal erred in law when it held that a certified true copy satisfies the requirement of the law having regard to the peculiar circumstances of the case and the provisions of Section 10(3) of the Mortgages Decree NRCD 96."

The plaintiff is hereafter called the appellant and the defendant the respondent in this opinion. It was trite learning that an appeal to this court is by way of rehearing.
The Court of Appeal affirmed the findings of the High Court that the appellant charged their title documents covering the properties as security for the due repayment of the cost of the flour supplied to them, and that there was justification for their retention as long as there was debt due and owing to the respondent.

There is evidence that the respondent had to take action in court for the recovery of debts owed it by the appellant successfully.

The appellant had to settle the judgment debt by instalment payments. The appellant pleaded in their statement of claim that it forwarded the four documents to the respondent company with a view to contracting for the supply of flour. The evidence of the appellant's sole witness at the trial in his viva voce evidence was that the appellant company mortgaged first, two documents of a property upon the value of which the respondent supplied it with goods. Later they were increased to four so that extra supply could be made in its favour.

The appellant's own evidence led through its representative, the Operations Director, Mr. Peter Stephen Wryter, was that when the respondent stopped supplying the appellant flour, the latter owed the respondent for supply made earlier, in respect of which the two documents had been mortgaged. Apparently, the extra supply of flour could not be made since the debt owed to the respondent had not been discharged. In fact there was evidence that the appellant company was sued for the recovery of that debt successfully. It became reasonable that all documents surrendered by the appellant to the respondent were in respect of the debt that arose from the supply of flour but not in respect of the agreement for the supply that was never made.

The trial High Court and the Court of Appeal were right in finding that the four documents were deposited for the supply of flour. In the result, grounds i and ii of the original grounds of appeal fail and are therefore dismissed.
Grounds 1. and 2 the additional grounds of appeal do not merit any lengthy consideration; the reason is that there was ample evidence that the respondent retained the documents and sued successfully for the recovery of the debt owed and before the appellant paid the debt in full by instalments. Under cross-examination the appellant said through its representative that the

final instalment was made in November 2001 and that very month five of the documents were released to them albeit except the original 89/43.

There was no gainsaying that the evidence was clear the respondent retained the documents for the appellant owed in payment of flour *supplied* to it. The respondent sued for the recovery of the sum owed and the appellant paid the debt by paying in instalments; when the last instalment was paid in November 2001, the respondent released the originals of the documents with the exception of one of them that very month.

That meant they were released 'promptly' or as soon as the sum owed was paid in full in the last installment. That was how the judgment of the Court of Appeal is to be understood. In conclusion grounds (i) and (iv) of appeal carry no weight and are dismissed. The respondent's supply of flour to the appellant was terminated in 1998. It was not until November 1999 that the documents were returned to the appellants. That was because the appellant had been indebted to the respondent. the respondent owed a duty to pay the respondent for goods supplied him; the respondent was an unpaid seller in terms of the law on the sale of goods. As such unpaid seller one of his remedies under the law in the Sale of Goods Act 1963, Act 137, was that he had a lien on the goods and he may retain their possession until payment or tender of the price; see Section 36 (1) of the Act for analogy.

> "A lien is the right to hold property of another for the performance of an obligation. A common law lien lasts only so long as possession is retained. A possessory lien is the right of the creditor to retain possession of the debtor's property until his debt has been satisfied. A particular lien exists only as a security for the particular debt incurred; *while a general lien is available as a security for all debts*

> *arising out of similar transaction between the parties*…A charging lien is the right to charge property in another's possession with the payment of a debt or the performance of a duty":

see Osborn's Concise Law Dictionary, Eighth Edition at page 202, (emphasis supplied.) and also Snell's Principles of Equity, Twenty-Seventh Edition, 438. The trial judge relied on the definition of a lien as provided for in Halsbury's Laws of England 4th Edition Volume 28 paragraph 502 at page 221 that:

> "Lien in its primary or legal sense is a right in one man to retain that which is rightfully and continuously in his possession belonging to another until the present and the accrued claim of the person in possession are satisfied. In this primary sense it is given by law and not by contract."

Thus, on the evidence on record, so long as a debt existed on the earlier transaction between the parties herein, the respondent had the general lien over the documents surrendered to the respondent, till all debts due and owing by the appellant were satisfied.

In the result there was ample reason to affirm the Court of Appeal in its holding that the retention of the documents by the respondent was lawful for the respondent exercised a right of lien over them.

The appellant made capital of the fact that a document was not returned as the original that it was when it was first deposited; it was a certified true copy that was returned. Therefore the respondent failed to return the documents 'in whole, undefaced or lost.'

The appellant did not mince his words when he submitted there was no evidence the document was lost. It did not raise any issue that it was not what was given to the respondent, or that the contents had changed in any way. Under Section 166 of the Evidence Act, 1975,

> "A duplicate of a writing is admissible to the same extent as an original, *unless*
> a) genuine question is raised as to the authenticity of the original or the duplicate, or
> b) in the circumstance it would be unfair to admit the duplicate in lieu of the original."

The appellant did not show in the least it would be unfair to admit the duplicate or certified true copy of what was surrendered to it by the respondent. The duplicate or certified true copy was rightly held to be treated as original by the Court of Appeal.

That ground of appeal is also accordingly dismissed.

Considering the record as a whole it was clear the Court of Appeal concurred with the findings of facts and conclusions of law by the trial High Court. The law on situations such as obtained in this case has been stated several times over by this court and must be repeated only for emphasis that:
The principle governing appeals against concurrent findings of fact as in the instant case, had been stated and re-stated on a number of occasions in this court. In a recent unanimous decision in a chieftaincy appeal, Achoro v Akanfela delivered on 9 July 1996 and reported in [1996-97] SCGLR 209, ante, Acquah, as he then was, JSC at 214-215 said:

> " … in an appeal against findings of fact to a second appellate court, like this court, where the lower appellate court

> had concurred in the findings of the trial court, …. this court will not interfere with the concurrent findings of the lower courts unless it is established with absolute clearness that some blunder or error resulting in a miscarriage of justice, is apparent in the way in which the lower tribunals had dealt with the facts".

The court proceeded further to mention three such blunders, as error on the face of a crucial documentary evidence, and finally, "the finding is so based on erroneous proposition of law, that if that proposition be corrected the finding disappears". It is important to point out that the establishment of a blunder or error per se is not enough. It must further be established that the said error has led to a miscarriage of justice.

We do not think the appellant herein discharged the burden on him or passed the test in the case cited so as to warrant the findings of fact and the principles of law applied by the lower courts, to be interfered with or set aside in this appeal. We rather affirm all of them and dismiss all grounds of appeal, original and or additional.

For all the foregoing, the judgment of the Court of Appeal is affirmed and the appeal dismissed.

(SGD) B. T. ARYEETEY
JUSTICE OF THE SUPREME COURT

(SGD) W. A. ATUGUBA
JUSTICE OF THE SUPREME COURT

(SGD) DR. S. K. DATE-BAH
JUSTICE OF THE SUPREME COURT

(SGD) J. ANSAH
JUSTICE OF THE SUPREME COURT

(SGD) P. BAFFOE-BONNIE
JUSTICE OF THE SUPREME COURT

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