

Perinparajah V. Fernando

337/1966

Present: Sansoni, C. J., and G. P. A. Silva, J.

PERINPARAJAH, Appellant, and FERNANDO and another, Respondents

S. C. 430/63—D. C. Batticaloa, 4018/M

Contracts—Clubs and unincorporated Societies—Liability of members.

Where goods are supplied to an unincorporated members' club, the members of the club who will be liable to pay the seller are only those who give or authorise the giving of the order for the goods.

APPEAL from a judgment of the District Court, Batticaloa.

M. Kanakaratnam, for the Appellant.

S. Sharvananda, for the Respondents.

Cur. adv. vult.

March 17, 1966. **SANSONI, C.J.—**

The plaintiffs, who carry on business in partnership, sued the two defendants for the value of goods alleged to have been sold and delivered to them between 13th February and 15th May, 1959. They have given credit for three payments made by the defendants, the last of which was made on 13th July, 1959.

The defendants pleaded that the plaintiffs had these transactions with the Batticaloa Kachcheri Welfare Society and not with them, and denied liability.

It was proved that this Society ran a canteen; and the goods in question, which consisted of cigarettes and aerated waters, were

supplied by the plaintiffs on written orders signed by either the first or the second defendant. There are sixty such written orders, which were taken from an order book supplied to them by the plaintiffs. Each order is headed "Batticaloa Kachcheri Welfare Society Canteen ", and under the signature of the person signing the orders appear the words " Honorary Secretary " or " for Honorary Secretary ". The first defendant was in fact the secretary of this Society at the relevant period, and the second defendant was a member of the Managing Committee. That Committee, consisting of the first and second defendants and Chellapillai, was appointed to run this canteen. Chellapillai has not issued any orders to the plaintiffs, and presumably that is why he has not been sued. Admittedly it was the two defendants who first spoke to the second plaintiff and requested him to supply goods to the canteen on orders signed by a member of the Managing Committee.

The question that arises is whether the plaintiffs are entitled to make a claim against these two defendants on the facts set out. At one stage we were impressed by the argument that the dealings which the plaintiffs had were with the Batticaloa Kachcheri Welfare Society Canteen, as appears from the orders produced. Each order is signed by the first or the second defendant describing himself as Honorary Secretary or for Honorary Secretary.

The position in law, however, is quite clear. The following passage in 5 Halsbury, paragraph 637 (3rd Edn.) puts the matter beyond doubt: " An unincorporated members' club is not a partnership nor an association which, as an association, is legally recognised ; and questions frequently arise as to who are the persons liable for goods supplied to such a club, or on contracts professedly made on its behalf. These questions depend on the ordinary principles of agency. The person supplying the goods must proceed against the persons who gave or authorised the giving of the order ; he must prove that the defendants, either by themselves or by their agent, entered into the contract." In this case it is admitted that it was the two defendants who gave the orders. It is they who entered into the contracts. They interviewed the second plaintiff at the

commencement of dealings and asked his firm to supply goods on signed orders.

The law does not know of a contract with an unincorporated society, for such a society has no existence, unless, of course, a statute provides otherwise. The first plaintiff said in evidence that his contract was with the two defendants, and that would seem to be the correct legal position notwithstanding the heading which appears on each of the written orders. The alternative view, that the contract was made with the Society, could only mean that the contract was made with all the members of the Society. But there is nothing in the evidence to indicate that the defendants were given any authority to contract on behalf of the members generally, either expressly or by necessary implication from the rules of the Society. Again, even if the plaintiffs purported to contract with the Society, the members were not the Society, for the Society had no existence — see *Bradley Egg Farm v. Clifford* [1 (1943) 2 A. E. R. 378]. The rule as stated by Lord Lindley in *Wise v. Perpetual Trustee Co.* [2 (1903) A. C. 139,] is — "Clubs are associations of a peculiar nature.....; and the feature which distinguishes them from other societies is that no member as such becomes liable to pay to the funds of the society or to anyone else any money beyond the subscriptions required by the rules of the club to be paid so long as he remains a member."

It is the function of the law "to imply an intention on the plaintiffs' part to make their contract with the person or persons to whom alone in the circumstances of the case the law regards as the persons responsible " — per Scott L. J. in *Bradley Egg Farm v. Clifford* (supra).

I would therefore hold that the defendants are liable to the plaintiffs for the balance sum claimed. Their liability has been confirmed by them by the letter of 18th June 1959 which they wrote to the plaintiffs. They say in that letter, which is signed by both of them, "We undertake to pay the outstanding bill to your Company on account of cigarettes purchased for the above canteen on the 27th instant." They describe themselves under their signatures as "

Managing Committee, Batticaloa Kachcheri Canteen ", but the liability which they incurred by this letter is no less personal than the liability which arose on the written orders for goods issued by them.

The appeal is dismissed with costs.

SILVA, J. - I agree.

Appeal dismissed.