

IN THE SUPREME COURT OF TONGA

AM 6 of 2013

APPELLATE JURISDICTION

[MC CV 124/2012]

NUKU'ALOFA REGISTRY

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**BETWEEN: PITA HALAPO'ULIA MOHETAU**

- **Appellant**

**AND : MBf BANK LIMITED - Respondent**

K. Piukala for the Appellant

Mrs F. Vaihu for the Respondent

### **JUDGMENT**

1. On 6 July 2011 the Appellant entered into a contract of guarantee with the Respondent in respect of an advance made by the Bank to Tupou Fakasilikiano Lilo. When the advance was not repaid the Bank began proceedings in the Magistrates' Court.
2. In the Court the Bank produced a copy of the guarantee, signed by the Appellant. A second witness produced a letter from the Appellant's employer given to the Bank by the Respondent. This witness also told the Court that he had explained the meaning of the contract of guarantee to the Appellant.
3. The Appellant's evidence was that he knew nothing about the letter from his employer, that nobody had explained the meaning of the

contract of guarantee to him and that he had signed it when he was told to, without being aware of the consequences: "I just signed aimlessly". He admitted that he had twice before signed similar guarantees. He accepted that had been a teacher for 27 years but had now retired. He stated that he had not asked for, or received, a copy of the guarantee which he had signed.

4. The Magistrate found as a fact that the Appellant had signed the contract. He took into account the Appellant's previous occupation and the evidence that the contract had been explained to him. He found the evidence of the Bank's witnesses to be more trustworthy and found in their favour.
  
5. Mr Piukala advanced five grounds of appeal. The first three address the Magistrate's evaluation of the evidence before him, however I am satisfied that the conclusions reached by the Magistrate were open to him. These grounds fail. The fourth ground was that the Magistrate did not set out his reasons for preferring the evidence of the Bank's witnesses. In my opinion, however, it is clear from the judgment that the Magistrate did not believe that the Appellant, a school teacher of 27 years standing, signed the contract without knowing what he was doing. This conclusion of the Magistrate was in line with attitude the Courts take to the signing of contracts by adults of sound mind: as a general rule a party who signs a contract will be held to its terms (*Saunders v Anglia Building Society* [1971] AC 1004). Were this not the general rule, business transactions would simply come to a halt.

6. The final ground of appeal was that there was no evidence before the Court that formal demand had been made of the Appellant before the legal proceedings were commenced. Paragraph 1 of the letter of guarantee states:

“1. I will pay to you *on demand* all money which is now or may during the operation of this guarantee be owing ....”.

7. In my opinion this ground of appeal succeeds: there is no cause of action against a guarantor until he has defaulted following demand (*Bradford Old Bank Ltd v Sutcliffe* [1918] 2 KB 833). In the absence of any evidence of demand the case against the Appellant had to fail.

8. The appeal is allowed with costs to be taxed if not agreed.

DATED: 5 July 2013.

N. Tu'uholoaki  
5/7/2013.



  
Chief Justice