

1982 No. 10871 P

003714

UNION PAPER COMPANY LIMITED

.v.

SUNDAY TRIBUNE  
(IN LIQUIDATION)

-and-

JOHN McSTAY  
AND  
UNION PAPER COMPANY LIMITED



.v.

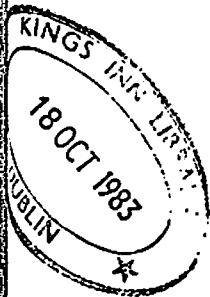
PATRICK MONAHAN  
(DROGHEDA) LIMITED  
SMURFIT PUBLISHING DIVISION LIMITED  
SANDYFORD PRINTERS LIMITED  
AND  
CHRISTOPHER CARROLL AND COMPANY LIMITED

Judgment of Mr. Justice Barron delivered 27th April 1983.

In these Actions the Plaintiff claims to be the owner and entitled to immediate possession of certain newsprint originally sold by it to the Sunday Tribune Limited ("Sunday Tribune") and now in the possession of Sandyford Printers Limited ("Sandyford"). The Plaintiff's claim rests on the existence of a reservation of title clause in the Contract of Sale between it and Sunday Tribune. If

such contract did not contain such a clause, then its claim fails. If its claim does not fail on this basis, it must still establish that in the events which have happened the title to the paper which they reserved did not pass to Sandyford in the manner contended by Sandyford.

The Plaintiff is a manufacturer of newsprint and a member of the Norwegian Papermakers Association. It carries on its business in this country through selling agents. Its main agent for this country is Robert Stewart and Company (Paper) Limited a company having its principal place of business in Glasgow. This latter company in turn act through a sub-agent in this country, Larry McLoughlin. Although the latter was basically a selling agent, in his dealings with Sunday Tribune he agreed in addition to procuring the sale of newsprint to Sunday Tribune to undertake the obligation to ensure that at any given time Sunday Tribune had in its warehouses a stock of newsprint sufficient for between 4 and 6 issues. The manner in which this business was carried out with Sunday Tribune was that orders were placed verbally by McLoughlin with Graham Young the principal of the Glasgow firm, who in turn passed on these orders in writing to the Plaintiff in Norway. On receipt of such orders, the Plaintiff issued



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confirmation notes in writing which it sent to the Glasgow firm.

These confirmation notes were in turn sent by Graham Young to Larry McLoughlin with a copy for the customer. Each of these confirmation notes contained on its face the following reference:-

"This order is booked subject to general trade rules adopted by Norwegian, Swedish and Finnish Papermakers Associations."

Reference to such trade rules was not set out on any other document arising in the course of dealings between the parties nor were the rules themselves ever furnished to Sunday Tribune.

When the goods were ready for delivery, they were dispatched by sea under a bill of lading and were accompanied by an invoice. The goods were paid for by acceptance of a bill of exchange and it was at that stage that a copy invoice was received by Sunday Tribune.

The general trade rules adopted by Norwegian, Swedish and Finish Papermakers Associations were established in 1925 and were revised in 1929. A further revision took place in 1980. Neither the 1925 rules nor the 1929 rules contained any provision for reservation of title to the property in the goods supplied. The rules of 1980 introduced such a provision for the first time.

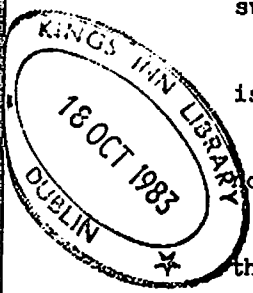
Both the 1925 rules and the 1929 rules showed clearly that they

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were general trade rules adopted by the Norwegian, Swedish and Finnish Papermakers Associations. The 1980 rules were printed without any such acknowledgement. This was apparently in the belief that such rules might have contravened provisions of the E.E.C. as to cartels. In any event, the only copies circulated in this country were circulated on behalf of members of the Finnish Papermakers Association and made no reference to such rules having been adopted by any other association.

For the terms of these 1980 rules to apply to the Contracts of Sale between the Plaintiff and Sunday Tribune, it is necessary for the Plaintiff to establish that the parties contracted with knowledge of the existence of these rules and of their provisions. The Plaintiff submits that it has discharged the onus of proof in relation to this issue of fact by showing that the confirmation notes came to the notice of Sunday Tribune and that this Company continued to trade with the Plaintiff thereafter. The Sunday Tribune contend that the fact that their dealings were subject to general rules was never brought to their notice and that if it had been brought to their notice by delivery of the confirmation notes this would not have brought the 1980 rules to their notice.



The evidence upon which the Plaintiff relies is essentially that of its sub-agent Larry McLoughlin. His evidence is that in most cases he left the confirmation note personally at the reception desk in the Sunday Tribune Offices, in an envelope marked for the Accounts Department. His explanation for using the expression "in most cases" was that he did not know if he got these documents in all cases. If his evidence is correct, then most of these documents should have come to the actual notice of the Accounts Department and should have been filed with the other documents relating to the same transactions.

The evidence on behalf of Sunday Tribune is that these documents never reached the Company. Matthew Brennan, the Financial Controller of the Company and also its Secretary gave evidence that he had never seen a confirmation note relating to the orders of newsprint from the Plaintiff. Any document left at the reception desk addressed to the Accounts Department would have been passed to him. Hugh McLoughlin, the Chief Executive of Sunday Tribune, also gave evidence to the effect that he had never seen a confirmation note relating to these orders. The Liquidator gave evidence that he had not personally inspected the files of the Company, but had directed his assistant to seek the

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documentation relating to the relevant transactions from Matthew Brennan. The documents furnished included the relevant invoices but no confirmation notes. The Liquidator subsequently directed his assistant to make a further search and his assistant gave evidence that he had searched but had found no further documents and specifically had not found any confirmation notes. The only other evidence relevant to this issue of fact was that of Graham Young the Scottish Agent who confirmed the procedural steps taken in relation to the making of orders.

The evidence of Larry McLoughlin suggests that Graham Young may have been mistaken in stating that the confirmation notes together with the copy were sent to him in relation to each order. This seems unlikely, though there did seem to be some doubt from the documents produced by Graham Young as to whether he always sent on the original confirmation note rather than a copy of it.

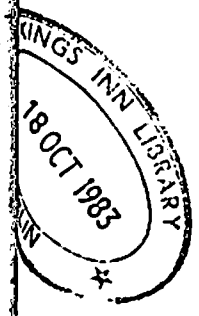
I found Matthew Brennan to be a truthful witness and I accept his evidence that he never saw a confirmation note. I also accept the evidence of Hugh McLoughlin to the same effect and that of the Liquidator's assistant that no such documents were to be found in the records of the Company. I do not accept the evidence of Larry

McLoughlin that he left these documents at the reception desk of the Company as he said. In particular, I found his explanation of the reason why these documents were not left with the Company in all cases unconvincing. It seems to me also that as the arrangement between Larry McLoughlin and the Sunday Tribune was that he would ensure a 4 to 6 weeks supply of newsprint it is probable that he did not consider it necessary for the Company to be given details of the orders he was placing.

It follows from this view of the facts that I find that the Plaintiff has not established that the contractual arrangements between it and Sunday Tribune included the general trade rules. Accordingly, it is not necessary to consider the subsidiary point whether the reference to these terms on the confirmation notes must be taken to be a reference to the 1929 rules rather than to the 1980 rules.

The issues which arise in the second Action are dependent upon a finding that Condition 8(c) of the 1980 rules applied to the contracts between the Plaintiff and the Sunday Tribune. Nevertheless, the issues in this Action were fully argued and I propose to deal shortly with some of them.

It is submitted on behalf of Sandyford that the newsprint supplied by the Plaintiff and now in the possession of Sandyford is the



property of Sandyford. They claim to have purchased such newsprint under two contracts dated respectively the 10th of August 1982 and the 8th of October 1982. I accept that in determining the nature of the contracts contained in these documents that I should be governed by the form of the document and not by the reason which prompted the parties to enter into it. The documents purport to be contracts of sale in that quantities of newsprint are sold by Sunday Tribune to Sandyford for a fixed price. However the contracts also contain provisions for the repayment by Sunday Tribune to Sandyford of this purchase price. This repayment is made independent of the use of the paper by Sandyford in the printing of the Sunday Tribune. The documents do not indicate what is to happen to the paper if it is not so used. In my view the proper construction of these documents was that they provided for a transfer of title of the newsprint from Sunday Tribune to Sandyford coupled with a provision for repayment of the price to Sandyford. Although nothing is said expressly as to a re-vesting of the property in the newsprint in Sunday Tribune once the price is repaid, I consider that this must be implied from the terms of the document. Looking at the document in this light, it seems to me that it is no more than a transfer of title by way of security rather



than by way of outright purchase.

It is submitted on behalf of the Plaintiff that even if the transaction was either a sale or a mortgage that nevertheless it was not bona fide in the sense that Sandyford knew that the contract of sale between the Plaintiff and Sunday Tribune contained a reservation of title clause. I do not accept this contention. The evidence makes it clear that it was the Solicitor for Sandyford who very properly drew the attention of his clients to the possibility of the existence of a reservation of title clause.

The matter was investigated on behalf of Sandyford and the contract between the parties contained an express warranty given honestly that there was no such reservation of title clause in existence. I accept that Sandyford was a member of a group of companies the officers of which would have been fully aware that general trade rules were customary in sales of newsprint from Scandinavian countries. However the evidence establishes that it was only the Finnish Papermakers Association members who had circulated general trade rules containing reservation of title clauses. In the circumstances, having regard to the specific warranty given, I accept that the officers of Sandyford did not have notice of the existence of the general trade rules of 1980

as applying to sales by Norwegian Papermakers Association members.

Accordingly, by virtue of the provisions of Section 25(2) of the Sale of Goods Act 1893 notwithstanding any reservation of title provision which may have existed the property in the newsprint would have passed to Sandyford in accordance with the terms of the two documents dated 10th August 1982 and 8th October 1982 respectively.

A further matter argued between the parties was whether or not the mortgage created by these latter documents was a bill of sale within the meaning of the Bills of Sale (Ireland) Act, 1879. The expression bill of sale is defined by Section 4 of the Act inter alia as follows:-

"The expression "bill of sale" shall include bills of sale, assignments, transfers, declarations of trust without transfer, inventories of goods with receipt thereto attached, or receipts for purchase moneys of goods, and other assurances of personal chattels, and also powers of attorney, authorities, or licences to take possession of personal chattels as security for any debt...."

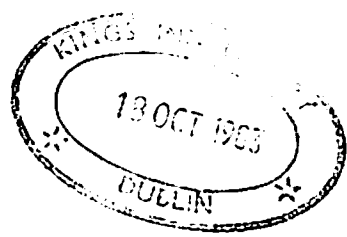
The Plaintiff contends that these documents created an assurance of the personal chattels concerned. It is submitted on behalf of

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Sandyford that since possession of the newsprint passed, no bill of sale existed. In support of this proposition Counsel for Sandyford relied upon in Re Hardwick, ex parte Hubbard, 17 Q.B.D. 690. That was a case of a pawn in which the possession of the chattel pawned passed to the pawnbroker. There was no question of any transfer of ownership. In order to bring the transaction within the definition of a bill of sale it was necessary to show that a licence to take possession of the chattel had been given. It was held that no such licence could have been given since possession had already been handed over voluntarily. (The position here is different. It is not necessary to rely upon the extended meaning of "Bill of Sale" as including a licence to take possession since there was an assurance of the newsprint). In my view, the documents dated the 10th August 1982 and 8th October 1982 respectively were bills of sale.

Having regard to my finding of fact, I will dismiss the Plaintiff's claim in both Actions.



*Henry Barton*  
11/7/83