

MARIANAS ELECTRIC AND SUPPLY COMPANY, INC., Plaintiff

v.

HERMAN R. GUERRERO, Individually and
Doing Business as Saipan
Electric and Supply, Defendant

Civil Action No. 100

Trial Division of the High Court

Mariana Islands District

January 17, 1967

Action to collect on certain notes given plaintiff by defendant as to which each party claims error in certain omissions and inclusions. The Trial Division of the High Court, Chief Justice E. P. Furber, held that notes constitute clear evidence of agreement between parties as to balance due, amounting to an "account stated", and that in absence of clear and convincing evidence that claims were erroneously included or omitted, parties must rest on agreed status of accounts as shown by giving and accepting notes.

1. Bills and Note"s-Account Stated

Where notes constitute clear evidence of agreement between parties as to balance due for certain parts of their accounts with each other, they amount to an "account stated".

2. Bills and Notes-Account Stated

While account stated may be opened and rectified on grounds of fraud, omission, or mistake, party seeking to open it has burden of proving fraud, omission or mistake by clear and convincing evidence.

3. Bills and Notes-Acc'Ount Stated

Where records of accounts and showing as to actions or lack of actions of parties are incomplete, court cannot determine with satisfactory certainty whether any claims as to items alleged to have been erroneously included or omitted are correct.

4. Bills and Notes-Account Stated

Beyond single error in account stated, which error is clearly demonstrable from uncontradicted testimony of witnesses for creditor and evidence showing how amount was computed, parties must otherwise rest on agreed status of accounts as shown by giving and accepting of notes in question.

FURBER, *Chief Justice*

FINDINGS OF FACT

1. At the time of giving of the notes sued on in this action, the defendant had confidence in the plaintiff, its officers and employees, and largely accepted their figures as to the status of accounts between the parties.

2. There was an error of five hundred nineteen dollars and fifty cents (\$519.50) in computing the amount for which the note sued on in Count I was written, in that the defendant under his arrangement with the plaintiff at that time, was entitled to a commission of twenty percent on items sold by him, yet in computing the amount he should be charged for items not returned, he was only allowed a credit of fifteen percent from the list price, except in the case of seven items, the total list price of which was one thousand seventy-eight dollars and sixty-three cents (\$1,078.63).

3. To accomplish the intent of the parties, the note sued on in Count I should have been written in the principal sum of nine thousand one hundred seventy-four dollars and ninety-eight cents (\$9,174.98) instead of nine thousand six hundred ninety-four dollars and forty-eight cents (\$9,694.48), and there was a partial want of consideration to the extent of the five hundred nineteen dollars and fifty cents (\$519.50) error set forth above.

4. Therefore, the nine thousand five hundred dollars (\$9,500) that the defendant has admittedly paid on this note has extinguished the principal, leaving three hundred twenty-five dollars and two cents (\$325.02) to be applied to the payment of the interest.

5. The interest on the amounts properly due on the note sued on in Count I totals four hundred ninety-seven dollars and nineteen cents (\$497.19). Deducting the balance of three hundred twenty-five dollars and two cents

(\$325.02) (explained above) of the defendant's last payment on this note, there is a balance of one hundred seventy-two dollars and seventeen cents (\$172.17) interest still due, plus attorney's fees of twenty percent thereof in accordance with the terms of the note amounting to thirty-four dollars and forty-three cents (\$34.43), making a total of two hundred six dollars and sixty cents (\$206.60).

6. The further errors and omissions claimed by the defendant as to the note sued on in Count I, and the errors and omissions claimed by each of the parties as to the note sued on in Count II have not been proved.

7. There is due the plaintiff from the defendant on the note sued on in Count II, a balance of principal of one thousand five hundred sixty-one dollars and sixty-five cents (\$1,561.65), interest to date of this judgment of six hundred forty-nine dollars and ninety-five cents (\$649.95), making a total of principal and interest of two thousand two hundred eleven dollars and sixty cents (\$2,211.60), plus attorney's fees of twenty percent of that amount, amounting to four hundred forty-two dollars and thirty-two cents (\$442.32), in accordance with the terms of the note, making a total of two thousand six hundred fifty-three dollars and ninety-two cents (\$2,653.92).

8. The plaintiff has not sustained the burden of proving that anything is due it from the defendant on Counts III, IV, and V.

OPINION

[1,2] The two notes sued on in this action constitute clear evidence of agreement between the parties as to balances due for certain parts of their accounts with each other, amounting in each instance to an "account stated". While such an account may be opened and rectified on grounds of fraud, omission, or mistake, the party seeking to open it has the burden of proving the fraud, omission, or mistake by clear and convincing evidence. In this in-

stance, the defendant has claimed various items were erroneously included. In determining the amount for which each note was written, and the plaintiff has in effect claimed, under Counts III, IV, and V, that certain items were erroneously omitted in determining the amount of the notes.

[3,4] From the facts agreed on and the evidence, and particularly in view of the incomplete nature of the records introduced (which appear to be all on the subject now available to the parties) and the showing as to the actions or lack of action of the parties, the court cannot determine with satisfactory certainty whether any of these claims as to items alleged to have been erroneously included or omitted are correct. The error set out in the second finding of fact above is clearly demonstrable from the uncontradicted testimony of witnesses for the plaintiff and the face of the slips introduced in evidence showing how the amount of the note sued on in Count I was computed. Beyond that, it is believed the parties must rest on the agreed status of their accounts as shown by the giving and accepting of the notes in question. 1 Am. Jur. 2d, Accounts and Accounting, §§ 34 and 35. 12 Am. Jur. 2d, Bills and Notes, § 1180.

JUDGMENT

It is ordered, adjudged, and decreed as follows:-

1. The plaintiff Marianas Electric and Supply Company, Inc., shall recover from the defendant Herman R. Guerrero the sum of two thousand eight hundred sixty dollars and fifty-two cents (\$2,860.52), and costs as specified in the next paragraph.

2. The plaintiff is awarded such costs as it may have had which are taxable under the first sentence of Section 265 of the Trust Territory Code, provided it files a sworn itemized statement of them within thirty (30) days

from this date, otherwise only three dollars and fifty cents (\$3.50) costs will be allowed to cover the filing fee and trial fee.

3. In accordance with Section 282 of the Trust Territory Code, this judgment shall bear interest at the rate of six percent a year from the date hereof until paid.