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N v H

ANGLO AFRICAN SHIPPING (1936) (PTY) LTD

and

SLAVINS PACKAGING (PTY) LTD

SMALBERGER, JA :-

IN THE SUPREME COURT OF SOUTH AFRICA

(APPELLATE DIVISION)

In the matter between:

ANGLO AFRICAN SHIPPING (1936)
(PROPRIETARY) LIMITED Appellant

and

SLAVINS PACKAGING (PROPRIETARY) LIMITED Respondent

CORAM: TRENGOVE, HOEXTER, VAN HEERDEN,
SMALBERGER, JJA, et BOSHOFF, AJA

HEARD: 4 SEPTEMBER 1986

DELIVERED: 26 SEPTEMBER 1986

J U D G M E N T

SMALBERGER, JA :-

The respondent successfully sued the appellant in the Witwatersrand Local Division for damages in the sum of R52 000. The respondent's claim was based on the appellant's

breach / .....

breach of an alleged contract of sale. The appellant now appeals against the decision of the trial Judge (ESSELEN, J), leave to do so having been granted by this Court.

The sole issue on appeal concerns the question whether or not the agreement of sale entered into between the parties, in circumstances which I shall presently detail, in respect of a machine used for bookbinding and related purposes, and known as a "casemaker", was void on the grounds of mistake. The appellant argued that it was, while the respondent con= tended to the contrary. In order to appreciate the respective contentions advanced by the parties, and to view them in proper perspective, it is necessary to set out the relevant facts, particularly those which preceded the agreement of sale, in some detail. These facts, unless otherwise indicated,

are either common cause, or not in dispute for the purposes of the appeal.

The appellant, notwithstanding its name, is a finance company which specialises in short term financing. It is a member of a group of companies with world-wide interests. One of its sister companies, which also specialises in short term financing, is the International Shipping Company (Proprie= tary) Limited (International Shipping). The respondent is a manufacturer of plastic products, as well as stationery and packaging products. Its managing director, who throughout the events I shall unfold acted on its behalf, is one Slavin. In September 1982 an advertisement appeared in the press advertising the sale of "the most modern and sophisticated bookbinding equipment" belonging to a company in liquidation,

Everton Offset (Proprietary) Limited (Everton Offset).

The sale was held on 14 September 1982. Three of the items on the sale were a Kolbus Flowline (the flowline), a Kolbus Combined End Sheet Glueing Machine (the glueing machine) and a Kolbus Fully Automatic Casemaker DA with Cloth Feeder and Boardcutter (the casemaker). Slavin attended the sale, and inspected the machinery on offer. He was particularly interested in the casemaker as it could be used for the respondent's manufacturing purposes. The flowline, glueing machine and casemaker were put up for auction individually and collectively. Slavin put in the highest individual bid for the casemaker, namely R30 000. It was, however, not sold to him, as the highest bid for the three items together exceeded the sum of the highest bids for each individual item.

There / .....

There is no evidence of what the highest individual bids were in respect of the flowline and glueing machine. The successful collective bid was put in by International Shipping, which had financed the initial purchase of the three machines by Everton Offset, and to which Everton Offset still owed a considerable sum of money. I digress for the moment to mention that the action which has given rise to the present appeal should strictly speaking have been between the respondent and International Shipping, but the respondent was misled by certain correspondence into be= lieving that it was dealing throughout with the appellant. Hence the point was not taken that the respondent had sued the wrong company. For practical purposes, therefore, International Shipping can be equated with the appellant, and I will regard the machines as having been bought by the appellant.

To / .....

To revert to the facts. Having acquired the machines the appellant, represented by one of its executive officers, a certain Scarrott, requested the Ipex Printing Machinery (Proprietary) Limited (Ipex), a company which deals in new and second-hand printing machinery, and whose managing director was one Brüssow, to endeavour to sell the machines on its (the appellant's) behalf. The appellant was advised by Brüssow that a realistic selling price for the casemaker (which was virtually new) would be R66 000, and for the glueing machine, R18 000. Towards the end of September 1982 Slavin was approached by a salesman for Ipex, one Da Rocha, who tried to interest Slavin in purchasing the casemaker for R66 000. Slavin's response was that the price was "absurdly high" and that he could obtain a used machine (presumably of a similar

make) overseas for R45 000. At about the same time Scarrott telephoned Slavin in response to a call received from Slavin and gave him the prices for the three machines as casemaker, R66 000, glueing machine, R20 000, and flowline, R150 000. Slavin commented that if the appellant wanted to sell the machinery cheaply he was interested in buying. Although Slavin could not recall the conversation, which is confirmed by a note in Scarrott's diary, he did not dispute that it had taken place. I pause here to mention that at the time the printing and bookbinding industries were severely depressed due to recessionary conditions. The market for related machinery was equally depressed, and it was very much a buyer's market.

Nothing further transpired between the parties until the second half of January 1983, some four months later. On

24 January / .

24 January 1983 Slavin flew to Europe on business. Prior to leaving he attempted to contact Scarrott in order to ascertain whether the casemaker was still for sale. The reason for doing so, according to Slavin, was that he intended to discuss a new project with an overseas correspondent with reference to using the casemaker. Scarrott was not available when Slavin telephoned, and did not return Slavin's call before the latter's departure overseas. When eventually Scarrott telephoned the respondent he spoke to one Winkler, the respondent's general works' manager. Winkler was unaware of the fact that Slavin had attempted to contact Scarrott, and had not been alerted to the possibility of a call from the latter. During the course of their telephone conversation Winkler requested Scarrott to put any proposals he wished to

make in writing for transmission to Slavin. As a result Scarrott caused a telex to be sent to the respondent, the material portion whereof reads as follows:-

> "Machinery on offer in Kolbus range :-
> 1) End Sheet Glueing Machine R72 000 nett.
> 2) Casemaker R20 000 nett.
> Both ex warehouse with no guarantee.
> Approximately one year old. Commission or margin required by you to be added to above prices."

In quoting the prices in the telex Scarrott mistakenly transposed them. He had meant to reflect the price of the glueing machine as R20 000, and that of the casemaker as R72 000. Winkler immediately passed on the contents of Scarrott's telex to Slavin. The material portion of Winkler's telex in this regard reads as follows:-

"These people have unsuccessfully tried to sell these machines both here and overseas. If you can help they would be grateful. Their message follows:-

International Shipping Company (Pty) Ltd.
Machinery on offer in Kolbus range :-
1) End Sheet Glueing Machine R72 000 nett.
2) Casemaker R20 000 nett.
Both ex warehouse with no guarantee.
Approximately one year old. Commission or margin required by you to be added to above prices."

On 28 January 1983 Slavin responded to Winkler's telex with the following telex from Milan:-

"R Winkler
Re Kolbus machinery prices seem incorrect. Casemaker at R20 000 should immediately be bought. We offered R30 000 at auction. Pls tlx advise correct model no and serial nos. I will try and sell next week. Pamphlets on machines in Achilles file with Rina."

The words "prices seem incorrect" in Slavin's telex were understood by Winkler as an instruction to check the prices. Winkler did not go back to Scarrott, but "checked" the prices merely by referring to Scarrott's original telex. Having done so he sent Slavin a telex on the same day which read:-

> "Att : Mr Robert Slavin
> Could you please pass message to Mr R Slavin
> Kolbus Machinery
> Prices quoted are correct. Model X serial no will follow when obtained."

On 31 January 1983 Winkler telexed the model and serial numbers of the casemaker and glueing machine to Slavin after having received them from Scarrott.

Winkler did not carry out Slavin's instruction to buy the casemaker immediately. Instead he telephoned Scarrott on 8 February 1983 and arranged for a two-week option to

purchase the casemaker. This was confirmed by a letter of the same date from the respondent's accountant, one Lee, to Scarrott. Neither during the telephone call, nor in the letter, was any reference made to the price of the casemaker. Slavin subse= quently returned from overseas, inspected the casemaker and its accessories at the premises where it was being housed, and on 22 February 1983 sent Scarrott a letter by hand exercising the option to purchase the casemaker for R20 000. The letter was delivered to Scarrott personally by a Mrs Richardson, who at the time was one of the respondent's sales representatives. In the presence of Mrs Richardson Scarrott telephoned Brüssow and told him that he had obtained a good price for the casemaker. It was only after he had mentioned the price to Brüssow, and Brüssow had reacted thereto, that it dawned on Scarrott, no

doubt to his great distress, that he had mistakenly transposed the prices of the casemaker and the glueing machine in his telex to Winkler. Almost immediately thereafter Scarrott telephoned Slavin to tell him that the prices in his telex had been inverted. Slavin told Scarrott to discuss the matter with Winkler, and put him through to Winkler. Scarrott repeated to Winkler that he had made a mistake, and that the price of the casemaker should have been R72 000, and that of the glueing machine R20 000. Winkler said he would discuss the matter with Slavin. The following day, in the course of a further telephone call from Scarrott to Slavin, the latter informed Scarrott that he was holding the appellant to its quotation, and the resultant agreement in respect of the sale of the casemaker. The

appellant subsequently refused to be bound by the agreement, declined to give the respondent an undertaking that it would not dispose of the casemaker pending the outcome of an action, and eventually resold the casemaker to a third party. In the result the respondent was left with a claim for damages against the appellant.

In the Court a quo the appellant contended that it was not bound by the option or sale, as it had by mistake transposed the prices of the casemaker and the glueing machine in its telex to Winkler, and that the respondent knew of the mistake or, alternatively, ought reasonably to have known thereof. It was ultimately common cause at the trial that the appellant had made a mistake, but the trial Judge found that the appellant had failed to establish actual or constructive

knowledge of the mistake on the part of the respondent (the appellant having accepted that the onus to do so was on it). In the result the trial Judge held that there had been a valid agreement between the parties in respect of the sale of the casemaker for R20 000. It was not disputed that if such an agreement existed, it had been breached by the appellant, and that the respondent had in consequence thereof suffered damages in the sum of R52 000. So much for the facts, and the background to the appeal.

On appeal it was common cause between counsel for the parties that, in our law, if one person makes a material mistake in an offer to another, a valid contract does not result if the latter's acceptance takes place with knowledge of the mistake. Counsel were further agreed that, estoppel

apart, constructive knowledge of a material mistake in an offer suffices to exclude a contract if such offer is accepted, i.e. if a reasonable man in the position of the offeree would have known of the mistake in the offer. Our law, counsel contended, does not permit a person to "snatch a bargain" or "snap up" a mistaken offer. Although there is no decision of this Court on the point, the authorities referred to by counsel in their heads of argument (notably those of counsel for the appellant) afford strong support for their contentions. It is not, however, necessary to decide whether those conten= tions are correct, or correct in all respects. For the purposes of the present appeal I shall assume, without expressing any view thereon, the correctness of counsel's contentions in the above regard. On this assumption, if the appellant

can establish that the respondent knew, or ought reasonably to have known, of Scarrott's mistake, no valid contract of sale would have been concluded, and the appeal must succeed.

The appellant relies heavily on the contents of the telex from Slavin to Winkler on 28 January 1983 for its contention that Slavin must have known (and therefore by inference did know) that the prices quoted by Scarrott to Winkler, and in turn conveyed by him (Winkler) to Slavin, had mistakenly been transposed. In this respect the point was made that the telex had not been analysed with sufficient care and perception by the trial Judge. Slavin's telex must, of course, not be viewed in isolation, but against the background of the knowledge he possessed at the time. It may also have to be viewed in the light of other considerations, a matter to

which I shall advert later. The evidence establishes that when he received Winkler's telex, Slavin was fully alive to the fact that he had some four months earlier bid R30 000 for the casemaker, and that it had shortly thereafter been offered to him by Da Rocha for R66,000. He presumably would also have remembered his response to Da Rocha at the time, viz., that the price was "absurdly high", and that he could acquire a similar used machine overseas for R45 000. It was argued that Slavin must also have recalled to mind the prices that Scarrott had quoted to him for the casemaker and the glueing machine (R66 000 and R20 000 respectively). It should therefore have been patently obvious to Slavin, so the argument goes, that the price reflected in the telex he received from Winkler for the glueing machine was glaringly high, and that

for the casemaker correspondingly low - a clear indication thus that the prices had been transposed. It was further argued that Slavin had promptly appreciated that there had been a mistake, and that the opening words in his telex to Winkler "prices seem incorrect" were a manifestation of Slavin's realisation that the prices had been transposed, particularly when regard was had to the use of the plural "prices". Hence the instruction, in order to snatch a bargain, "casemaker at R20 000 should immediately be bought". A further consideration mentioned was Slavin's request for the model and serial numbers of the machines coupled with the intimation "I will try and sell next week", which it was suggested indicated that Slavin was buying the casemaker in order to resell it, in the obvious realization that the appellant's mistake could be turned to the respondent's advantage. It was

further contended that Slavin had neither intended nor expected Winkler to check the prices quoted in any way, but to act without delay and accept the offer in respect of the casemaker. This, it was argued, was evident from Slavin's attitude, as expressed in his evidence, that when a purchaser suspects a mistake there is no need to alert the seller thereto and put him on his guard, as well as his telephone call from Denmark to Winkler to enquire whether his instruction had been carried out, and his annoyance when told that Winkler had not purchased the casemaker, but taken an option on it. Other factors on which reliance was placed to indicate actual knowledge on Slavin's part that a mistake had been made were his alleged readiness to buy the casemaker despite the intimation in Winkler's telex that the machines were proving difficult to sell; his failure

to instruct an inspection of the casemaker before purchase; his alleged lack of candour when Scarrott informed him that he (Scarrott) had made a mistake and transposed the prices in his telex to Winkler; and his inappropriate reaction in referring Scarrott to Winkler instead of dealing with him himself. Criticism was also voiced of Slavin's obstinate refusal during cross-examination to concede that Scarrott had made a mistake when it was obvious that he had done so.

Compelling though many of these arguments are, I am unpersuaded that actual knowledge of Scarrott's mistake can be imputed to Slavin. I have previously mentioned that Slavin's telex to Winkler on 28 January 1983 must be viewed against the background of the events which preceded it. It must also be seen in the context of Slavin's evidence concerning

what he intended to convey in the telex, bearing in mind the trial Judge's finding that Slavin was a "satisfactory and convincing" witness. I pause here to remark that the opposite finding was made in respect of Scarrott as a witness, although such finding would not seem to have a significant bearing on the outcome of the appeal. A finding that Slavin knew that a mistake had been made by the appellant has as its concomitant a finding that Slavin was a deliberately untruthful witness in maintaining the contrary. Such finding would fly in the face of the trial Judge's assessment of Slavin's evidence and credibility. A Court of appeal will normally hesitate to disturb a trial Judge's findings of fact and credibility, particularly having regard to the advantages enjoyed by him in seeing and hearing the witnesses and being steeped in the

atmosphere of the trial. (R v Dhlumayo and Another 1948(2) SA 677(A); S v Kelly 1980(3) SA 301 (A)). But such findings are not unassailable. There are circumstances where inter= ference with such findings would be justified. In the words of INNES, CJ, in Estate Kuluza v Braeuer 1926 AD 243 at 256, "the Court cannot escape the responsibility of interfering where, after making every allowance for the fact that it has not seen the witnesses, it is satisfied that a wrong conclusion has been reached." To hold otherwise would be to detract from the fact that an appeal is essentially in the nature of a re- hearing, although upon special lines. But sound reasons must exist before the conclusion can be reached that a trial Judge's findings of fact and credibility were wrong.

The major flaw, in my view, in the appellant's argument, and the inference it seeks to draw from the contents of Slavin's telex to Winkler, is the absence of any evidence, or sufficient evidence, to show that Slavin, at the relevant time, knew what the relative values of a casemaker and a glueing machine were, and that the former was a much more expensive machine than the latter. Without such evidence the argument that Slavin, on receipt of Winkler's initial telex, realised that the price of the casemaker was glaringly low, and that of the glueing machine glaringly high, and accordingly that the prices had been transposed, must needs fall away. Slavin was never questioned in this regard, and while he knew in general that Kolbus machines were "fairly expensive" there is no direct evidence that he knew what the relative values of

the two machines were. Nor is there, in my view, sufficient evidence from which such knowledge on Slavin's part can be inferred. Slavin did not normally deal in machines such as the casemaker and the glueing machine. Throughout the piece Slavin maintained that he was only interested in the acquisition of the casemaker. In his own words, the glueing machine "was not part of my industry's tools of trade." There is nothing to refute his evidence in this regard - nor even to cast doubt upon it. If Slavin was not interested in the glueing machine he is unlikely to have taken particular note of its price, either at the time of the auction or later, or to have known (or appreciated) how its price compared with that of the casemaker. There is no evidence that Da Rocha ever offered to sell him the glueing machine, or conveyed its price to him.

As I have mentioned, Scarrott testified that he gave Slavin prices for the casemaker, glueing machine and flowline, which Slavin does not deny, although he cannot recall the conversation (Scarrott's evidence that Slavin specifically asked him for all three prices was never put to Slavin under cross-examination, nor conceded by him, and, in the circumstances, cannot be accepted, particularly when regard is had to the adverse credi= bility findings made against Scarrott). If Slavin's evidence that he is unable to recall this conversation is to be believed, and no reason was suggested why it should not be, then the conversation clearly made no lasting impression on Slavin, and it can accordingly not be said (at least not with any degree of conviction) that the price of the glueing machine, or its relationship in value to the casemaker, must have impressed

itself on Slavin's mind to the extent that he would inevitably have recalled it on receipt of Winkler's telex four months later.

Slavin realised, on receipt of Winkler's telex, that the casemaker on offer for R20 000 was the selfsame machine for which he had put in the highest individual bid of R30 000 at the auction, and which had subsequently been offered to him by Da Rocha for R66 000. While at first blush the low price is indicative of a mistake, a possibility to which Slavin was alive, it does not necessarily follow that he must have known that a mistake had been made. According to Slavin, it "appeared strange to me that we should be offered a machine at a cheaper price than we bid at the auction ..... but not so strange as to be unbusinesslike". It must be borne in mind that Slavin knew

that the market for that type of machine was sorely depressed, in all probability more so than in September 1982, and that the appellant (in view of what was stated in Winkler's telex) had unsuccessfully tried to sell the casemaker in the Republic and overseas. Furthermore, Slavin knew that the casemaker was in the hands, not of a dealer in that type of commodity, but a financial institution, which might, in view of its unsuccessful attempts to sell the casemaker, wish to dispose of it as expe= ditiously and beneficially as possible. As Slavin put it: "I knew there was a financial institution involved ..... to them having such a machine overhanging their organization was a pure nuisance value and ..... they would want to liquidate and get their money back at a lower but not an unreasonable price." These considerations militate strongly against a

finding / .....

finding that Slavin must have known that a mistake had been made in quoting the casemaker's price. He may legitimately have thought that, while a mistake was possible, valid reasons existed for the striking reduction in the casemaker's price. As stated in Corbin on Contracts: Vol 3 : para 605 : "market value is a variable quantity. It varies with time and place and circumstances. It varies with the appetite of him who buys and with the needs of him who sells".

Nor, in my view, can the phrase "prices seem incorrect" simply be extracted from Slavin's telex to Winkler and relied upon to conclude that Slavin knew that the prices had been transposed. The use of the word "seem" suggests uncertainty as to the correctness of the prices (which Slavin admits) rather than knowledge that they were incorrect. As previously

pointed out, there is no evidence, or insufficient evidence, either to establish, or justify the inference (as the more or most probable one), that Slavin knew what the respective values of the casemaker and the glueing machine were, and should consequently have realised that the prices had been inverted. Slavin was never asked to explain precisely what he had in mind with the use of the phrase "prices seem in= correct", more particularly the use of the plural "prices", nor was it ever pertinently suggested to him that those words, in themselves, were indicative of knowledge on his part that the prices had been transposed. In the circumstances it would not be proper to draw an adverse inference against Slavin merely from the use of those words. It is also relevant to note that the price quoted for the glueing machine, viz., R72 000,

was a figure which had never previously featured in any discussion or conversation concerning the casemaker. Had its price been given as R66 000, which was the price previously quoted for the casemaker, it may have been more obvious that there had been a transposition of prices, and the inference that Slavin knew that to be the case, correspondingly stronger.

The words in Slavin's telex "Casemaker at R20 000 should immediately be bought. We offered R30 000 at auction" could well support an inference that Slavin knew that a mistake had been made, and wanted to "snatch" the bargain on offer without delay. But they could equally imply (when taken in conjunction with the preceding words) that the price was to be checked (because Slavin entertained some doubt as to its

correctness), and if found to be correct, the casemaker was to be bought (as the respondent had been prepared to pay R30 000 for it four months previously). Slavin ultimately maintained that in essence this is what the words were in= tended to convey, having acceded readily to the suggestion put in cross-examination that the words contained the impli= cation that Winkler should check the prices. While Slavin's evidence in this regard was somewhat lacking in spontaneity, I can find no valid reason to disbelieve it. It is by no means far-fetched to read such an implication into the words of the telex. Winkler actually understood them in that sense, and checked the prices by referring to Scarrott's telex. Having done so, he telexed Slavin that the prices were correct. This, according to Slavin, removed all doubt from his mind as

to the correctness of the prices, a reasonable and natural reaction if previously there had only been doubt, and not certainty, in his mind. Slavin was entitled to assume that Winkler had taken such steps as were necessary to satisfy himself that the prices were correct. Slavin's telex to Winkler did not, either specifically or by implication, place any restrictions on Winkler in this regard.

I turn next to the submission that Slavin's request in his telegram to Winkler for the model and serial numbers of the machines, together with the intimation "I will try and sell next week" indicated that Slavin was buying the casemaker to resell it, thereby taking advantage of what he knew was a mistake. This submission runs counter to Slavin's evidence and the probabilities. Slavin's evidence was that he intended

to purchase the casemaker for the respondent's manufacturing purposes, and not to resell it. This is borne out by the fact that he bid on the casemaker at the auction in September 1982, and had attempted to contact Scarrott before his departure for Europe to ascertain whether the casemaker was still for sale. The probabilities are that he would not have done so had he not genuinely been interested in the acquisition of the casemaker for the respondent's purposes. It was only at a later stage of his overseas trip that he considered the possibility of reselling it, or trading it in, if it was not possible to utilize it beneficially in the respondent's interests. In any event the words "I will try and sell next week" are somewhat ambiguous. It is not clear whether they relate, or were intended to relate, to both the casemaker and the glueing machine, or to one or the

other. Slavin was never asked to explain what precisely the words were intended to convey. In the circumstances the inference the appellant seeks to draw from the use of the words is not justified.

I believe I have dealt with all aspects of Slavin's telex to Winkler, and their possible significance in relation to Slavin's knowledge, or lack of it, that the appellant had made a mistake. I now move on to the other considerations relied upon by the appellant as signifying actual knowledge on Slavin's part. Appreciation by Slavin that a mistake had been made was said to be implicit in his attitude, as revealed in

his evidence, where he said :

> "People do make mistakes, but on the other hand, in commercial negotiations, when one is negotiating, does one say to a seller (and I'm not arguing the legal point), does one put words in the seller's mouth, or does one put the seller on guard perhaps, for want of a better word."

This passage, however, must be read in conjunction with what was said by Slavin almost immediately thereafter, viz.:

> "In commercial negotiations, if someone quotes you a price that is in all intents and purposes reasonable, what does one do?"

Views may differ on whether Slavin's attitude, as it emerges from the passages I have quoted, is necessarily out of keeping with normal business morality and thinking (involving as it does the field of moral philosophy). While the passages quoted may reflect sadly on Slavin's business ethic, or lack of

it, I am unable to read into them knowledge on his part that a mistake had been made. The fact that Slavin appreciated that he was striking a bargain does not mean that he "snatched" at one in the legal sense. The latter concept denotes an uncon= scionable act (which the law will not countenance) in deliberately seeking to take advantage of another's known mistake (I refer, of course, to the case where actual knowledge is present); striking a bargain is a legitimate occurrence frequently en= countered in the business and commercial world which the law recognises and enforces.

Slavin's failure to instruct Winkler to inspect the casemaker before its purchase, and his (Slavin's) readiness to buy it despite the intimation in Winkler's telex that it was proving difficult to sell, upon which the appellant relies,

cannot be regarded as of any significance in relation to the issue of Slavin's knowledge. There was no need to inspect the casemaker as Slavin was acquainted with it, having inspected it four months previously at the time of the auction, and his readiness to buy was consistent with his previously evinced intention to purchase the casemaker if it could be obtained at a price he was prepared to pay. I see nothing sinister or significant in the fact that Slavin telephoned Winkler from Europe to enquire whether the casemaker had been purchased. Such conduct would seem to be in keeping with normal business interest and practice. The fact that Slavin displayed annoyance when he heard that Winkler had not purchased the casemaker, but taken out an option on it (which in any event secured the respondent's right to acquire it), while

perhaps a matter for comment, carries insufficient weight to have any significant bearing on the question of Slavin's knowledge. So too, while Slavin's somewhat obdurate refusal to concede that Scarrott had made a mistake may, to some extent, reflect adversely on his credibility, it cannot seriously detract from the trial Judge's finding that he was a "satisfac= tory and convincing witness".

To sum up thus far. The evidence does not, in my view, justify the inference, as the most probable inference, that at the time of his return from overseas Slavin knew that a mistake had been made in the price quoted for the casemaker, nor the rejection of Slavin's evidence to the contrary.

The option to purchase the casemaker was exercised on 22 February 1983. Nothing occurred between Slavin's return from overseas and then to alert him to the fact that a mistake had been made. It was not established that Slavin knew or appreciated that Winkler had checked the prices only by reference to Scarrott's telex, and not by reference to Scarrott himself. I would hesitate, on the issue of Slavin's knowledge, to draw any adverse inference from Slavin's alleged lack of candour when told by Scarrott that he (Scarrott) had made a mistake and transposed the prices, and Slavin's referral of Scarrott to Winkler. Slavin was never questioned about his alleged lack of candour, or his reasons for referring Scarrott to Winkler. He could conceivably have provided some acceptable explanation for his conduct. One such explanation might be

that as Scarrott had originally discussed and conveyed the prices to Winkler, the question of any mistake was best dealt with by them. There are in my view no considerations of sufficient persuasion to justify the conclusion that when the option was exercised the position had changed from the time of Slavin's return from overseas, and that he had in the interim acquired knowledge of Scarrott's mistake.

In the result I am not persuaded that the trial Judge erred in finding that the appellant failed to discharge the onus on it of proving that the respondent (through Slavin) knew that the appellant (through Scarrott) had made a mistake with regard to the price of the casemaker when offering it for sale. In arriving at this conclusion I have had regard not only to the individual arguments raised by the appellant, with

which I have endeavoured to deal, but I have also taken into account the cumulative effect of all such considerations as favour the appellant. Nor has it been proved by the appellant that the respondent ought reasonably to have known of such mistake. A reasonable man in Slavin's position (i.e. with Slavin's knowledge and understanding of all relevant circumstances which either preceded, or existed at the time of, the receipt of Winkler's initial telex) would, in my view, have shared Slavin's original doubt concerning the correctness of the prices quoted in the telex, but he would not necessarily have appreciated that a mistake had been made. In his case too such doubt would have been allayed on receipt of Winkler's confirmation that the prices were correct. Nor did any events occur subsequently which would have caused him to know

that a mistake had been made.

It was not suggested that Winkler had actual knowledge of Scarrott's mistake. Winkler was unacquainted with a casemaker and a glueing machine, and had no knowledge of their relative values. He had specifically requested Scarrott to commit the prices he required for the machines to writing. He had no reason to anticipate any mistake on Scarrott's part. On receipt of Slavin's telex, which indicated a possible error in the prices and implied that they be checked, Winkler was reasonably entitled to assume that Slavin was alluding to a possible error on his (Winkler's) part in transmitting the prices. In those circumstances he cannot be faulted for merely consulting Scarrott's telex before advising Slavin that the prices were correct. A reasonable

man in Winkler's position would have acted no differently. He would have been entitled to have regard to what could reasonably have been considered as reliable information available to him - in this instance Scarrott's telex. In the circumstances Winkler's failure to ascertain from Scarrott whether the prices set out in the latter's telex were correct does not justify an adverse inference, as his conduct cannot be construed as unreasonable.

In the result, even assuming that constructive knowledge on the respondent's part of Scarrott's mistake would have sufficed to vitiate the agreement of sale, such constructive knowledge was not proved.

I am / .....

I am accordingly of the view that there is no basis for interfering with the findings of the trial Judge.

The appeal is dismissed, with costs.

J W SMALBERGER

JUDGE OF APPEAL

TRENGOVE, JA)
HOEXTER, JA)
VAN HEERDEN, JA) CONCUR
BOSHOFF, AJA)