THE SUPREME COURT OF APPEAL
OF SOUTH AFRICA

CASE NO. 453/2000
Reportable

In the matter between

UNION SPINNING MILLS (PTY) LIMITED **Appellant**

and

PALTEX DYE HOUSE (PTY) LIMITED **First Respondent**
PALTEX KNITTING (PTY) LIMITED **Second Respondent**

CORAM: SMALBERGER ADP, HOWIE, ZULMAN AND NAVSA JJA et LEWIS AJA

HEARD: 5 MARCH 2002

DELIVERED: 22 MARCH 2002

Applicability, on the facts, of standard trading terms

JUDGMENT

ZULMAN JA

[1] This is an appeal with special leave against a judgment of the Full Court of the Bophuthatswana High Court. The judgment is reported as *Paltex Dyehouse (Pty) Ltd and Another v Union Spinning Mills (Pty) Ltd* 2000(4) SA 837 (BHC).

[2] For the purposes of convenience I will refer to the parties as they were at the trial. The plaintiff (the appellant) instituted two separate actions against the defendants (the first and second respondents on appeal). The actions were consolidated.

[3] In each of the actions the plaintiff sued the defendants for the purchase price of yarn sold and delivered to the defendants during the period August, October and November 1991. In each action the defendants raised counter-claims for damages. By agreement a preliminary issue fell to be decided by the trial court. The issue is stated as follows in the judgment of the trial court:-

> "Which terms and conditions governed the contractual relationship between the plaintiff and the defendants".

[4] The plaintiff contended that the terms and conditions which governed the contractual relationship between it and the defendants were set out in certain order confirmation documents which it posted to the defendants. These terms and conditions were its standard terms and conditions relating to the supply of yarn to its customers. The defendants denied receipt of such documentation and accordingly knowledge of the standard terms and conditions. The defendants averred that the yarn that it admitted receiving from the plaintiff was defective and that it suffered damages as a consequence.

[5] After hearing oral evidence, the trial court (Khumalo J) found for the plaintiff. Leave to appeal was refused but in terms of an order granted by this Court leave to appeal to the Full Court of the Bophuthatswana High Court was granted. The appeal was upheld.

[6] The legal principles applicable to the imposition of standard terms of contract are well known. They are clearly stated in *Christie* The Law of Contract[1]. Furthermore, where a party alleges an agreement, that party bears the onus of proving the terms of the agreement, even if this involves

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[1] 4th Edition Pages 204 - 209

proving a limitation of liability or that exclusion clauses did not form part of the agreement It is also necessary for a party relying upon special terms and conditions to prove that the document in which such terms and conditions appear is the type of document where the recipient would expect to find such conditions and in addition that reasonable steps were taken to bring the conditions to the attention of the recipient. (See for example *Stocks & Stocks (Pty) Ltd v T J Daly & Sons (Pty) Ltd*[2] and *Micor Shipping (Pty) Ltd v Treger Golf and Sports (Pty) Ltd & Another.*[3]*)*

[7] The determination of the issue is essentially a factual one. Some guidance as to how a court is to approach such a matter is to be found in the following remarks of Franklin J in *Micor Shipping*[4]:-

> "Those cases show that in the case of private individuals the Court requires positive evidence to show some sort of office practice from which the inference of posting can be drawn.. But the *onus* remains on the plaintiff to prove that the letter was sent; and even then the presumption means no more that this; the fact that the letter was posted is evidence from which the inference that it reached the addressee may be drawn; but all the circumstances must be considered in order to decide whether on a balance of probabilities that inference ought to be drawn; *Goldfields Confectionary and Bakery (Pty) Limited v Norman Adam (Pty) Ltd* 1950 (2) SA 763 (T) at p 768"

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2 1979(3) SA 754 (A) at 765A – 767C.
3 1977(2) SA 709 (W) at 713 H – 714 F.
4 Supra at 715 A – C.

[8] The plaintiff led evidence from a number of witnesses which dealt in detail with the plaintiff's office practice at the relevant time concerning the handling and confirmation of orders that it received from customers via its representative, Mr Ferguson. Amongst these witnesses were Mr Scheffer, the plaintiff's administration director, Mrs Cusse, a sales administrator of the plaintiff and Mr Bester, an employee of the plaintiff in its sales and administration department. I will deal more fully later in this judgment with the office practice in question.

[9] Business dealings between the parties commenced during 1990. Ferguson testified that he had acted as "agent" for the plaintiff for approximately eight or nine years. (It would seem that in law Ferguson was a broker and not an agent in the true sense.) The plaintiff has its factory and principal place of business in Port Elizabeth. He stated that he had knowledge of the plaintiff's prices, mode of operation and procedures for the delivery of yarn to his customers. He described the *modus operandi* for placing orders with the plaintiff as follows:-

(**1**) When he received an inquiry from a customer for the supply of yarn, he would inquire from the plaintiff whether the order could be executed.

(2) If the plaintiff was able to supply the yarn, he prepared a form or indent bearing his firm's name (Ferguson Agencies) and entitled "Order Confirmation". He despatched copies of the form to the plaintiff and the customer. I will refer to this type of document as "Ferguson's confirmation".

(3) Thereafter he would receive one copy of a document headed "Order Confirmation" from the plaintiff. I will refer to this type of document as "plaintiff's confirmation document". This would take place a week or two after the despatch of Ferguson's confirmation.

(4) Ferguson checked plaintiff's confirmation against his confirmation before the delivery of the goods took place.

(5) According to Ferguson this procedure was followed in every case with the defendants including the orders forming the subject matter of the dispute.

[10] At the foot of the plaintiff's confirmation document the

following appears in capitals and in clear print:-

> "*THIS CONTRACT IS SUBJECT TO THE GENERAL CONDITIONS OF SALE APPEARING ON THE REVERSE HEREOF. THE CUSTOMER'S ATTENTION IS DRAWN SPECIFICALLY TO CLAUSE 19 THEREOF.*
>
> *DELIVERIES UNDER THIS CONTRACT WILL BE MADE IN ACCORDANCE WITH CREDIT INSURANCE LIMITS.*"

(I have sought to reproduce the same print size as appears on the plaintiff's confirmation document.)

Twenty-two standard "Conditions of Sale" are printed on the reverse side of the document. In its judgment the Full Court attached a photostatic copy of the terms and conditions describing them as being "in minuscule print and difficult to read". We have been furnished with a specimen of the actual document in question. In my view although the conditions are printed in small type they are legible. In any event legibility was not an issue before us and counsel for the defendants did not seek to attach any significance to it.

[11] Condition 19 provides as follows:-

> "19. <u>Acceptance of Conditions</u>
>
> 19.1 Upon delivery of the Order Confirmation to the Customer, the Customer shall, in the absence of signature of this Agreement by the Customer, be deemed to have accepted the terms and conditions of this Agreement unless the Customer gives written notice to the contrary to the Company within 3 (three) days of receipt of this Order Confirmation.

> 19.2 In the event of the Customer rejecting these terms and conditions the Company shall be entitled in its discretion to cancel this agreement at any stage thereafter by giving written notice to that effect to the Customer. In such event the Company shall not be liable for any direct or indirect loss suffered by the Customer in pursuance of such cancellation."

[12] Condition 14 deals extensively with the question of warranties in respect of goods supplied. In essence the company's contractual liability in respect of any latent or patent defect in the goods is limited to the replacement of the defective goods or to the repayment of the purchase price paid in respect of defective goods but the company is not liable to the customer for any loss, including consequential loss, suffered by the customer (see conditions 14.7 and 14.8 respectively).

[13] It is common cause that the defendants did not give any notice to the plaintiff that they rejected the standard terms and conditions. The defendants allege that they had never received the plaintiff's confirmation documents.

[14] In their plea and counterclaims the defendants allege that they, represented by their managing director, Mr Beraru, entered into oral

agreements of sale with the plaintiff, represented by Ferguson, at the plaintiff's principal place of business, for the supply of various quantities of cotton yarn; that it was an express or alternatively an implied or tacit term of the agreements that the cotton yarn would be of good quality and would be free from defects, in particular that the yarn would be fit for the purpose for which it was manufactured; and that it was in the contemplation of the parties when the agreements were concluded that the defendants would suffer certain consequential damages if the yarn were not of good quality. In its amended plea to the counterclaim the plaintiff avers that its liability in respect of defective material (it being denied that defective material was delivered by it to the defendants) was limited to the remedies and procedure provided for in condition 14 of the Conditions of Sale.

[15] Scheffer gave evidence as to the operation of the plaintiffs internal system. He was responsible for customer service as well as the processing of orders received by the plaintiff from customers. He testified that the processing of an order would be dependent on various factors, particularly whether the plaintiff could meet the required delivery dates. He stated that after an order was accepted from a representative such as Ferguson or directly from a customer, four copies of the plaintiff's confirmation

documents were generated by the plaintiff's computer - a green, a pink, a blue and a yellow copy. The green and pink copies were posted to the customer. The intention was that the pink copy would be signed by the customer and returned to the plaintiff, signifying agreement with the standard terms. The yellow copy was posted to the agent and the blue copy was retained by the plaintiff. The standard terms and conditions to which I have referred were printed on the reverse side of all four copies. Scheffer positively asserted that the plaintiff's system ensured that such confirmation documents were placed in envelopes and posted to customers. He was sure that confirmation documents would have been posted to the defendants although he personally did not do the posting. For a delivery to be effected by the plaintiff, the plaintiff would generate an invoice, a packing list and a delivery note. Scheffer prided himself on the efficient running of his department. He personally ensured that "paper work" was timeously executed and that all necessary documentation was sent to customers and agents. He testified that no post addressed to either of the defendants had ever been returned to the plaintiff as having been uncollected. If documentation was returned by the post office it was referred to him and he would personally ascertain the reason for the return and would take steps to rectify the position. Scheffer confirmed that Ferguson had taken the initial orders from

the defendants and used his own confirmation document.

[16] Cusse also gave evidence in regard to the procedure which was followed in the sales administration department of the plaintiff company. Scheffer was her immediate superior. She described Scheffer as a meticulous person who ensured that the office under his control should "run like clockwork". She corroborated Scheffer in regard to the plaintiff's system and method in regard to orders, order confirmations and all the relevant documentation. Generally, Scheffer signed the plaintiff's confirmation documents. Cusse personally, or through the staff immediately under her control, ensured that the plaintiff's confirmation documents were placed in correctly addressed envelopes, were franked and taken by a driver to the post office. She asserted that Scheffer checked regularly to see that the post had been timeously despatched. In cross-examination she was perplexed to hear that the defendants contended that they did not receive a single copy of the plaintiff's confirmation documents. Her view was that this was impossible. Cusse also testified that invoices were generated in her department and were posted in the same manner as the plaintiff's confirmation documents.

[17] Bester gave evidence about the system employed by the plaintiff and

corroborated both Scheffer and Cusse.

[18] Three customers of the plaintiff who had no connection with the defendants testified on behalf of the plaintiff. Each of them had placed orders with the plaintiff over a substantial period. They stated that they always received the plaintiff's confirmation documents in the post as well as the invoices and other documents described by Scheffer and Cusse. Two of them testified that they actually read the terms and conditions appearing on the reverse side of the plaintiff's confirmation document.

[19] None of the aforegoing evidence was seriously challenged by the defendants

[20] Reverting to the evidence of Ferguson, he also testified that he received the plaintiff's confirmation documents. He referred to his own confirmation documentation which states at the foot:-

> "Orders are accepted by us as Agents only and are subject to Supplier's confirmation. Neither the Suppliers nor ourselves can be held responsible for delays of delivery of goods caused by Strikes, Lock-outs, Prohibition of Import or Export or other circumstances or contingencies unavoidable or beyond our control, Force Majeure or Act of God. We are acting as Agents only and accept no responsibility."

He testified about a meeting at the plaintiff's premises in Port Elizabeth during 1991 when there were discussions concerning the plaintiff's terms and conditions for the supply of yarn. Mr Snijman, a director of the plaintiff, and Beraru were present. According to Ferguson, Snijman bluntly told Beraru that if the defendants were not satisfied with the plaintiff's yarn they must stop ordering it. Snijman indicated, according to Ferguson, that the plaintiff's attitude was based upon the existing terms and conditions of sale. Ferguson also gave evidence to the effect that he visited the defendants' premises on a reasonably frequent basis. He estimated that the defendants ordered approximately 30 to 40 tons of yarn per month from the plaintiff. On the occasion that they met in Port Elizabeth Beraru complained about the dye on the cotton not having come out correctly.

[21] Snijman in his evidence stated that he was not involved in the processing of the day to day orders taken by the plaintiff. He recalled three occasions when he had had discussions with representatives of the defendant. The first was in April/May 1990 at the defendants' factory at Garankuwa. The second was in 1991 also at the defendants' factory. The third occasion was on 24 September 1991 when Beraru came to Port Elizabeth. On the two occasions that he visited the defendants' premises he

was accompanied by Ferguson. The Port Elizabeth meeting concerned a complaint about yarn. As a result a piece of cloth was sent to the CSIR in Port Elizabeth for testing. Snijman made it clear to Beraru that any complaints would be dealt with in accordance with the plaintiff's terms and conditions and that no claims for consequential loss would be entertained by the plaintiff. He testified that it was possible to check the suitability of cotton in a matter of days by dyeing a sample. He said that if the defendants thought that the conditions of sale did not give enough time to test the cotton it was open to them to refuse to accept the yarn. He further said that the plaintiff did not consider it necessary to insist on the return of pink copies of the plaintiff's confirmation documents because this was considered to be superfluous. He made it plain that he wanted Beraru to understand that the plaintiff had a standard procedure for all its customers. He denied that reliance on the conditions of sale was an afterthought.

[22] The defendants called two witness in support of their contentions. The first was Mrs Verhoef who testified that she was employed by the defendants from the beginning of 1991 until the end of 1994 as a secretary. She performed these duties for Beraru and Mr Brin who was also a director of the defendant company. According to her Brin generally dealt with

deliveries. She said she did not receive much post at the time. She could not recall what documentation she received from the plaintiff apart from packing slips. She had a vague recollection of the relevant events and facts. When she was giving evidence she repeatedly said that she "could not recollect" or "did not remember". She, however, remembered receiving orders from Ferguson by fax. She could not recall receiving any documents which were pink or green; she remembered only white documents. Beraru was away much of the time and mail was kept for him in a file for his attention until he was available to read it. According to her when Beraru spent time at the defendants' premises in Garankuwa "he would look at all our documents that we had received in the past month or two that he was not there. If anything was not right or done right, he would get angry. He was very precise on what his documents had to look like and what he had to receive. If he had not received a document and he was expecting it he would ask us for it, we would have to look for it." In cross-examination she admitted that her memory of the events was very vague. She said that all the documents she received were filed in a secure cabinet. She also conceded that invoices were received through the post from the plaintiff. She also testified that Brin and Beraru "had all the documents or looked at all the documents that I had to give them through the post." Brin was not called to

give evidence.

[23] Beraru testified that he was the managing director of the defendants from 1990 to 1992. He spent approximately ten days out of every two months at the premises of the defendants. During these visits he checked all correspondence, all accounts and invoices. These were filed. He also enquired about progress at the production facility of the defendants. He testified that the plaintiff was the defendants' sole supplier of cotton yarn. All orders placed by the defendants were placed through Ferguson. The defendants received indents from Ferguson. He claimed that the indents contained all the relevant terms of the contract with the plaintiff. According to Beraru he at no time saw any of the plaintiff's confirmation documents containing terms and conditions of sale. If he had received such documentation he would "immediately" have approached his attorney for advice concerning the conditions and he would "never have agreed" to condition 14 appearing on the reverse side of the plaintiff's confirmation document because it was impossible "to see immediately a defect in the yarn" and react timeously. Beraru testified that he met Snijman on at least two occasions, the latter being at the plaintiff's premises in Port Elizabeth. During this meeting Snijman said that the plaintiff did not guarantee that

there were no defects in the yarn and that if the defendants did not like it they must stop buying the yarn. Beraru had brought to Snijman's notice certain defects in yarn supplied. He had had many years of experience in the textile industry and was aware of the importance of standard terms and conditions. He said conditions of sale which existed in South Africa did not apply in other countries. He confirmed that his own company had its own standard terms and conditions of sale which had been prepared by the defendants' attorneys.

[24] A trial court has the obvious and important advantage of seeing and hearing the witnesses and of being steeped in the atmosphere of the trial. These advantages were not possessed by the Full Court and indeed this Court. Although courts of appeal are slow to disturb findings of credibility they generally have greater liberty to do so where a finding of fact does not essentially depend on the personal impression made by a witness's demeanour but predominantly upon inferences from other facts and upon probabilities. In such a case a court of appeal with the benefit of an overall conspectus of the full record may often be in a better position to draw inferences, particularly in regard to secondary facts. (See, for example, *R v*

Dhlumayo and Another[5]*, S v Robinson and Others*[6] and *Hoffman and Zeffertt* – The South African Law of Evidence[7].)

[25] In his evaluation of the evidence Khumalo J commented as follows:-

> "The plaintiff's witnesses have corroborated one another on important aspects affecting the issue to be decided. Their demeanour cannot be faulted and was not criticised nor was their credibility attacked. The defendants' witness Mrs Verhoef appeared to be an honest witness but the difficulty I have with her evidence is that her recollection of events was very poor and the statements she made were repeatedly qualified by her uncertainty as to what documents were received at the time. She vaguely remembered invoices and statements. She also thought that she had seen one order confirmation. Her evidence is dangerously unreliable. The evidence of Mr Beraru also suffers certain defects. Although he appeared honest a number of questions remain unanswered."

[26] In discussing the evidence of Beraru the learned trial judge said that if Beraru's evidence was scrutinised carefully "the impression I get is that honest as he may be, he was not adequately informed about what was happening within the companies." It seemed a case of "the right hand not knowing what the left hand does".

[27] Refusing an application for leave to appeal, Khumalo J specifically rejected as being incorrect an argument addressed to him by counsel for the

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5 1948 (2) SA 677 (A) at 698
6 1968 (1) SA 666 (A) at 675 G - H
7 4th Edition pages 489/490

defendants that he had made no credibility findings on any of the witnesses called at the hearing. He then went on to refer to passages in his judgment dealing with the credibility of the main witnesses and concluded:-

> "From all these extracts it is clear that I believe the witnesses of the respondent and not those of the applicant. Credibility did play a role in the matter. As correctly pointed out by Mr Buchanan the determination of the credibility of witnesses was obviously inextricably bound up with the overwhelming probabilities which support the respondent's version."

In my view Khumalo J was overly generous in his assessment of Beraru's evidence. A careful consideration of his evidence leaves me with the distinct impression that Beraru was untruthful more particularly when he stated that he saw no documentation emanating from the plaintiff which contained contractual terms such as those set out in the plaintiff's confirmation documents.

[28] In my view the learned trial judge was correct in his assessment of the probabilities which I believe fully support the plaintiff's version. Some of the more important probabilities which favour the plaintiff's case are the following:-

(1) It is remarkable that other documentation such as invoices and statements which were sent to the defendants in the same manner as the plaintiff contends the confirmation documents were sent, were admittedly received by the defendants, but the plaintiff's confirmation documents were not.

(2) It is strange also that other customers of the plaintiff who testified at the trial received the plaintiff's confirmation documents, which they read, but that the defendants allegedly did not receive such documents.

(3) On the probabilities documentation that was received at the defendants' offices such as the plaintiff's confirmation documents would have come to Beraru's attention.

(4) Beraru stated that he was aware that orders had been booked to the second defendant (Paltex Knitting (Pty) Limited) because the first defendant (Paltex Dye House (Pty) Limited) was no longer covered by credit insurance. He stated that a certain Mr Mor who was employed by the defendants at the relevant time

had requested this arrangement from the plaintiff but that he had no authority to do so. Credit insurance is a matter covered by clause 20 of the terms and conditions of the confirmation document. It is also referred to in the endorsement in the left hand corner of the confirmation document. It is strange how Mor would have known about this if he had not seen the confirmation documents in question. The probability is that he would have reported it to his superior, Beraru. If he did not know about this how he was able to discuss the matter with Ferguson or Scheffer? Mor was not called as a witness.

(5) It is also not improbable that Beraru had been given the documentation and simply did not trouble to read it or apply his mind to it. His immediate concern was to get delivery of the yarn.

(6) Ferguson's confirmation had a clear endorsement on it to the effect that the plaintiff was to "confirm" every order placed through Ferguson. It is passing strange why the plaintiff would

not confirm orders received in its standard manner and send the confirmation to the defendants.

(7) Beraru was away from the defendants' premises for much of the time. In the circumstances he may not have been sufficiently informed as to what orders, executed by Brin, were confirmed in his absence. Even though there was no onus on the defendants in this regard, it is a matter for comment that they chose not to call Brin to testify, especially since he was responsible for the day to day running of the business of the defendants in the absence of Beraru.

(8) This is not a case of a single confirmation document being lost in the post but, on the defendants' case, a significant number of such documents, properly addressed to the defendants and posted over a substantial period of time, not reaching their destination.

(9) Although the defendants acknowledge receiving documents such as invoices, delivery notes and packing slips from the

> plaintiff no explanation was given, although this was requested by the plaintiff, why these documents were not discovered when a discovery affidavit was deposed to, and a reply given to a rule 35(3) notice, neither of which made reference to the defendants ever having had such documentation.

[29] In my view the judgment of the Full Court was, with respect, incorrect where it stated "the plaintiff relies on the following proposition - that the mere posting of the order confirmation to the defendants, is proof of its receipt". The evidence and the argument reveals that the plaintiff did not rely upon mere posting alone but upon the totality of the facts, particularly concerning its practice and method of confirming orders received from its representative.

[30] I believe that the Full Court also erred in its view that had Beraru received, or been aware, of condition 14 of the conditions of sale he would never have been prepared to agree to it because, having regard to the production process of the defendants, defects may have manifested themselves only after the expiry of 30 days. This contention loses sight of the fact that evidence was given by Snijman to the effect that late claims would have been considered and that in any event if Beraru had wished to

debate this clause before the orders were executed he could easily have done so.

[31] In my view there is also no support for the conclusion of the Full Court that the terms contained in the plaintiff's confirmation documents were imposed after the orders were placed and that they differed from what had been agreed upon. The totality of the evidence reveals that it was part of the plaintiff's system of acceptance of orders, and thus part and parcel of the contractual process, that orders placed with Ferguson were confirmed only upon the terms set forth in the plaintiff's confirmation documents. This is not a question of a belated variation of a contract to incorporate standard terms and conditions. The terms here were part of the contract concluded. The contract only came into being upon the non-rejection by the defendants of the terms of the confirmation documents, as provided for in condition 19.1.

[32] The judgment of the Full Court is also erroneous in so far as it suggests that what it considered harsh conditions imposed a greater burden of proof upon the plaintiff than the normal burden of a balance of probabilities. The type of conditions which are found in the plaintiff's confirmation documents

are standard conditions relating to the supply of manufactured goods. Indeed, Beraru in his evidence went so far as to state that his company employed similar conditions in supplying its customers with goods. This latter fact also lends support to the proposition that the plaintiff's confirmation document is the type of documentation which a purchaser of the goods in question would expect to receive and expect to find conditions in. (See, for example, *Micor Shipping*[8]*)*.

[33] In argument before this Court counsel for the defendants, whilst not conceding that the plaintiff had established that its confirmation documents had been sent and probably received by the defendants stressed, if I understood the argument correctly, that the defendant, represented by Beraru, concluded an oral agreement with Ferguson, in the terms set out in the body of Ferguson's confirmation document, for the supply of cotton yarn at the prices specified and for delivery as stated therein; and that the words appearing at the foot of that document were to be ignored, or at least meant no more than that the plaintiff was to "confirm" post-contractually what was already agreed by way of Ferguson's confirmation.

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[8] Supra at 713 H – 714 A

[34] These contentions were never put to Ferguson or any of the plaintiff's witnesses, nor led in the evidence-in-chief of Beraru. The whole focus of the proceedings before the trial court was simply directed towards ascertaining whether the defendants ever received the plaintiff's confirmation documents. Counsels' contentions are in any case untenable, for the following reasons:-

(1) There is no evidence to support the proposition that Ferguson who, as I have already indicated, was more a broker and not the plaintiff's agent in the legal sense, had any authority to conclude such an agreement The terms printed at the foot of Ferguson's confirmation state clearly that Ferguson acted as "Agent only and accepted no responsibility".

(2) The "confirmation" required from the plaintiff was not merely to confirm the terms set out regarding price and delivery as set out in Ferguson's confirmation but to stipulate the terms and conditions upon which the yarn was to be supplied. The argument entirely ignores the

true effect of the terms and conditions set out in the plaintiff's confirmation document and its role in effecting conclusion of the parties' contracts of sale.

[35] In my view the plaintiff established on a clear balance of probabilities not only that it sent its confirmation documents to the defendants (a matter not really in dispute) but that:

(1) As a matter of fair inference, such documentation was received by the defendants.

(2) The documentation was of the type on which a reasonable purchaser would expect to find standard terms and conditions.

(3) The plaintiff had done all that was reasonably necessary to bring the terms and conditions to the defendants' attention.

(4) In all the circumstances the terms and conditions set out on the reverse side of the plaintiff's confirmation document "governed the contractual relationship between the plaintiff and the defendants".

(5) In any event Beraru, who read all relevant documentation carefully, either read the terms and conditions or knew of their existence.

(6) The confirmation documents preceded deliveries in every case.

[36] In the circumstances the parties' contracts were governed by the plaintiff's standard terms and conditions, as held by the trial Court.

[37] The appeal is accordingly allowed with costs and the order of the Full Court is set aside. Substituted for it is the following:

"The appeal is dismissed with costs."

R H ZULMAN
JUDGE OF APPEAL

SMALBERGER ADP	**)**	
HOWIE JA	**)**	**CONCUR**
NAVSA JA	**)**	
LEWIS AJA	**)**	