

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2007-04067

BETWEEN

**DUNCAN VILLAGE MAINTENANCE
COMPANY LIMITED**

Claimant

AND

**TRINIDAD AND TOBAGO SOLID WASTE
MANAGEMENT COMPANY LIMITED**

Defendant

Before The Hon. Madam Justice C. Gobin

Appearances:

Mr. S. Marcus SC and Mr. Campbell for the Claimant

Mr. R. Bartley for the Defendant

JUDGMENT

1. The claimant, a Cepep contractor, sued the defendant for breach of contract. The matter came on for trial on March 19th 2009. On that date none of the defendant's witnesses turned up and their witness statements were struck out. The claimant's witness statement was not challenged by counsel for the defendant. I indicated there would be judgment for the claimant. Before I entered the order formally, I came to consider the issue of the quantum of damages, I raised a certain point on the claimant's pleadings and requested written assistance by submissions on the matter. On the date fixed for decision Senior Counsel, Mr. Marcus, appeared. I received further oral submissions from the parties.

The issue raised by the Court

2. The issue essentially related to the period for which the claimant was entitled to recover damages in the light of the pleadings as to the terms of the contract.

The Claim form

3. In the claim form, the claimant sought damages for “breach of contract entered into on the September 3rd 2002 whereby the defendant engaged the services of the claimant in accordance with the terms and conditions therein stated and which breach occasioned loss to the claimant in the sum of \$188,348.14 as at September 7th 2007”.

The statement of case

4. The statement of case referred to the agreement of September 3rd 2002. A copy of the agreement was attached to it. That document specified that the duration of that contract was for one year and this was confirmed at paragraph (2) of the statement of case. Some of the terms were set out in the following paragraphs and then came this at paragraph (5).

“At the end of the one year period provided by the said agreement there was cessation of work which resumed on or about the 5th day of November 2003 on the same basis as the agreement dated the 3rd September 2002.”

5. At paragraph (6) which followed, the claimant set out the alleged breach in the following terms –

“Subsequent to the resumption of work under the provisions of the said agreement the defendant without consultation with the claimant unilaterally reduced the said percentage from 35% to about 30% and later to 27%, thereby causing loss and damage to the claimant”.

The loss and damage was not particularized so that there is no indication as to the exact length of the period for which the claimant claims and the basis of the calculation of the alleged loss, that is, whether it was for the period November 2003 to October 2004 or from November 2003 up to the present time.

The Defence

6. For the purposes of this decision, what is significant is that the defendant admitted paragraph (5) above so that it accepted that from November 5th 2003, work resumed on the same basis as the agreement of September 3rd 2002. Following from this, it seemed to me that there could not be disputed that from November 5th 2003 to November 4th 2004 the defendant was bound to pay the claimant its management fees at the percentage agreed in the written contract that is, 35.2% of the labour costs. This is because on the face of it the pleading clearly stated that on or about November 5th 2003 work resumed “on the same basis” as under the agreement dated September 3rd 2002. I interpreted that to mean on all the same terms and conditions of that agreement including the duration of 12 months.

The Dispute

7. If I am to award damages in accordance with this interpretation, the claimant would be entitled to the payment at the agreed rate only until November 4th 2004. But the claimant contends that the claim for damages on the statement of case always extended to the present time because the contract remains in existence, with the provision of services by the claimant and payment albeit at a reduced rate by the defendant.

The claimants submissions

8. I wish to emphasise that the issue arose purely on the pleadings and that the matter turns ultimately on pleadings rather than on the interpretation of contracts. The claimant says that the statement in the pleading was that “work” was to continue on the same basis and not that the “contract was to continue” so that the 12 month duration clause would not have been incorporated. If this were so then the question as to what were the terms on which the “work” was to continue would have been left open. This interpretation would have been of no assistance to the claimant. Counsel argued alternatively that the statement is capable of meaning that the work would continue for an undefined or indefinite period but that in all other respects the terms of the original contract would remain the same. I am unable to find any basis for selectively incorporating the terms of the contract in this way. On the claimant’s interpretation the oral contract would also include the termination clauses 21 (A), (B) and (C). These would make little

sense in the context of an open ended contract, they clearly contemplate a 12 month duration. The fact that the claimant is advancing two alternative meanings of a pleading itself raises to question as to whether the claim was described with sufficient clarity.

9. The claimant relies on the fact that the relationship continues to today to imply a continuation of the contract on exactly the same terms of payment until the present. But this was never pleaded. Even the fact that a contract continued to today was not specifically pleaded. It was mentioned in the pre-action letter. But the terms under which it is alleged it continued were never particularized and in so far as the defendant is concerned, no indication has ever been given as to what, if any, was the case it was to meet in this regard. Had this been done, it may have been open to the defendant to plead a variation in the rate of payment and an acceptance by the claimant since November 2004, by its continuation to provide services. I should be slow to interpret the claimant's pleading in a way which deprives the defendant of his entitlement to know what is being alleged and what case he had to meet.

10. With reference to the submissions of Senior Counsel, I am respectfully unable to agree that I should imply that the contract continued on the same basis as the original agreement. The continuation of a contract is not in dispute. There is simply no claim in relation to it on the pleading. The statement of case is silent in this regard. There is no need for me to import

terms from the previous document to the “arrangement” that continued because in my view it does not form part of the subject matter of this case. But in any case, works continue to be provided and payment continues to be made. In those circumstances there could hardly be the need for me to imply a contract on the basis of conduct of the parties. What the claimant is really asking me to do in the absence of a specific pleading as required by the rules, is to find that the contract which continued between the parties after the second 12 month period ending November 2004 continued on the same terms for payment as the original one. I am not prepared to do this because this would be unfair to the defendant who has had no opportunity to meet such a case.

11. Order

There shall be judgment for the claimant. The defendant to pay damages for breach of contract in the sum of \$46,993.69 with interest thereon at the rate of 12% per annum from the 1st November 2004 until payment. The defendant to pay the claimant’s cost in the sum of \$14,500.00

Dated this 2nd day of June 2009

CAROL GOBIN

JUDGE