

**THE REPUBLIC OF TRINIDAD AND TOBAGO
IN THE HIGH COURT OF JUSTICE**

CV 02323 of 2014

BETWEEN

**CARIBBEAN TRANSPORTATION (Caritrans)
CONSULTANCY SERVICES COMPANY LIMITED**

CLAIMANT

AND

SURMOUNT LIMITED

DEFENDANT

Before the Honourable Mr. Justice Ronnie Boodoosingh

Appearances:

**Mr. A. Williams for the Claimant
Ms. D. James for the Defendant**

Dated: 21 September 2016

JUDGMENT

1. Both parties are limited liability companies. The issue in this case is whether an agreement came into being between the parties. The Claimant says yes. The Defendant says no.

2. The Claimant is a Civil Engineering firm that provides consultancy services and drawings for construction. The Defendant at the material time was a land developer.
3. If there was a contract, the issue arises as to whether the Defendant is liable to pay for certain drawings and work done by the Claimant.
4. The claim is a small one for the sum of \$25,141.25 plus interest. It was filed before the Petty Civil Court Act was amended. The parties were unable to resolve the claim between them. Thus a full trial had to be embarked upon for such a small claim. The work required by the attorneys far exceeded the value of the claim. Nonetheless, cases like these also have to be resolved, one way or the other.
5. Natasha Mc Collin on behalf of the Defendant accepts that she met with Lacey Williams of the Claimant company. She accepts they held discussions. But she says those discussions did not materialise and firm up into a concluded agreement. She said any agreement was contingent upon the Defendant being able to secure financing from the Bank for the housing project. She said Mr Williams agreed to come on board and to begin the work of doing the necessary drawings for the development before approval of the loan and that he specifically agreed that if no financing was forthcoming he would not be paid. In other words, he was taking a risk in keeping with what Ms Mc Collins said was a practice in the construction industry.
6. Suffice it to say, the Bank did not approve of the loan.

7. The Defendant also contended that the master plan of the site prepared by the Claimant was not adequate and fit for the purpose and as such no right to compensation follows.
8. Construction contracts like other types of contracts must come into being – there may be negotiations between the parties, but an offer and acceptance must be had. The Court may look to the course of conduct or course of negotiations between or among the parties to decide if a contract came into being. Any acceptance must be unequivocal and unconditional.
9. At critical focus is an email of 3 September, 2013 where the Defendant’s managing director wrote to the Claimant: “Based on your revised fee proposal of \$241,624.40 we wish to confirm that this is acceptable. We will discuss this matter further on your return.”
10. Mr. Lacey Williams and Mr. Mack Cain, a US based Landscape Architect gave evidence for the Claimant. Ms. Mc Collins gave evidence for the Defendant.
11. Mr. Williams is a Civil Engineer of over fifteen years. He holds a Master’s degree. He detailed in his evidence how he was contacted by Ms. Kalayan Monsegue. Discussions took place. He got an email of the topographical layout of the site. He developed a preliminary site plan. He had submitted a fee proposal. Ms. Mc Collins sent the email of 3 September, 2013 indicating the revised fee proposal was acceptable. Later on, a reduced fee was proposed for the work done was requested. This was provided on the basis that the balance would be paid later.

12. Further emails passed. There was no suggestion that the Defendant was not liable to pay the fees but that they did not have the money at the time and therefore the Claimant granted extensions for the payment to be made.
13. As late as 20 March, 2014 Ms. Mc Collins had written by email to Mr. Williams that the Defendant would try to compensate for these works. It was stated that the Defendant's cash flow was tight at the moment.
14. He categorically asserted that the work was not gratis. He said there was no arrangement for them not to be paid unless the Bank had approved financing of the project.
15. Mr. Cain could not attest to the agreement. He was engaged by the Claimant. What he gave evidence of was his contribution to the project and that he had liaised with Ms. Monsegue with regard to the drawings. Nothing was raised about the unfitness of the work done for the purpose it was intended.
16. Ms. Mc Collins for the Defendant gave evidence. Ms. Monsegue had given a witness statement but she did not attend court. Her witness statement was accordingly struck out, as was the witness statement of Garnet Jules who was advanced as a witness as to the fitness of the work done.
17. Ms. Mc Collins detailed the start of the project. She sought a loan and had meetings. Ms. Monsegue brought in Mr. Williams and his company. She had a meeting on 3 August, 2013. She said she told Mr. Williams that he could not be paid unless she got financing for the job – from the Bank. Mr. Williams accepted this. She referred to the various emails that were sent.

18. I have considered the evidence of both the Claimant's and the Defendant's witnesses. I prefer the evidence of Mr. Williams to that of Ms. Mc Collins – where there is a conflict between them.
19. It is clear from the email exchanges that the Defendant did not expect to receive the services of the Claimant for free. At no time when the invoice was sent or emails seeking to obtain payment by the Claimant did the Defendant through Ms. Mc Collins say to Mr. Williams, why are you sending me an invoice when you agreed not to accept payment unless we got the loan approval from the bank? In fact, as late as March 2014 Ms. Mc Collins was stating that they were committed to compensate the Claimant but that cash flow was tight.
20. The email of the Defendant of 8 August, 2013 asserted: "should we be in a position to make a payment prior to receipt of draw downs one will be done so accordingly."
21. This was an acknowledgement that a payment was agreed to and that it did not depend on the receipt of financing ("draw downs") from any other source.
22. Further, the Defendant's email of 11 August, 2013 showed that an agreement had been reached, which would be put into writing. It provided: "Once in agreement on the above and submittal of your revised fee proposal, a contract will be prepared accordingly."
23. It is in light of this that the Defendant's statement of 3 September, 2013 that the revised proposal was acceptable must be seen as evidencing that an agreement had been arrived at between the parties.

24. I also note that the Claimant and the Defendant had no previous business arrangement. In this context, the Claimant's assertion that a fee arrangement was arrived at is more plausible than the Defendant's evidence.

25. Based on what was said (written) and done by the parties it is clear to me that an agreement was concluded between them.

26. The nature of the work being done also suggested that an agreement for a fee was concluded. There was a back and forth among persons from both companies. Notably there was email contact between Mr. Cain in the United States and Ms. Monsegue, the Defendant's landscape architect.

27. Further, the reference to "we will discuss when you return" had to refer to the drafting of the written contract to evidence the previously agreed oral contract.

28. It is clear to me that there was a meeting of the minds between the Claimant and the Defendant representatives. I also find that the contract was not vague, nor was it uncertain. In agreements of this nature the interaction between the parties shows what was agreed.

29. I also did not accept Ms. Mc Collin's evidence that Mr. Williams agreed to work for free and thereby took a risk if the bank loan did not come through. I found this assertion to be a later invention to avoid paying.

30. The second aspect raised by the Defendant was that the work done by the Claimant was not fit for the purpose required.

31. I did not accept that aspect of their case either. First, the Defendant had no special expertise in the design or conceptual stage. Presumably this is why she had to engage the Claimant. Second, it was accepted that the drawings were subsequently used by the said Ms. Monsegue. Third, the Defendant made no complaint either orally or in writing that the work was not acceptable until after the claim was filed. This formed no part of her replies to the Claimant's requests for payment. Fourth, the Claimant's witnesses were able to satisfactorily explain the process they employed at the beginning stage of the work they did.

32. I found the absence of Ms. Monsegue's evidence to be significant given that she had also had interactions with Mr. Williams and Mr. Cain on behalf of the Defendant company.

33. It is also not denied that she later adopted the drawings done by the Claimant. In this regard this further supports the assertion that the Defendant had no issue with the quality of the work done by the Claimant.

34. It was also raised in submissions that the Claimant had failed to plead as material facts the involvement of Mr. Cain in the transaction. At its highest Cain was a sub-contractor of the Claimant. He assisted the Claimant in producing the design. His involvement did not go to the issue of whether a contract was in fact formed between the Claimant and Defendant. The fact of his involvement was also known to the Defendant. Thus in my view there was no material failure to plead his involvement by the Claimant.

35. The Claimant has proved its claim that there was an agreement and that work was done for the Defendant. I accept the value of the work as given by Mr. Williams.

This is supported by relevant invoices and a description of the actual work undertaken.

36. There is therefore judgment for the Claimant against the Defendant. The Defendant must pay the Claimant the sum of \$25,141.25 together with interest at 3% per annum from 19 September, 2013 to the date of judgment. The Defendant must pay prescribed costs to the Claimant based on the total of the judgment sum together with the interest calculated to the date of judgment. There is a stay of execution of twenty one days.

37. I must also commend the quality of work undertaken by both Counsel especially in their written submissions in what would have been a small claim for them. Nonetheless they both were very thorough and careful in their work.

Ronnie Boodoosingh
Judge