

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2015 – 02258

Between

PREMIERE CONSULTING GROUP LIMITED

Claimant

And

MELFOR SECURITY SERVICES LIMITED

Defendant

Before the Honourable Mr Justice Ronnie Boodoosingh

Appearances:

Mr Caesar for the Claimant

Mr L. Phillips Jnr for the Defendant

Date: 7 September 2020

REASONS

1. Mr Cecil Phillip is the principal figure in the claimant company. Mr Alfred Melville is the principal of the defendant company. They were also the two witnesses in this matter.

2. The simple issue is whether the defendant hired the claimant company to do any accounting work for it. The defendant said there was no agreement for this. The claimant says there was. This was a straight question of fact based on the competing versions. I considered the evidence given in the witness statements of Mr Phillips and Mr Melville and the cross-examination of both witnesses.

3. The evidence showed that both gentlemen knew each other well for many years. This was agreed in their witness statements. There was a court matter in which the defendant was involved that appeared to have required some kind of professional evidence of an accounting nature.

4. Both men agree that they met each other and they discussed work being done. However, this is where the disagreement begins.

5. According to Mr Phillips, he has worked for many years abroad and returns from time to time to Tobago to work. He knew Mr Melville for many years. He said the claimant company offered accounting services which was largely done by Mr Phillips himself. He explained before you can give an opinion you first have to compile the accounts. He stated that the person who compiles the accounts cannot review or audit it. An independent party has to do any audit.

6. Mr Phillips detailed in his witness statement various things he did. He stated he met with Mr Melville. He had a discussion with him about the work to be done. He could not tell him a fee without knowing the extent of the work to be done. He went to the defendant's office. He created an email account for the defendant while was necessary to sort out the accounts. He worked on compiling the information needed between March and September 2013. He also liaised with attorneys for the defendant in respect of the court matter. He sought clarification of information from Mr Melville. Getting information was challenging. He also sent a draft agreement to the defendant for the services. This agreement was not executed. He noted he sent letters seeking information, to compile the accounts, to government departments. He also said Mr Melville agreed to pay for the work done but eventually stopped taking his calls. In consequence he began these legal proceedings.

7. On the other hand, Mr Melville's version was that he never commissioned the claimant company. If there was any work being done

it was with the claimant personally. He accepted he did have a claim in court. He accepted that he met with Mr Phillips. He explained the exercise needed. He stated that the defendant's employee gave Mr Phillips information regarding the business on a flash drive. He accepted there were difficulties with the accounts. He stated that Mr Phillips said he was prepared to work with what information he had. He only intended to deal with Mr Phillips personally but never with any company. He stated there was no agreement or discussion of fees. He, therefore suggests that the claimant company cannot bring any claim against him because he had no agreement with it.

8. After five months, Mr Phillips advised him to settle the court matter. I considered this bit of evidence to be of critical importance. It showed there was an arrangement which involved professional advice being given by Mr Phillips.

9. Mr Melville also gave evidence that Mr Phillips told him that he could not do an audit and as a result the defendant employed another accounting firm, JALSA. JALSA was paid the sum of \$72,000.00.

10. Much of the evidence given by Mr Melville supported the claimant's version that there was an oral agreement. I accepted Mr Phillip's evidence and concluded that there was. I found that Mr Phillips practised his profession through his company and that this was the arrangement made. I considered Mr Melville's evidence that he had agreed for only Mr Phillips in his personal capacity to do work to be an artificial construct to avoid his obligations.

11. The next question that arose, was whether a fee was agreed. The claimant's witness says yes. Mr Melville says no. It is clear to me that Mr Phillips, through his company, was not working for free. JALSA was paid to conduct an audit. The question is whether it is reasonable to conclude that a fee was agreed. I conclude that no fee was agreed. The claimant did work however. He exhibited documents to his witness

statements evidencing work being done. He did the base work for what JALSA built on. According to the defendant, JALSA was paid \$72,000.00.

12. JALSA could not have done their work without the base work done by the claimant. I accepted his evidence that industry practice and ethics required a different entity to audit the accounts produced by another entity.

13. In the absence, however, of clear, justified and detailed evidence from the claimant on the value of the work, the court is somewhat handicapped to conduct an assessment. The court has insufficient evidence to compare the work done with a statement of the value of the work done as to how the claimant arrives at the figures claimed.

14. What I do accept is that not knowing what work was entailed in the job, the claimant could not give an accurate costing for fees at the start. But I accepted that there was an agreement to pay. There is evidence of

what JALSA was paid. Having done the base work, the claimant put the fee as \$147,000.00 in the draft agreement. But that has not been fully justified.

15. In the circumstances an award of nominal damages is appropriate. This does not necessarily mean small damages. The claimant had done some significant work and had given professional advice to the defendant. I am of the view that an appropriate award is the sum of \$50,000.00 in damages to be paid by the defendant to the claimant. The defendant will pay the claimant costs of the claim in the sum of \$10,000.00. In arriving at this sum for costs, I have taken into account the costs occasioned earlier in the proceedings by the costs of applications made by the claimant for relief.

Ronnie Boodoosingh (E-signed)

Ronnie Boodoosingh

Judge