

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV2016-02931

Between

WESTERN GENERAL CONTRACTORS SERVICES LIMITED

Claimant

And

JUNIOR SAMMY CONTRACTORS LIMITED

First Defendant

JUSAMCO PAVERS LIMITED

Second Defendant

Before The Honourable Mr Justice Ronnie Boodoosingh

Appearances:

Mr Ganesh Saroop and Mr Alvin Pariagsingh for the Claimant

Mr Jagdeo Singh, Ms Karina Singh and Ms Desiree Sankar for the Defendants

Date: 27 March 2019

JUDGMENT

1. The Claimant is a subcontractor who performed construction works for the First and Second Defendants (the Defendants). The First Defendant is a contractor. The Second Defendant is a subsidiary of the First Defendant.

Claimant

2. The claim against the Defendants is for monies due and owing in the sum of \$3,251,027.99 for work the Claimant says it performed on several construction contracts. The Claimant pleaded that it had a very good business relationship with the Defendants. Consequently, during the period December 2013 to February 2015, the Claimant, First Defendant, and Second Defendant entered into contracts for construction works at the following work sites:

- The NIDCO-Diego Martin Highway – Phase 2 (NDMH)
- The Charleville Overpass (CO)
- Nu-Iron, Point Lisas (NPL)
- Phoenix Park Gas Processors Limited (PPGPL)

- C3 Centre at Corinth (C3)
3. By letter dated 21 January 2014, Vishnu Ramjug, Contracts Manager at Junior Sammy Contractors Limited, wrote to the Claimant and confirmed the contracts for NDMH and PPGPL projects.
 4. On 15 May 2014, a purchase order numbered 49749 issued by the First Defendant to the Claimant, requested a quote from the Claimant for goods and services in connection with the CO project.
 5. By letter dated 20 August 2014, Hugh Murphy, President of Junior Sammy Contractors Limited, wrote to the Claimant and confirmed the subcontract for the C3 project.
 6. The Claimant did not submit evidence of a written agreement with respect to the NPL project.

7. The Claimant pleaded, however, that for each project, upon delivery of the goods and services at each site, the Claimant submitted invoices to a Quantity Supervisor or a Site Supervisor who signed the invoices as proof of the delivered goods and performance of the requested services.

8. In the Claimant's Statement of Case it was noted, work done for invoices numbering 1026-60, 1026-62, 1026-64, 1026-65, and 1026-66, were paid in full; payment for invoices numbering 1026-61, 1026-69, and 1026-73 were paid partially; payment for invoices numbering 1026-63, 1026-67, 1026-68, 1026-70, 1026-71, 1026-72, 1026-74, 1026-75, 1026-76, 1026-77, 1026-78, 1026-79, 1026-80, 1026-81, 1026-82, 1026-83, 1026-84, 1026-85, 1026-86, 1026-87, and 1026-88, were never made.

9. The Claimant pleaded that the Defendants never raised any concerns to the Directors of the Claimant regarding the quality of work performed by the Claimant.

Defendant

10. The Defendants contended that the terms and conditions as set out in the letter in relation to the C3 project do not have a connection to the other projects as that contract specifically related to the C3 project.

11. The Defendants further pleaded that with respect to invoices submitted for payment of work done, there was a procedure in place for approval of invoices. The procedure is that before commencement of the work, sub-contractors receive purchase orders. Invoices were correlated with purchase orders to ensure that invoices correspond with correct rates and works performed. Once the work was of a satisfactory standard, invoices were paid. Signing of invoices was only the first step in the verification process. Therefore, signatures on the invoices exhibited by the Claimant reflected only receipt of the invoice. The Claimant, however, did not adhere to the policies and procedures with respect to the invoices.

12. Additionally, while the Defendants acknowledge that they did partially pay invoices 1026-61, 1026-69, 1026-73, upon realization that invoices seemed inflated, they scrutinized the invoices. Interestingly, the Defendants

contended that collusion had taken place between the Claimant and an employee of the Defendants to inflate the invoices.

13. In relation to the C3 project, the Defendants pleaded that there were problems in relation to delays, lack of productivity and poor workmanship from the Claimant. Additionally, meetings were held with the Claimant to discuss ongoing performance concerns and delays on the project due to the Claimant's fault.

Counterclaim

14. The Defendants counterclaimed that the work performed by the Claimant was defective for several reasons. Work performed on the projects lacked skill, care, were performed improperly and in an unworkmanlike manner. The materials used were sub-standard, unsuitable, applied improperly, and unskilfully. Most times labourers were not present at the sites and materials not supplied within a reasonable time. Poor site management and control caused excessive delay.

15. As a result, the Defendants said they suffered losses. These losses included reworks at C3, NPL, PPGL, and CO projects; payment for scaffolding and losses because of extended delays at the C3 project; delays at the CO project; and delay at the NDMH project. The losses totalled \$3,328,000.00.

Defence to Counterclaim

16. The Claimant replied that there was never any complaints by the Defendants regarding the quality of work.

17. The Claimant pleaded it had no control over the approval process of invoices and relied on a memorandum sent by Hugh Murphy that indicated that payment would be made 21 days after submission of invoices.

18. Purchase orders were never issued on a regular basis and the Claimant received just one purchase order. This did not prevent them doing the work and claiming for it.

19. The Claimant's invoices were never inflated and rather, the Defendants agreed to the amounts on the invoices. Additionally, the Quantity Supervisor and the Project Manager approved the quantities of material used.

20. The Claimant also indicated that as per the terms of the contract, they were tasked with specific sets of work while the Defendants were responsible for another set of work. The Claimant states that the Defendants' performance of their responsibilities caused delays by either their not providing materials to the site or preparing the site for work to be conducted.

Law

21. This was an entirely fact driven case. It turned on which side's witnesses I accepted as being truthful and credible. The question was whether I accepted the invoices represented the true sums due under the various contracts for work done in a satisfactory manner. With due respect to the cases cited by both sides, the determination of this claim rested with the conclusions I formed based on the evidence presented and my evaluation of the respective witnesses. It is not necessary, therefore, to set out basic principles of contract law or the law related to monies due and owing for the purposes of this

judgment. There was one matter that concerned 2 claims for a sum above the fixed contract price. These related to the PPGPL contract and the Diego Martin Highway contract. In **Emden's Construction Law** cited in **Watts v The Star Hotel CV 2013 – 04806** it was stated:

“8.60 The bills of quantities may be incorporated into the contract so as to operate as part of the contractual definition of the work to be carried out. In such a case, the contractor is entitled to additional payment if the work is more extensive than described in the bills. Thus where the contract specified that work was to be done for a lump sum ‘according to the plans, invitation to tender, specification and bills of quantities, it was held that the effect of these words was to incorporate the terms of these bills as part of the contract. Accordingly the contractor was entitled to extra payment when he had to do more work than that mentioned in the bills.”

22. Further, in **Hudson's Building and Engineering Contracts**, 13th edition, it was stated:

“Contractual liability to pay a reasonable price for construction work can come about in a number of ways. Thus, if a request to carry out work and an intention to pay for it can be inferred from the

circumstances between the parties, silence as to price will not necessarily prevent a contract coming into being, provided that the contract is otherwise sufficiently certain, and a term for payment of a reasonable price will be implied. Obviously, this will be more likely to be the case if the contract is a relatively small one, or in cases where the work has been carried out rather than where a still executory contract is being alleged.”

23. It is to be noted that such a payment will not be an entitlement to a quantum meruit payment, which this case has not been advanced on in any event.

Summary of Evidence: Claimant

24. The Claimant had three witnesses, Ms Shabana John (Ms John), a Director of the Claimant, Mr Vedesh John (Mr John), a Director of the Claimant, and Mr Marlon Ramsumair, an employee of the Claimant.

Ms Shabana John

25. At paragraph 3 of Mrs John’s witness statement, she testified that there was a lengthy business relationship between the Claimant and the Defendants.

Because of the lengthy business relationship, the Defendants awarded the Claimant the aforementioned five projects.

26. At paragraphs 3, 7, and 8, she testified that by letter dated 21 January 2014, the First Defendant wrote to the Claimant to confirm the NDMH contract and the PPGL contract. By letter dated 20 August 2014, the First Defendant sent terms and conditions for the C3 project. A purchase order dated 15 May 2014, from the First Defendant to the Claimant requested a quote for materials and labour for the CO project.

27. Evidence with respect to the invoices are contained in paragraphs 9(b), 10 and 12. Ms John stated that the Claimant did not have control over the process of approval or the reception of invoices. It was not customary to be issued a purchase order before the commencement of the work and there were no purchase orders for a number of the projects but in spite of this payments were made. She adduced all of the previously mentioned invoices issued by the Claimant to the Defendants.

28. Revisions to certain invoices by the Defendants were not approved or within the knowledge of the Claimant. Since the Defendants approved quantity of materials and associated rates, there could not have been a discrepancy on the invoice and works completed. Furthermore, at paragraph 14, the project manager signed the invoices as the verification process.

29. At paragraphs 17 and 18, she said the Defendants never complained about the quality of work on any of the projects save and except work done at the C3 site on 13 January 2015. However, Fiaz Rahaman and Nicholas Beharry, Quantity Surveyors at the site, approved the reworks by the Claimant to the problems at C3.

30. At paragraph 29, she disputed parts of the Defence, which exhibited a letter and attached report prepared by Project Engineering Limited (PEL), as the letter and report did not refer to the Claimant.

31. At paragraph 37, she stated as a consequence of non-payment the bank denied loans and overdraft facilities to the Claimant and directors were forced

to use personal savings, credit accounts and borrow money from family members to pay employees in order to continue work for the Defendants.

Cross Examination

32. Ms John testified in addition to the work performed on the five projects there was also a contract for another project, Chuck E. Cheese.

33. The signed invoices were the evidence for performance of the contract. Each invoice was issued for separate tasks that were verified and approved by the Defendants. She acknowledged that five invoices had a separate design than the other invoices.

34. With respect to the pleadings and evidence-in-chief, documentation was not adduced for the following: the denial of a loan or overdraft facility for the Claimant; the use of personal savings and credit accounts to pay workers or those funds that had been exhausted; that personal loans were taken by Ms John or Mr Vedesh John to continue works for the Defendants; and that monies were borrowed from family members. Furthermore, other documents such as time sheets, receipts, variations, and letters of instructions were not disclosed to the Court.

Inconsistencies/Observations

35. Ms John did not specify the Chuck E. Cheese contract in the witness statement but listed the non-payment of the invoice in the pleadings and witness statement.

36. Ms John indicated that a meeting was held between her and representatives of Defendants, but this was not mentioned in her witness statement or pleadings.

37. Ms John indicated that as a result of receiving partial payment for the NDMH project, the Claimant wrote a letter to Mr Hugh Murphy and Mr Junior Sammy inquiring about further payment. This letter was not submitted to the Court.

Mr Vedesh John

38. Mr John is a director at the Claimant company.

39. At paragraph 5 of his witness statement, he indicated that he was present on all job sites in his capacity as Project Manager. It was his duty to ensure that the quality of work performed was of a satisfactory standard.

40. At paragraph 4, he stated that during the period February 2014 to February 2015, contracts were awarded to the Claimant for the aforementioned projects.

41. At paragraph 6, he disputed several areas of the Defendant's defence and evidence in chief. The report submitted by the Defendant, which included photographs, did not show work performed by the Claimant. He said the attendance register for workers at the site submitted by the Defendants was fabricated as workers signed an attendance sheet prepared by the Claimant and did not tick for presence next to their names. The Claimant did not misuse scaffolding as the Defendants insisted that scaffolding for the C3 project stay on site.

42. At paragraphs 7 and 8, despite the non-conformance report issued by PEL, the rework and repairs to the C3 project were completed satisfactorily.

43. At paragraph 9, he stated that the letter dated 20th January 2015, along with attached report which mentioned certain works, was not performed by the Claimant.

44. At paragraph 14, he testified that the Claimant was not able to secure loans and had been denied overdraft facilities by the bank, directors were forced to use personal savings, credit accounts or loans from family members to pay employees in order to continue work for the Defendants.

Cross Examination

45. Mr John testified that in construction, contractors/sub-contractors must adhere to the scope of works and bills and quantities and he had the responsibility to adhere to the bill of quantities.

46. He agreed that the projects were spread all over Trinidad and he was the only Project Manager employed by Claimant.

47. Consequently, he could not be at each job site at the same time. A site supervisor for the Claimant company provided progression reports but these reports were not reduced to writing.

48. As part of payroll there were attendance records and he was in charge of labour allocation and time sheets. For the C3 project, he had 25 men assigned to the site. Additionally, as part of executing the work, daily presentations and site meetings were held and minutes kept by the Claimant company.

49. Recording documents such as minutes to meetings were not submitted as part of the matter but he did not have possession of the documents.

50. The Claimant had to borrow money to pay off workers and suffered losses as a result of non-payment of the monies due and owing.

Inconsistencies/Observations

51. Mr John admitted that no evidence was submitted with respect to the borrowing of money.

52. He did not submit attendance sheets for the attendance of labourers at the site.

Mr Marlon Ramsumair

53. Mr Ramsumair is an employee of the Claimant who worked on the aforementioned project sites. In his witness statement he indicated he was a weekly paid employee and therefore signed time sheets provided by the Claimant.

54. Mr Ramsumair indicated that the pictures submitted as part of a report by Fiaz Rahaman with respect to the C3 project, were taken after work was completed, but as a result of rainfall, had to be reworked. He was present for these reworks.

Cross Examination

55. During cross-examination, Mr Ramsumair testified that a certain amount of labourers are required depending on the square foot or the amount of work involved at each site.

Defendants

56. The Defendants had three witnesses, Mr Hugh Murphy, President of Junior Sammy Contractors Limited, Mr Fawwaz Khan, Quantity Surveyor of Junior Sammy Contractors Limited, and Mr Fiaz Rahaman Project Manager of Junior Sammy Contractors Limited.

Mr Hugh Murphy

57. At paragraph 5 of his witness statement, he stated that the First Defendant did subcontract the Claimant for the supply of labour and equipment for the aforementioned five projects during the period December 2013 and February 2015. The First Defendant supplied construction materials.

58. At paragraph 8, he confirmed that by letter dated 21st January 2014, the Claimant was requested to perform works at the NDMH and PPGPL sites.

59. At paragraphs 11-12, he indicated that there was a procedure for the payment of invoices. Submitted invoices were correlated with rates, works completed and performance standards. Before any work commences, a purchase order had to be issued.

60. At paragraph 18, he stated that it was usual for the Claimant and First Defendant to revise invoices due to any defects, rates or quantities before they were officially signed off. The signature on the invoices reflected receipt of invoices and is the first step in the verification process.

61. At paragraph 21, he said the Claimant ignored the policies with respect to the submission of invoices and additionally there were delays on the Claimant's part in performance of the work on the projects.

62. At paragraph 22, he indicated that the invoices were inflated and did not reflect the work performed by the Claimant.

63. At paragraph 23, he noted with respect to the C3 project, a number of issues arose that required a sum of \$1,456,620.00 to rectify. At paragraph 25, he set out there were numerous occasions where poor performance delay, poor workmanship and problems with labour arose in relation to the Claimant's work. At paragraph 27, he said as a result of the reworks, the costs were deducted from the contract price.

64. At paragraphs 28 and 29, he indicated that the losses suffered on all five projects were the result of the Claimant's poor performance and delay resulting in loss and damage to the sum of \$3,338,920.00.

Cross Examination

65. Mr Murphy testified that gradually the level of professionalism, commitment and quality of work of the Claimant dwindled resulting in complaints from clients.

66. No documentary evidence of the complaints or meetings with the Claimant to discuss the complaints were submitted. The Claimant, through Ms and Mr John, was told of the complaints verbally in the presence of clients. No minutes were taken of meetings which Mr Murphy held with Ms and Mr John. General memorandums were electronically mailed to subcontractors regarding areas of performance, tardiness and professionalism. The electronic mails were copied to the Claimant. Hardcopies of the memorandum would usually be delivered to the sub-contractors.

67. The Claimant was paid for the work which the Defendants believed were an accurate reflection of work performed and that several of the Claimant's invoices were revised.

68. At times, the relationship with the Claimant was informal to not create unnecessary distractions for the Claimant.

69. He agreed that purchase orders issued by the Defendants were necessary to commence work and also agreed that save and except one purchase order no other purchase orders were adduced by the Claimant or the Defendants.

70. He indicated that the Defendants paid for certain works but if there were rectifications then the full price would not be paid.

71. He disagreed that part payments were made towards final payment but as part of progress payments. If there were problems, notes would be taken but these notes were not submitted to the Court.

72. When invoices were submitted, he said a project manager and quantity surveyor would sign off on the work as having received the invoice.

73. The invoice would then be delivered to the head office and sent back to the relevant site to be verified within a month.

74. He agreed that details in the pleadings or evidence-in-chief were not provided regarding the specific policies and procedures that were not followed by the Claimant.

Counterclaim

75. With respect to the C3 project, he testified that the Defendants incurred approximately a one million-dollar loss. In support of that figure, a report by Fiaz Rahaman was submitted.

76. He could not recall when the report was requested. Additionally, he could not recall if any rework was done at the C3 site.

77. He was not sure if the counterclaim figure was supported by any contemporaneous document.

Inconsistencies/Observations

The counterclaim figure was not supported by any contemporaneous document.

78. The Defendants did not submit any documentary evidence of the complaints nor any documentary evidence of having met with the Claimant to discuss the complaints. All concerns were relayed to the Claimant verbally in the presence of clients. No minutes were taken of these meetings.

79. There was no evidence that the memorandums were sent to the Claimant.

80. The purchase orders for the projects were not attached.

81. He did not outline what policies or procedures were specifically breached by the Claimant in submitting invoices.

Mr Fawwaz Khan

82. At paragraph 8 of his witness statement, he indicated that he was assigned to the C3 project in San Fernando as Senior Quantity Surveyor.

83. At paragraph 2, the level of professionalism, commitment and quality of work of the Claimant changed so that problems arose.

84. At paragraph 18, he stated that due to the concerns on the project, several meetings were held between Mr Murphy, Ms John and Mr John, and Mr Khan regarding the work. The warnings concerned performance and delay which the Claimant ignored.

85. At paragraphs 12 to 17 and 19, he discussed invoices. There was a procedure for paying invoices. Invoices were correlated with the rates and work completed. For work where rates were used but required corrections to the invoices, those corrections had to be agreed to by the head office. A revised and corrected invoice had to be approved by head office. This was detailed in a memorandum sent via electronic mail in 2011 and 2012 to sub-contractors by Mr Khan.

86. Invoices were reviewed by him. Following his review, the invoices would be submitted to the Accounts Department. It was the usual practice that when

the Claimant submits invoices, the invoices would be revised. This was the first step in the verification process. Invoices were disputed regularly because they seemed to be inflated.

Cross Examination

87. Mr Khan indicated that he made on site visits once a month. Nicholas Beharry worked under his guidance. He was responsible for verification of quantities and oversaw variations, which were additional works or change in scope of works for something not priced initially. He was not responsible for preparation of rates which was the responsibility of the contracts manager Mr Ramjug.

88. When invoices were sent, he would receive it and he or Mr Beharry would verify quantities on site. If Beharry did not verify, he would conduct measurements, and once the client accepted the work, he approved of the work performed. He indicated that the process of signing the receipt and verification is different from approval.

89. He could not recall whether the Claimant was doing work at that time the memorandum for submitting revised invoices were sent to sub-contractors.

90. He indicated that he realised invoices were inflated when he recognized anomalies.

91. He indicated that with respect to the issues of workmanship, they would have meetings and the clients would complain. He was present for a few of the meetings regarding a number of issues attended by Mr Murphy, Ms John and Mr John at the head office. He was not aware if minutes were taken and did not document the concern regarding the lack of professionalism by the Claimant.

Mr Fiaz Rahaman

92. In 2014 he was assigned to the C3 site.

93. At paragraph 8, he indicated that he received several complaints from the Quality Assurance/Quality Control Manager Mr Ravi Roopnarine and Mr Dennis Persaud from Project Engineering Limited regarding quality of works, supervision and manpower on the site.

94. At paragraph 10, the first stage of verifying invoices was done by him while the Quantity Surveyor verified the purchase orders against the rates.

95. At paragraph 14, he said a letter received from PEL on 17th June 2014, raised concerns of the quality of work.

96. At paragraph 12, he stated one concern that arose was the laying of concrete, the floor had to be recast which took 3-4 days.

97. There were manpower issues such as insufficient persons to supervise and qualified workers to conduct the respective works on site. Delay often arose from the lack of manpower.

98. At paragraph 17, he noted that based on recommendations he decided to record attendance between August and September 2014.

99. At paragraph 24, he said he was present for the remedial works being conducted. In total the remedial works costs \$3,338,920.00

Cross Examination

100. Mr Rahaman indicated that he was assigned to the C3 project but not initially as well as some of the other projects. As a Project Manager, he was there to ensure everything went according to project plans and he had a supervisory role over the Quantity Supervisor (QS). This meant that he was at the C3 site regularly, on a daily basis.

101. He testified that he was not sure when the C3 contract was awarded to the Claimant. There were other subcontractors but they were doing outside works.

102. He testified that the invoices pertaining to that contract would be presented to him but only for him to view and he would sign for receipt. He did not verify the invoice. He had a supervisory role over Nicholas Beharry, Quantity Surveyor, and that Mr Beharry also signed invoices. In some

instances both Mr Beharry and Mr Rahaman signed. Signing of invoices was the first stage to verify invoices.

103. Concerning any complaints he received regarding the C3 site he verbally spoke to the supervisors of the Claimant on site.

104. He testified that the letters dated 17th June 2014 and 9th January 2015, and the non-conformance report dated 14th January 2015 received from PEL complaining of performance did not specify the Claimant. He did not have any discussion with PEL before they prepared the report. PEL may have spoken to supervisors on site but it was before 17th June 2014. One of the concerns raised by PEL was poor attendance on site.

105. He might have written a letter regarding the issues at C3 but it was not submitted to the Court. He prepared a report about the Claimant dated 20th September 2014. In that report, his recommendation was for the Claimant to be terminated. Photographs attached to the report were dated October, November and December 2014.

106. After the non-conformance report, work was redone. The work was redone by the Claimant to rectify the issues. He was the person to rectify these issues along with Mr Beharry; extra materials had to be supplied by the First Defendant for reworks. However, these extra deliveries were not evidenced via documentation.

107. He was not sure if the final values for the reworks at the CO, NDMH, and PPGL projects were accurate but significant costs was incurred for labour, material, and equipment.

108. The Defendants owned, supplied and managed scaffolding.

Implausible

109. There was no documentation with respect to the remedial works done.

110. Information concerning the complaints by clients were communicated verbally.

111. He received invoices on site and signed as having received them in light of complaints.

112. Attached photographs on the report were dated October, November and December while the report was 20th September 2014.

Findings and Conclusions

113. I accepted the case for the claimant. I accepted the evidence of the claimant of the system of work that prevailed. Invoices would be presented. These would be signed off by the Defendants' project manager or engineer on site. This would then allow for payment. The defendant from the documents paid on invoices without purchase orders before. The arrangements were often verbal and confirmed by invoices.

114. I accepted the course of business occurred as described by Ms John in her evidence. She was tested rigorously in cross-examination but she maintained her position. She gave satisfactory explanations. Her manner of answering questions led me to believe her. I found she explained the process and made the process clear. I found Ms John to be an impressive and credible witness.

115. I also found Ms John had first-hand knowledge of the transactions. She was the one in the claimant company who oversaw the arrangements and prepared the invoices after the work was done. Compared to the witnesses for the defendants she was more on top of the operations. The evidence of the defendants' witnesses was less specific and generalised. The witness statements revealed broad statements, some of which were really conclusions, and generalised comments. The defendants' witness statements lacked concreteness.

116. There was a difference shown in some of the invoices in terms of formatting. Some had lines on the documents and some did not. I did not consider these to be of any significance or moment. There was no difference in terms of the work set out or the figures claimed. Thus I found the formatting to be immaterial. It may well be that the printed copy of the original from the copy was formatted differently in some instances.

117. There was an issue raised in cross examination also about invoice 1026-76 not being attached to the claimant's witness statement. I did not consider this to be significant either since the document was an agreed document.

118. The defendants' case was not that the invoices were not submitted and signed off as such but that the signing off did not signify approval of the work done. This was a main point of contention between the parties. I accepted the claimant's case that the signing of the invoices on site was not merely a matter of the defendants receiving the document but rather signified approval of the work to allow for payment. It seems sensible to me for the defendants'

qualified representatives on site to be the authorised person qualified to sign off on the work as contended by the claimant.

119. This was sufficient for the defendants to pay certain invoices.

120. In my view the invoices were satisfactorily proved. Having accepted Ms John as a credible and believable witness, I accepted the truthfulness of the invoices she presented. I note she was the authorised officer who had control of the documents of the claimant and she was the one who verified and generated these invoices presented. As noted, the defendants paid on some of these invoices as presented or accepted in their invoice sheets that payments were due. In some cases there were small variations in what the defendants were saying should be paid according to their invoice sheets but the fact is that work was acknowledged for which payment was due. These payments were not made. The invoice sheets sometimes made reference to the quality of work, not the fact of work. I should note, however, that no credible evidence was presented by the defendants to support the lack of quality which was alleged.

121. The fact of the defendant's counterclaim was also unwittingly an indicator of the bona fides of the sums claimed by the claimant. The counterclaim in total amounted to just \$10,426.01 more than the sums claimed. This was what the defendants say was their loss due to the claimant's defective works requiring re-works. If this was the approximate loss which they claimed, this tends to suggest that this was roughly what would have been due to the claimant if the work had been satisfactorily done. As I have

indicated the defendants have failed to prove their contentions about the bad work they alleged.

122. The defendants also submitted that an audit letter by Mr Ritchee Chadee would be a better guide as to what the correct claim should be by the claimant. There was no evidence as to how this figure of \$1,424,378.45 was arrived at. It was open to the defendants to call him as a witness to explain this. However, this was not done and I could attach no weight to his evidence. I preferred to rely on the evidence presented by Ms John and Mr John as being persons directly involved in the contracts who gave witness statements and presented themselves for rigorous cross-examination.

123. It seems to me that the defendants' unwillingness to pay had to do with their unproved suggestion of collusion between one of their employees and the claimant to inflate orders.

124. There was much cross-examination on the non-provision of time sheets and purchase orders and other documents to support the claim of the claimant. The practice among these parties was for payments to be made on the basis of sign off on the invoices notwithstanding the lack of other documentation. The rates for the jobs were agreed beforehand and the invoice ought to have triggered payment here.

125. Mr Ramsuair's evidence in cross examination was that there were about 15 workers on site at the C3 site. This was different from Ms John who

said there would be up to 35 workers. I found it more likely that Ms John would remember that matter better than Mr Ramsumair. Although this was an inconsistency I preferred her evidence on that matter to him.

126. In contrast, the defendants' evidence was far more vague. The defendant did not produce any counter documents to suggest a lower sum was due based on their records. They seemed to be content to lay back and see if the claimant would prove its case. The allegations were general and unsupported. Between the versions of the two sides, the claimant's evidence was more compelling.

127. The first witness for the defendants was Mr Hugh Murphy who is the President of the first defendant and a senior manager of the second defendant. He noted he had custody of the first defendant's documents. It was pointed out to him that he had not attached any written complaints about the work done by the claimant to his witness statement. His explanation was that with small contractors that was not their approach. They would talk to them about their performance and try to help them along. They wanted to keep things informal. He accused the claimant company of lack of professionalism, lack of timeliness and poor performance at times.

128. I found it difficult to believe that the claimant would be dissatisfied with the work being done to the extent they allege, have to re-do work because of the sub-standard work and this would not generate one written complaint. Surely the defendants would have been concerned about their own reputation with their clients. I saw no reason to believe that they would

want to go easy on the claimant company for poor work. No special relationship was shown between the claimant and the defendant companies to justify that approach.

129. The informal approach spoken of by Mr Murphy more seems to relate to how the contracts were formed and carried out. This is what the claimant contended; that many times there would be discussions or a call and the work would be negotiated like that. This sometimes happens in construction contracts; it is neither unusual nor impermissible. Very often the requirement for the work to be done in a timely manner may lead to arrangements such as this.

130. Another matter pointed out was that the emails which the defendants said were sent to the claimant produced by the defendants related to 2011 to 2012. These were 2 to 3 years before the claimant had done any work for them. The emails did not show they were sent to the claimant. Mr Murphy said the same email would be resent. However, they did not produce any of these re-sent emails.

131. It is to be noted also that in the Memo being referred to there is the continuous reference of invoices being verified and payable within 21 days. There is no mention of purchase orders. This document in fact supports the claimant's case that payments were paid on the invoices signed off by the site personnel of the defendants.

132. In cross-examination it was also pointed out that payments were in fact made to the claimant without purchase orders being presented. This went against the very process advanced by the defendants that the invoices had to be verified by sending to the head office, then returning to the site for verification.

133. Mr Murphy was asked about the role of the Project Managers and Quantity Surveyors. They were the ones on site. They oversaw the work being done by the claimants. The process described by Mr Murphy for payment of invoices was that they would merely be received by the Project Manager and / or Quantity Surveyor. They would go to the office for booking. Then some verification would take place there which involved the invoices going back to the site to be verified. This seemed implausible to say the least. The best persons to verify would be the ones signing them. They were in the position to sign off on the work at the time the invoices were presented on site. The office personnel could not verify the work. And if the invoices went back to the site, it is difficult to conceive who would have been better placed than the Project Manager or Quantity Surveyor to verify the work.

134. Further, I find it is unlikely that invoices would be submitted and signed off before the work had been completed. It is also unlikely that there would be signing off on badly done work. If there had to be re-work, the sensible thing to do would be to have the re-work done and then have the invoices submitted. This is likely because the defendants had committed to paying within 21 days.

135. It was demonstrated that payments were made on invoices with nothing else but the signatures of the receiving persons. The defendants appeared to be blowing hot and cold on this same issue.

136. A particularly troubling matter to the court was the report of Mr Faiz Rahaman about the alleged poor quality of work by the claimant on the C3 site. This is a report dated 20 September 2014. Following on this report are photographs captioned October 2014, November 2014 and December 2014. Mr Murphy gave a confusing explanation as to why this could be so that amounted to no explanation. It is fair to conclude that this report was produced after the fact and back dated to attempt to bolster the defendants' case. I found I could place no reliance on it and I conclude it was fabricated.

137. The defendants also sought to rely on a complaint about poor works on one of the sites in June 2014. However, the evidence suggests that the claimant was not engaged on that site until August 2014. Thus that report could not relate to the claimant's work. That the defendants could seek to advance it to justify its case is at least careless and more than likely dishonest.

138. It was also pointed out in cross-examination that the person the defendants say was colluding with the claimant was the contracts manager. This person would not go on site and therefore could not be part of the process to verify the work. It is therefore difficult to see how the claimant's invoices could have been inflated with his involvement since he was not on site.

139. Mr Murphy accepted that work was done on the C3 site. The position of the defendants, however, was that no payment at all was made to the claimant. There was no part payment as was done for other projects. This suggested that the defendants simply decided not to deal with the claimant company and settle any account for the C3 site. It smacked of a lack of bona fides on the part of the defendants.

140. I found that Mr Murphy was not a witness I could rely on. His witness statement lack specificity and made bald statements which were unsupported. One key statement was the alleged losses on the various projects the defendants say was caused by the claimant. There were just figures for the C3 project. For some of the others undated, unsigned documents were attached detailing losses. There was no evidence about who prepared these, how they were prepared and why the re-work was necessary. The witness statement vaguely referred to them being attached with no evidence about how they came about. Mr Murphy devoted one paragraph to the defendant's 3 million dollars counterclaim. It appears that the defendants were not seriously pursuing any counterclaim.

141. The defendant also called Mr Fiaz Rahaman. This witness was unable to satisfactorily explain why his report made on 20 September 2014 could include or refer to photographs from October, November and December 2014. He denied back dating the report.

142. He gave bald and bare evidence of losses on different projects attributable to the claimant. There were no details in his witness statement.

He admitted in cross-examination that the more detailed breakdowns of losses he said the defendants sustained were not prepared by him. He could not vouch for their accuracy since he had not prepared them.

143. His evidence was also implausible. He said he signed for receiving the invoices on site. He was in charge. He was there every day. He would be able to see what work was done and what was not done. The Quantity Surveyors reported to him. Yet, he was not responsible for verification of the invoices. He was the mere receiver. Others below him had to verify them even though he was present every day on site and they reported to him.

144. Mr Rahaman also referred to a complaint by PEL, a project managing on behalf of the client. This however was from June 2014. The claimant was engaged on 14 August 2014. The claimant is not mentioned in that complaint. Thus that Report could not relate to the claimant. There was no satisfactory explanation from this witness about that. He could not say when the contract was made.

145. The next matter he referred to was a complaint from January 2015 from PEL. This, however, was a matter specifically addressed by the claimant in their evidence. They indicated that remedial work was done by them. Mr Rahaman confirmed in cross-examination that the claimant was required to do this remedial work. This report therefore did not support the general statements made by the defendants' witnesses about the unsatisfactory work of the claimant.

146. Mr Khan's evidence was also unreliable. His evidence was general. It lacked specifics and details.

147. He referred to emails being sent and annexed copies of emails but it was clear that these were not sent to the claimant. These emails pre-dated the relationship of the defendants with the claimant.

148. The defendants' witnesses did not stand up to careful scrutiny. They were seeking to justify non-payment after the fact. There was no credible evidence to support their contentions that the claimant had not done the work they invoiced for or that the work was not up to standard.

149. I found there was a system to verify the work being done and it involved the persons signing off on the invoices. The system described by the defendants' witnesses appeared to me to be incredible and implausible. There was no support for it. The arrangements I found were as set out by the claimant's witnesses.

150. This allowed for flexibility and for some back and forth over invoices if there were queries. The defendant produced no credible evidence of any specific query they made to the claimant.

151. Despite the lack of time sheets and other documents, I find the claim proved as to the quantum due to them. Payments were made against invoices

without more. The absence of other documents in my view did not undermine the claimant's case. I found the claimant, through its witnesses, gave an accurate account of what was due to them and what was paid and not paid. They are entitled to judgment.

152. There were submissions raised about quantum meruit. The case was not presented on such a basis and was not defended on this basis. This was a case of breach of contract presented for monies due and unpaid under the contracts. Respectfully, therefore, I find it unnecessary in the circumstances to address the issues and authorities raised on those matters.

153. The counterclaim was not proved. As noted there was a lack of supporting evidence to prove the counterclaim. The documents produced in support were unverified. The court could attach little or no weight to them. There were just bald statements as to losses. I concluded that the counterclaim was not seriously pursued. The counterclaim is therefore dismissed.

154. This being a commercial claim, a higher rate of interest is justified than for personal injuries cases. Interest is of course discretionary. The payments were due at different times. For simplicity, I will award a rate of interest of 5% per annum to begin from the date of the filing of the claim form to judgment.

155. There is judgment for the claimant against the first and second defendants.

156. The first defendant must pay the claimant the sum of \$3,250,994.02 with interest to run from the date of the claim form to judgment at the rate of 5% per annum.
157. The second defendant must pay the claimant the sum of \$77,430.00 with interest to run from the date of the filing of the claim form to the date of judgment at the rate of 5% per annum.
158. The first defendant must pay prescribed costs to the claimant based on the judgment sum and interest to the date of judgment.
159. The second defendant must pay prescribed costs to the claimant based on the judgment sum and interest to the date of judgment.
160. The counterclaim having been dismissed, prescribed costs are payable by the defendants to the claimant on the prescribed scale based on the sum claimed in the counterclaim.
161. The trial had to be adjourned on the days originally fixed for it based on the late briefing of new Counsel on behalf of the defendants. I had reserved on the costs of the day. Given the lateness and the circumstances and taking account of the level of preparation for trial and the number of years called of counsel, the defendants must pay the additional sum of \$10,000.00 to the claimant for the costs of the day in November 2018.

162. There is a stay of execution of 28 days.¹

Ronnie Boodoosingh

Judge

¹ Thanks to JRC, Mr Shane Pantin for his assistance.