

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV2007/01730

BETWEEN

NATION DRIVERS COMPANY LIMITED

CLAIMANT

AND

THE ATTORNEY GENERAL

DEFENDANT

BEFORE THE HON. MADAME JUSTICE JOAN CHARLES

Appearances:

For the Claimant: Mr. Llyod Elcock

For the Defendant: Mr. Kerwin Garcia

Date of Delivery 4th April 2011

JUDGMENT

BACKGROUND

[1] The Claimant is a company engaging in the business of designing and implementing road traffic studies, strategies and developing road use systems.

[2] The Claimant and the Ministry of Works and Transport (“MOWT”) entered into negotiations for the former to do a road safety proposal; a portion of this proposal was utilized by the State in implementing a pilot project on road safety.

- THE CLAIM

[3] The Claimant contends that its Company Director, Mr. Stanislaus Huggins, in or about January 2004, started having negotiations with the then President, Mr. Patrick Manning, about the need to educate drivers in Trinidad and Tobago so as to stop the carnage on the roads. Mr. Huggins subsequently met with the then Minister of Works and Transport, Mr. Franklyn Khan, who requested that the Claimant prepare the National Road Safety Program (“NRSP”) and that it would be remunerated for the work done in preparing such. Mr. Huggins conceded that there was no agreement as to the price but that it was agreed that the cost of the Pilot Program would be the cost of the study.¹

[4] Mr. Huggins strongly asserted that the Community Road Safety Program (“CRSP”) could not have been created without first defining and determining the several other modules which comprised the NRSP.² The Claimant therefore had to restructure the

¹ Para.5, Witness Statement of Stanislaus Huggins

² Para. 13, *Ibid*

NRSP to create the CRSP as an independent body of work so that it would “stand alone” as a separate program.

[5] The Claimant acknowledges that MOWT’s letter of 30th August, 2004 directed it to start preparations for the CSRP and to deliver the CRSP to three (3) communities for which they proposed to pay \$150,000.000 for each community. However, Mr. Huggins asserts that thereafter he spoke with Minister Khan who orally extended the delivery of the CSRP from three communities to thirteen and the Claimant complied.

[6] However, to date the Defendant has only paid \$250,000.000 to the Claimant for the CSRP and there is an outstanding balance of \$200,000.00 which the Defendant has failed and/or refused to pay.

[7] The claim is therefore one for breach of contract which proceeds on two bases. Firstly, a claim for the sum of \$200,000.00 as the balance of the contract price due for the implementation by the Claimant of the pilot CRSP. Secondly, a claim for the sum of \$1.3M, as the sum payable by the Defendant for “an item of intellectual property of great commercial value” in the form of a NRSP, or alternatively a *quantum meruit* for the creation of this program.

- THE DEFENCE

[8] The Defendant advances that the Claimant provided information and advice in the form of the NRSP and which the MOWT reviewed

and found some merit in it.

[9] The MOWT, by way of letter dated the 30th August, 2004, agreed with the Claimant that one aspect of the proposed NSRP, namely the CRSP, would be adopted and implemented by the Ministry. Further, that the Claimant was only entitled to payment under the CSRP by way of invoiced submitted for work already completed.

[10] The Defendant denies that it ever agreed for the Claimant to undertake any road safety study or that it ever agreed to pay the Claimant the cost of either the entire CSRP or the NRSP but rather the extent of the work of the Claimant was contained in the letter dated the 30th August, 2004.

ISSUES

[11] The following issues arise to be determined in this matter::

- i. Whether there was a breach of contract by the Defendant in failing to pay the Claimant for the works performed in the CSRP under the terms of the letter dated 30th August, 2004;
- ii. Whether the Claimant has intellectual property rights over the CSRP;
- iii. Whether the Claimant is entitled to a *quantum meruit* award for the creation of the CSRP.

ANALYSIS

Whether there was a breach of contract by the Defendant in failing to pay the Claimant for the works performed in effecting the CSRP in the communities under the terms of the letter dated 30th August, 2004.

[12] The Claimant initially made an invitation to treat to the MOWT when it furnished a copy of the NSRP for the Ministry's perusal, evidenced by the letter dated 11th March, 2004. The MOWT replied in kind by letter dated the 22nd March, 2004 indicating that it had forwarded the NSRP to the Permanent Secretary of the Ministry and the Chief Traffic Engineer for their advice. Up to this point, there was no acceptance by the Defendant of the Claimant's proposal or any part thereof but merely negotiations between the parties.

[13] On the 20th July, 2004 by letter, the MOWT indicated to the Claimant that it had reviewed its proposal and was unable to proceed with the NSRP in its entirety but one aspect, the CSRP, was of some interest. The MOWT further indicated that it would be willing to undertake a Pilot Project and for the Claimant to submit a comprehensive program inclusive of a detailed cost structure for the MOWT's consideration. This letter can effectively be deemed an offer by the MOWT to employ the services of the Claimant.

[14] The Claimant accepted this offer by conduct. Conduct will only amount to acceptance if it is clear that the offeree did the act with the

intention of accepting that offer.³ The Claimant placing reliance on the letter of 20th July, 2004 submitted a 'Gantt Chart' indicating that the total cost of the CSRP would be \$2,193,675.00 inclusive of a developmental cost by letter dated the 4th August, 2004.

[15] As it is sometimes difficult when parties carry on lengthy negotiations to say precisely when the contract was concluded, the Court must look at the whole series of correspondence and decide whether on its true construction, the parties had agreed to the same terms.⁴ The MOWT's letter of 30th August, 2004, in the Court's view, confirmed the contract between the parties as it effectively stated the terms and conditions upon which the Pilot project was to be carried out.

[16] The letter stated that the MOWT had decided to implement the CSRP on a trial basis and that the Plan should be implemented in three (3) communities to be identified by the Claimant. It specifically stated that the MOWT was under financial constraints and would only be able to pay \$150,000.00 per community. Further, that invoices should be submitted to the MOWT on the basis of delivery of service. In addition, it indicated to the Claimant how the modules of the CSRP were to be developed and that they were to be evaluated by the Traffic Management Branch.

³ Chitty on Contracts, Vol. 1, 29th Edition, para. 2-028

⁴ *Ibid*, para. 2-026

[17] Under cross examination, Mr. Huggins, the sole witness for the Claimant conceded that the MOWT did not approve the NRSP but only the smaller CRSP. Further, both the documentary evidence and the *viva voxa* evidence of Mr. Huggins made it clear that the full scope of the work for which the Claimant was engaged was contained in the letter of 30th August, 2004.

[18] The Court therefore holds that at all material times the Claimant knew that it was acting under the terms and conditions of the letter of 30th August, 2004. The Claimant made no request or counter offer to the sum proposed for each community, as there is no documentary evidence to suggest that negotiations regarding price subsisted after the letter. It seems clear that both parties were in agreement and works were thereafter performed by the Claimant in accordance with the letter.

[19] The Defendant asserts that it paid to the Claimant the sum of \$100,000.00 as an advance payment to be set off against the maximum payment of \$450,000.00 for the three (3) communities. In addition, sometime in January, 2005, the Defendant advanced another sum of \$150,000.00 to the Claimant which was requested for the further implementation of the CRSP. This therefore amounted to the \$250,000.000 total received by the Claimant from the Defendant.

[20] The Claimant accepts that this was the total sum received from the Ministry but did not detail for what purpose it was given but merely that it was what was received for work done on the CRSP. The Court

therefore accepts that the Claimant has received to date the sum of \$250,000.00 from the MOWT for works done on the CRSP.

[21] A MOWT official, Mr. Dexter Wong Wai and Mr. Huggins were present at the launch of the CRSP by way of exhibitions at Trincity Mall and the St. Augustine Community Center. Mr. Wong Wai asserted in his Witness Statement, and was not shaken in cross examination, that both exhibitions had very little impact and were poorly attended. The latter venture being aborted as no members of the public attended.

[22] Mr. Wong Wai again made it clear in cross examination that he was only informed of the two aforementioned communities which he attended and he was unaware of any additional works. Based on the evidence presented to the Court, there is nothing to confirm that the Claimant gave the MOWT prior notice of its intention to deliver the CSRP in communities outside the terms of the agreement.

[23] The Court finds it odd that the Claimant would embark upon extra works without the prior approval of the Ministry or ascertaining the payment for the extra works. Not only does the Court find this poor business practice but it is also not in keeping with the Claimant's contention that it had been in this business for twenty (20) years. Certainly, it is the practice, if not only the Claimant, but of businesses generally to reduce all agreements into some form of writing.

[24] The Court therefore accepts the evidence of the Defendant to that of the Claimant that work was only carried out in two communities. However, in accordance with the terms of the letter of 30th August, 2004 and the Claimant having delivered the CSRP to two of the three communities, there is still an outstanding balance of \$50,000.000 owed to the Claimant. The Court acknowledges that considerable resources were expended upon the exhibitions at these two communities despite being poorly attended.

[25] The Court therefore holds that there was a contract between the parties which was finalized on the 30th August, 2004 and that there was breach of this contract by the Defendant in failing to pay the balance of \$50,000.00 for the delivery of the CSRP in the two communities.

Whether the Claimant has intellectual property rights over the CSRP.

[26] In the second limb of its claim, the Claimant is seeking a Declaration that it is solely entitled to all rights of property including the intellectual property rights contained in the NSRP and/or the CSRP and the sum of \$1.3M.

[27] Intellectual property is the collective name given to copyright, patents, trademarks, design rights, registered rights, confidential information and related rights. These rights are all exclusively statutory in nature and governed by the **COPYRIGHT ACT, CHAP. 82:80**. A copyright protects original works that maybe published or

unpublished and gives the owner exclusive rights to reproduce the work in any medium.

[28] The general rule is that the author of a work is the first owner of the copyright in it. Since there is no contention from the Defendant that it is the intellectual owner of the CSRP, which it utilized in its road safety, the Court grants the Declaration to the Claimant that it is solely entitled to all rights of property contained in the CSRP.

Whether the Claimant is entitled to a quantum meruit award for the creation of the CSRP.

[29] The general rule with respect to work voluntarily done is that a claimant cannot confer a benefit on a defendant and make him pay for it against his will. However, where there is an express or implied request by the defendant for the services to be rendered to him by the claimant, it is possible to imply a contract under which the defendant promises to pay *quantum meruit* for those services.

[30] The employment of a person in a professional capacity raises a rebuttable presumption that he is to be paid for those services.⁵ In **Clarke and Tucker v Tucker**⁶, Wylie J. agreed that there is such a presumption; when a person requests professional services, it is implied that he will pay a reasonable fee for those service, even though no fee is mentioned between the parties.

⁵ Halsbury's Laws of England, 4th Edition, Vol. 9, p. 476, para. 697

⁶ (1961) 4 WIR 44, p. 45

[31] A *quantum meruit* claim does not lie for the creation of the NSRP, as this work was undertaken as a gamble and its cost is part of the overhead expenses of the Claimant which it hoped would have been met out of the profits if a contract was achieved; if no contract ensues, there is no remedy.⁷ Further, the mere receipt of a benefit, when the defendant had no real option to accept it or reject does not justify a claim for *quantum meruit*.⁸

[32] However, when the MOWT contacted the Claimant *via* the letter of 20th July, 2004 to reduce the NSRP into a smaller project, namely the CSRP, they were then engaging the Claimant to render its services in a professional capacity. In **Craven-Ellis v Canons Ltd.**⁹, Greer LJ stated:

“... the party from whom payment was sought requested the work and obtained the benefit of it ... I think the law should imply an obligation to pay a reasonable price for the services which had been obtained.”

[33] Further, in creating the CSRP from the NSRP, the Claimant devoted considerable time and employed the services of other personnel, outside of its company, to accomplish this task. The Claimant is therefore entitled to a *quantum meruit* award for the work done in creating the CSRP.

⁷ William Lacey (Hounslow) Ltd. v Davis [1957] 1 WLR 932, at p.934 per Barry J.

⁸ Forman & Co. Propriety Ltd. v Ship “Liddesdale” [1900] A.C. 190

CONCLUSION

[34] The Court makes the following orders:

- i. The Defendant to pay to the Claimant the sum of \$50,000.00 as the balance due on the contract for the implementation of the CSRP;
- ii. The Defendant to pay to the Claimant the sum of \$500,000.00 as *quantum meruit* for the work done in the creation of the CSRP;
- iii. Interest on the sum of \$550,000.00 at the rate of 6% from the date of instituting these proceedings to the date of judgment.
- iv. The Defendant to pay to the Claimant the costs of this action to be assessed in default of agreement.

JOAN CHARLES

JUDGE

⁹ [1936] 2 KB 403, p. 939