

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV2017-000215

WELLINGTON BAYNES

Claimant

AND

VANGUARD HOTEL LTD.

Defendant

BEFORE THE HONOURABLE MADAME JUSTICE JOAN CHARLES

Appearances:

Claimant: Ms. Deborah Moore-Miggins

Defendant: Ms. Deedra Maharaj

Date of Delivery: 21st October 2020

JUDGMENT

- [1] The Claimant, acting on behalf of himself and the Bethel Interest Group, a non-profit organization claimed against the Defendant:
1. A declaration that there was a subsisting contract between the Claimant and the Defendant which was partially oral and partially written made on or around 4th April 2016.
 2. A declaration that the Defendant was in breach of the said contract with the Claimant.
 3. Special damages in the sum of \$20, 736.00.
 4. Damages for breach of contract including for loss of profits from the tournament and injury to his reputation.
 5. Interest
 6. Cost and/or further relief.

THE CLAIM

- [2] The Claimant pleaded that he had coordinated golf tournaments at the Defendant's hotel over a period of six years and was familiar with the arrangements for doing so.
- [3] In or around February 2016, the Claimant held discussions with one Kathy Charles, Golf Course Manager at the Defendant's hotel, about hosting a charity golf tournament on the 9th and 10th July 2016, sponsored by the Better Village Olympics. He pleaded that Ms. Charles had been held out by the Defendant hotel as its servant/agent with authorization to negotiate contracts on its behalf.
- [4] The Claimant averred that on or about the 4th April 2016, he entered into a partially written, partially oral contract with the Defendant (the contract) under which the Defendant agreed to host the Better Village Olympic Charity Golf Tournament on the 10th July 2016 at a revised cost of twenty thousand two hundred and fifty dollars (\$20, 250.00) upon

payment of a deposit of seven thousand dollars (\$7000.00) to be paid by the 4th April 2016. The Claimant asserted that pursuant to this agreement:

- a. he paid the said deposit of \$7000.00 on the 4th April 2016
- b. on the said 4th April 2016, Ms. Charles acting on behalf of the Defendant confirmed the booking and authorised the Claimant to proceed with arrangements for the event.

[5] The Claimant, acting in reliance on Ms. Charles' representation to proceed with the planning for event, incurred the following expenses:

- i) printing (1) banner and (8) large posters
- ii) made several trips to Trinidad to promote the tournament;
- iii) sponsored the visit and accommodation of two Village Olympics officials from Trinidad to supervise and advise on the tournament arrangements and ground transport cost for two days for the officials.
- iv) further expenses in advertising the event countrywide using various media and other communication sources including the display of promotional posters on the notice board of the hotel.

[6] The Claimant also solicited donations from various or companies, business and government ministries.

[7] The Claimant pleaded further, that thirty teams were expected to participate in the tournament each paying a fee of five thousand dollars (\$5000.00). He projected profit of approximately one hundred and fifty dollars (\$150,000.00).

[8] In breach of the contract, on the 11th April 2016, one Christopher Forbes, General Manager of the Defendant informed the Claimant by letter of same date that it would not be hosting the golf tournament. On

the 15th May 2016, the General Manager ordered that the poster advertising the golf tournament be taken down from the Golf Shop.

- [9] The Claimant was forced to abandon the tournament as a result of the Defendant's termination of the contract which caused the Claimant to suffer loss and damage, including injury to his reputation as a golf promoter.
- [10] The Claimant therefore claimed Special Damages totaling twenty thousand seven hundred and thirty six dollars as well as loss of profit.

DEFENCE

- [11] The Defendant denied that a contract subsisted between it and the Claimant and that it had breached such contract by terminating same unlawfully.
- [12] The Defendant admitted that it had previously had dealings with the Claimant as golf promoter during the years 2014, 2015 and 2016. It was also admitted that the Claimant and Kathy Charles, Golf Club Services Manager of the Defendant, held discussions with the Claimant about the staging of a Charity Golf Tournament at the Defendant's golf course on the 9th and 10th July 2016. However it was denied that Ms. Charles was authorized to negotiate and/or give final approval for contracts. It was asserted that only the Defendant's General Manager/Director of Sales and Marketing or Chief Accountant was authorized to contract on its behalf.
- [13] The Defendant averred that its General Manager informed the Claimant that the tournament would be confirmed upon payment of the full cost of hosting the tournament on the 30th April 2016. An email confirming this conversation was sent to the Claimant on the 22nd April 2016. The Defendant denied that the Claimant made any other payment.

[14] The Defendant noted that the hotel only took over the operations of the Golf Course on the 1st November 2013; prior to that date the golf course was operated by the Magdalena Grand Beach and Golf Resort.

REPLY

[15] The Claimant averred that both pre and post November 2013 the Defendant described itself as Vanguard Hotel Limited, trading as Magdalena Grand Beach Resort – therefore the Defendant Company was the same owner of the resort. It was also averred that both the subject contract and pre November 2013 contracts were prepared by the Defendant.

[16] The Claimant pleaded that in accordance with past dealings with the Defendant, a deposit was paid of \$7000.00, and the Claimant's posters were erected by agents of the Defendant as part performance of a verbal contract to be confirmed in writing that the Defendant would host the Golf tournament. Further, that the Claimant and Ms. Charles, the Defendant's agent, continued discussions regarding contract terms until Mr. Forbes ordered that the tournament posters be removed from the hotel's premises.

[17] The Claimant asserted that the Defendant, through its agent Ms. Charles agreed to host the tournament on payment of the deposit of \$7000.00, the balance to be paid before the first ball tee-off. It was pleaded that this was the prevailing practice consistent with past dealings with the hotel regarding its payment schedule. The Claimant expected that these terms were to be included in the new contract, which Ms. Charles referred to in her correspondence dated 4th May 2016. He also pleaded that Ms. Charles verbally assured him that the usual contract terms in accordance with the prevailing practice would be included in the new contract.

- [18] The Claimant also averred that the demand for total payment upfront was unrealistic in that the number of participants had to be determined before the total cost could be calculated; the final numbers could only be ascertained just before the first ball tee-off when all participants would have registered.
- [19] It was pointed out that the Golf Pro Shop where the posters and banners for the tournament were erected was owned by the Defendant; said posters and banners were erected with the consent of the Defendant's agent, Ms. Charles.

EVIDENCE

Wellington Baynes

- [20] In his evidence in chief, Mr. Baynes testified that on the 4th April 2016, Ms. Charles, on behalf of the Defendant, verbally confirmed that booking of the golfing groups' accommodation and authorised the Claimant to proceed with arrangements for the event.¹
- [21] He stated that Ms. Charles, as Golf Club Services Manager, represented that she was authorised to negotiate and approve contracts on behalf of the Defendant from 2014 and even before that date.²
- [22] After Mr. Forbes, General Manager indicated by letter dated 11th April 2016, that the Defendant would not be hosting/participating in the tournament, the Claimant advised him that he had already contracted with the Defendant for the latter to host the tournament. Mr. Forbes questioned the Claimant about the contract whereupon the letter advised him to speak to Ms. Charles³. Mr. Forbes later admitted that he was

¹ Para 99(b) of the Claimant's witness statement filed on 12th December 2017

² Para 11 of the Claimant's witness statement filed on 12th December 2017

³ Para 19 of the Claimant's witness statement filed on 12th December 2017

unaware of the execution of this contract but demanded that the balance be paid by 30th April 2016.

- [23] The Claimant explained that during a telephone conversation with Mr. Forbes about the demand that the total price be paid within eight (8) days, Mr. Forbes confirmed that this demand for upfront payment was only being made of the Claimant. Mr. Baynes also stated that even after the letter and verbal exchange with Mr. Forbes, Ms. Charles continued her discussions with him about the terms of the contract, and by email dated 4th May 2016 agreed to vary its terms. The Claimant accepted the proposed variations and requested the new promised contract.⁴ However, before the new written contract could be issued, Mr. Forbes ordered that the Claimant's banners and posters be removed from the golf shop.
- [24] The Claimant claimed that in all his discussions with Ms. Charles post the 22nd April 2016, it was never communicated that the Defendant was insisting on the one hundred percent payment.
- [25] In cross-examination, Mr. Baynes explained that he was not aware prior to 2013 that the hotel did not own the golf course. He revealed that the Defendant issued a standard form contract by which it demanded a one hundred percent deposit of thirty eight thousand (\$38,000.00) dollars to host the tournament.

EVIDENCE FOR THE DEFENDANT

Kathy Charles

- [26] This witness revealed that she has held the position of Golf Club Services Manager since 2017; that prior to this she was the Events Coordinator at the Magdalena Grand Resort. Ms. Charles acknowledged that the Claimant holds an annual tournament – the Sexy Baynes Tournament at

⁴ Para 20 of the Claimant's witness statement filed on 12th December 2017

the resort and that she dealt with him in 2014 as Events Coordinator at the resort relative to this tournament in 2014. Ms. Charles revealed that on occasions prior to 2014, as well as the instant tournament, the Defendant prepared the written contracts.

[27] Ms. Charles testified, during cross-examination, that in 2014, the hotel usually allowed tournament organizers to pay a deposit and comply with a schedule of payment until the first ball tee-off; however in 2016 the Defendant would ask the client if he/she was willing to pay the full price since another client may be willing to pay the full price for the same day.

[28] This witness admitted that she sent an email to the Claimant on the 4th May 2016, offering a variation of the payment terms for the contract by reducing the cost from \$38,000.00 to \$20,000.00. She however stated that she had received no approval for this revision. She could not however say whether the initial deposit of \$7000.00 had been refunded to the Claimant.

[29] Ms. Charles also acknowledged that at no time was the Claimant informed that his deposit would not be accepted or refunded. She also agreed that the sum to be paid was based on the number of participants in the tournament – if fewer people participated there would be no refund. Later on in cross-examination, Ms. Charles stated that the client would be refunded in this situation.

[30] Significantly, this witness admitted that the refund policy was an important term which should have been included in the contract but was not. She asserted that she only became aware of correspondence between Mr. Forbes and the Claimant in 2019.

[31] This witness admitted that the Claimant's posters and banners were put up with her consent and remained on the Defendant's premises past 30th April 2016 with her knowledge and consent. Ms. Charles also admitted that the contract price for hosting a Golf Tournament is

finalized as late as the morning of the tournament ‘sometimes’; further, that the contract would be amended whenever payments were made on the day of the tournament for a large number of players. This witness also explained that where there were fewer players than originally estimated, the quotation would be revised.

Christopher Forbes

- [32] He revealed during cross-examination that Ms. Charles reported to him when he was General Manager at the Magdalena Grand Resort. He stated that while Ms. Charles could conduct initial negotiations with the client, she could not conclude contracts with them. He went on to say, further, that Kathy Charles could not sign on behalf of Vanguard Limited.
- [33] He agreed that the 2016 contract did not provide for an initial refundable security deposit which is how he described the \$7000.00 paid by the Claimant to the Defendant as a deposit on the full contract price for hosting the tournament.
- [34] Mr. Forbes testified that the final quotation would be based on the number of players participating in the tournament – the price can be changed if there are more players but not if there are less players.
- [35] This witness admitted that the Claimant had not been refunded the \$7000.00 deposit paid.
- [36] Mr. Forbes agreed that the word ‘deposit’ in the contract did not suggest that it was the total payment. He asserted however that the Claimant’s banners had not been erected on the Golf Shop’s premises in April since they could only have been erected with his permission, not Kathy’s.

ANALYSIS AND CONCLUSION

[37] After careful assessment of all the evidence and the pleaded cases I found the following facts:

- a. Kathy Charles was the duly authorized agent of the Defendant to negotiate and conclude contracts with clients such as the Claimant. The Defendant held her out as such an agent and the Claimant dealt with her on that basis.
- b. The Claimant and the Defendant through its agent, Kathy Charles, entered into a contract, part oral part written on the 4th April 2016, by which the Defendant agreed to host a golf tournament organized by the Claimant and Bethel Group at its golf course.
- c. It was agreed between the parties on the 4th April 2016, that on the payment of a deposit of \$7000.00 by the Claimant to the Defendant to host the tournament, the latter would do so subject to settlement of other terms of the contract, including the final cost for hosting the event.
- d. Pursuant to that agreement, the Defendant through its agent authorized the Claimant to proceed with arrangements for the golf tournament. Accordingly, the Claimant erected banners and posters on the Defendant's golf shop and proceeded to raise funds and attract players for the tournament.
- e. The Defendant's agent aforesaid verbally agreed with the Claimant that he could make payments toward the contract price for hosting the tournament up to the time of the first ball tee-off.
- f. The Claimant and Defendant were in continuous discussions with respect to the contract - varying the quotation downward from \$38,000.00 to \$20,000.00; further that both parties agreed that the final contract price and therefore the final payment was to be determined by

the total number of participants in the tournament which could only be ascertained on the day of the tournament before the first ball tee-off.

- g. Mr. Forbes unlawfully terminated the contract thereby occasioning loss to the Claimant.

THE CONTRACT

[38] Both sides agree that the parties entered into a contract for the hosting of the golf tournament on the 4th April 2016; they differ on the issue of the mode of payment for hosting the tournament – whether the entire estimated cost was to have been paid by the Claimant by the 30th April as demanded by the Defendant’s General Manager Mr. Forde, or whether the Claimant would make payments up to the first day tee-off as contended by the Claimant.

[39] I note that all parties – the Claimant as well as Kathy Charles and Christopher Forbes of the Defendant testified that a client could make payments on the contract up to the day of the tournament and that the final contract price would be determined by the number of participants.

[40] The Defendants’ witnesses also testified that it was the usual practice in hosting events of this kind that the contract would be amended if there were more or less players than originally estimated by the parties; there would be a refund to the client if fewer persons participated and an increase in the price if more players took part in the tournament. Also of note is the fact that the Defendant kept the Claimant’s deposit of \$7000.00 as no refund was given to him at the time that the contract was terminated on the 15th May 2016 or at all. Both Mr. Forbes and Ms. Charles acknowledge that Mr. Baynes should have been refunded his deposit.

[41] Although the written contract provided that the entire sum be paid on its signing, this clause was varied by the conduct of the parties in that:

- (i) the quotation of \$38,000.00 was described as a 'deposit' and not the total contract price. Both Mr. Forbes and Ms. Charles acknowledge that the term 'deposit' used to describe the payment due under the contract dated 6th April 2016 did not suggest that this was the total payment.
- (ii) the Defendant accepted the deposit of \$7000.00 from the Claimant and did not indicate to him at any time that this deposit on the contract price was not accepted or would be refunded. In fact it was kept by the Defendants.
- (iii) upon payment of the said deposit of \$7000.00 the Claimant was permitted to advertise the event or the Defendant's golf shop by the erection of banners and posters.
- (iv) there was an oral agreement, based on industry practice regarding the holding of golf tournaments and the history between the Defendant and Claimant, that the price on the quotation was not the final figure but an estimate; the contract could and would be revised to cater for increase or decrease in participants in the tournament.
- (v) The Claimant and Defendant, through its agent Ms. Charles continued discussions on the contract which resulted in a variation of the price downward, before the written contract replacing this variation could be issued, Mr. Forbes terminated the contract.

[42] In the circumstances I hold that a valid contract subsisted between the Claimant and Defendant, partly written, partly oral, that the Defendant would host the golf tournament hosted by the Claimant at a final cost to be determined when all the participants were known as at the first day tee-off of the tournament. It was also agreed that upon payment of a deposit of \$7000.00, which was valid consideration for the said contract,

the Claimant could proceed to advertise the tournament on the Defendant's premises and elsewhere. The written contract requiring that the Claimant pay a deposit of \$38,000.00 was later varied to \$20,000.00. In any event, the payment terms were being discussed and it was agreed that a new term written contract be produced reflecting the new terms for payment when the Defendant abruptly terminated said contract.

THE AGENCY

[43] **Halsbury Laws of England 5th Ed Volume 1**

“125. Rights and liabilities of principal

As a general rule, any contract made by an agent with the authority of his principal may be enforced by or against the principal where his name or existence was disclosed to the other contracting party at the time when the contract was made.

Apparent (or ostensible) authority

[44] **Bowstead on Agency 18th Edition at pages 335-336 at paragraph 8-013** states:-

“Where a person, by words or conduct, represents or permits it to be represented that another person has authority to act on his behalf, he is bound by the acts of that other person with respect to anyone dealing with him as agent on the faith of any such representation, to the same extent as if such other person had the authority that he was represented to have, even though he had no actual authority”.

[45] **In Freeman and Lockyer v Buckhurst Park Properties (Magnal) Ltd [1964] 2 QB 480 at 502-503:-**

“It is necessary at the outset to distinguish between an "actual" authority of an agent on the one hand, and an "apparent" or

"ostensible" authority on the other. Actual authority and apparent authority are quite independent of one another. Generally they co-exist and coincide, but either may exist without the other and their respective scopes may be different. As I shall endeavour to show, it is upon the apparent authority of the agent that the contractor normally relies in the ordinary course of business when entering into contracts.

An "actual" authority is a legal relationship between principal and agent created by a consensual agreement to which they alone are parties. Its scope is to be ascertained by applying ordinary principles of construction of contracts, including any proper implications from the express words used, the usages of the trade, or the course of business between the parties. To this agreement the contractor is a stranger; he may be totally ignorant of the existence of any authority on the part of the agent. Nevertheless, if the agent does enter into a contract pursuant to the "actual" authority, it does create contractual rights and liabilities between the principal and the contractor.....

An "apparent" or "ostensible" authority, on the other hand, is a legal relationship between the principal and the contractor created by a representation, made by the principal to the contractor, intended to be and in fact acted upon by the contractor, that the agent has authority to enter on behalf of the principal into a contract of a kind within the scope of the "apparent" authority, so as to render the principal liable to perform any obligations imposed upon him by such contract. To the relationship so created the agent is a stranger. He need not be (although he generally is) aware of the existence of the representation but he must not purport to make the agreement as principal himself. The representation, when acted upon by the contractor by entering into a contract with the agent, operates as an

estoppel, preventing the principal from asserting that he is not bound by the contract. It is irrelevant whether the agent had actual authority to enter into the contract.

In ordinary business dealings the contractor at the time of entering into the contract can in the nature of things hardly ever rely on the "actual" authority of the agent. His information as to the authority must be derived either from the principal or from the agent or from both, for they alone know what the agent's actual authority is. All that the contractor can know is what they tell him, which may or may not be true. In the ultimate analysis he relies either upon the representation of the principal, that is, apparent authority, or upon the representation of the agent, that is, warranty of authority."

[46] In **Bowstead on Agency 18th Edition at page 337** paragraph 8-017 it is stated:-

"There must be a representation...this seems to occur in three main ways. It may be express (whether orally or in writing); or implied from a course of dealing; or it may be made by permitting the agent to act in some way in the conduct of the principal's business with other persons."

[47] The evidence before me is that Kathy Charles, first as Events Coordinator for the Defendant and later as Golf Club Services Manager, contracted with clients, including the Claimant regarding the hosting of golf tournaments on the Defendant's premises. The uncontradicted evidence of the Claimant is that Ms. Charles negotiated and signed all contracts between the Defendant and himself since 2013 with respect to other golf tournaments. Mr. Baynes is well known in golfing circles and indeed there is an annual tournament named after himself which is held on the Defendant's golf course. The Defendant adduced no evidence in support of its contention that Kathy Charles was not authorized to negotiate and/or give final approval for contracts apart from Mr. Forbes' testimony.

It seems to me, that the Claimant having made out a *prima facie* case that over his years of dealing with the Defendant, he dealt solely with Ms. Charles, negotiating contracts for the hosting of golf tournaments, and Ms. Charles, on behalf of the Defendant finalizing such contracts, the failure of the Defendant to produce the written documents to rebut this *prima facie* case caused me to draw an adverse inference against it - that the documents, if they existed would not support the Defendant's case. No explanation was offered by the Defendant for a failure to produce the contract of employment/terms of employment of Ms. Charles and Mr. Forbes which would have shed light on the scope of duties of each employee; this was particularly important given the fact that Mr. Forbes only joined the Defendant's employ in 2014 when Ms. Charles had worked at the Magdalena Resort since 2011.

[48] I therefore hold that it was reasonable for the Claimant to have relied on the representation by the Defendant that Ms. Charles had the authority to act as its agent and to contract on behalf of the Defendant. He could not have been expected to know the limits of Ms. Charles' authority without that information being expressly conveyed to him by the Defendant.⁵

[49] Very importantly, given the fact that Ms. Charles exercised full authority to contract with clients before 2014, it was incumbent on the Defendant, if there was a change in the scope of her duties with respect to this issue, to make this clear to the client, especially those who predated 2014, such as the Client. The failure to do so while allowing Kathy Charles to function as before – negotiating and signing contracts amount to a holding out by the Defendant that she was duly authorized to negotiate/finalise contracts and I so hold.

⁵ Halsbury's Laws of England Vol 1 2017 para 25

[50] I noted the apparent tension between Mr. Forbes, seeking to assert his authority as General Manager by purporting to limit the scope of her authority and the actual role played by Kathy Charles in this case. His denial that posters were erected by the Claimant on the Defendant's premises in April with Kathy's consent and his insistence that no such posters could have been erected without his permission is one example of this seeming conflict. Kathy, on the other hand admitted that she had given the Claimant permission to erect the posters and banners on the 4th April 2016 and they were so placed. This is also an example of the Defendant's failure to make clear to third parties, and it would seem its own employees, what was the scope of their respective duties.

[51] The Claimant is entitled to recover losses sustained as a result of the Defendant's breach of contract. I therefore make the following Orders:

- a. Judgment for the Claimant against the Defendant.
- b. The Defendant to pay to the Claimant damages for breach of contract in the sum of one hundred and eighty thousand (\$180,000.00) dollars.
- c. Special Damages in the sum of twenty thousand seven hundred and thirty six (\$20, 736.00) dollars.
- d. Interest on the Special Damages at the rate of 2.5 percent from the 11th May 2016 to date of judgment.
- e. Interest on the General Damages at the rate of 2.5 percent from the 18th December 2016
- f. The Defendant to pay to the Claimant prescribed costs on the above sums.

Joan Charles
Judge