REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

No. CV02903 of 2016

Between

NOVO TECHNOLOGY INCORPORATION LIMITED

Claimant

And

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant

Before Her Honour Madam Justice Eleanor Joye Donaldson-Honeywell

Appearances:

Mr. Keith Scotland and Ms. Jaqueline Chang, Attorneys-at-Law for the Claimant

Ms. Keisha Prosper and Leslie Almarales Attorneys -at -Law for the Defendant

Oral Judgement

Monday 21st May 2018

Background

1. On or around 26th September 2013, the Claimant company together with Nagraid S.A. and Infinity Financial Engineering Ltd ("INN Consortium") entered into a duly executed fixed term 2 year contract with the Ministry of Social Development and Family Services ("the Ministry"), for the supply, delivery, implementation, operation and maintenance of an Integrated Multi Application Biometric Smart Card System ("the Project") at the contract price of USD $5,386,819.33 and TT $29,313,288.00 plus VAT in the sum of TT $4,396,993.20 ("the First Agreement").

2. After the expiration of the First Agreement on or around 15th October 2015, the Claimant continued, upon the request of the Ministry, to provide its services until 27th June 2016, when the Ministry unilaterally terminated said services by giving 3 days' notice. During that period after the First Agreement the parties were in negotiations towards a new contract. However, the Claimant was asked, and agreed ["the Interim Agreement"] to continue the work in good faith in the interim and to submit invoices even though terms and conditions for a new contract had not been finalised. According to the Defendant the quantum of costs to be charged during the Interim Agreement were to be negotiated. The Claimant submitted cost proposals which the Defendant considered but the Defendant says never finalised.

3. The Claimant has submitted at the Defendant's request invoices for work done under the First Agreement, of which one remains unpaid. They also submitted invoices, which remain unpaid, for work done from October 15, 2015 to June 27, 2016. The instant claim seeks to recover money due and owing by the Defendant for services rendered both during the First Agreement and during the period of the Interim Agreement

Decision

4. The First Claim for relief is for the sum of $5,455,149.05 which represents money due and owing by the Defendant pursuant to The First Agreement. It is clear to me that the Defendant fully admitted in its pleadings that this amount was not paid.

5. As it relates to the Second Claim for relief, which is for $21, 484,761.65 I make the point that this is a case where there have been a number of admissions. These admissions are not all outlined in this oral judgment but are clearly laid out in the Defence. In essence this decision is partly a judgment on admission as well as on the evidence presented.

6. In the face of a plethora of admissions by the Defendant the Claimant still presented the evidence of four witnesses to support every aspect of its pleaded case. The Claimant's witnesses withstood cross-examination.

7. On the other hand the sole witness for the Defendant, Acting Chief Technical Officer Vijay Gangapersad, supported the Claimants case by and large. He agreed that it was unconscionable for the Defendant to have requested that the claimant continue work at the end of the First Agreement, to also ask for invoices to be submitted and not pay for the services. Further, several aspects of the Defendant's submissions that e.g. that the services were not properly provided, were not borne out by any evidence.

8. On the basis of the admissions in the pleadings, as well as the evidence I hold that the sum of $21,484,761.65, which represents the invoices for the period of the Interim Agreement, is due and owed to the Claimant. I rule in favour of the claimant with respect to that aspect of the Claim as well.

9. The first two reliefs claimed will therefore be granted based on the plethora of admissions. There are admissions in the defence that the Claimants were asked to continue work in good faith on the understanding that they would be paid and that they should submit invoices while a negotiation was taking place with regard to the terms of a new contract.

10. As it relates to the third aspect of the relief claimed, I agree though with the Defendant that the planned new contract was never finalised. During this period there was an Interim Agreement between the parties. It was rather informal. The terms were not agreed to but the Defendant did ask the claimant to submit proposals with the Claimants position with regard to what should be paid. The claimant did so and there was no response from the Defendant.

11. There was no counter proposal with regard to what should be paid for the Claimant's work. Up to this day there is no counter-proposal. The Claimant presented evidence that they, in fact based the invoices they submitted for work done during the Interim Agreement period, on the First Agreement. That Agreement was a Central Tenders Board [CTB] approved contract. Further, having been asked to consider reducing the cost, the Claimant did so. Certain reductions were made as established in the pleadings and evidence of the Claimant. The made another concession in that they did not charge interest. Those were some concessions proposed by the Claimant, but again there was no response, no counter

proposal as to what should be paid instead. So I reiterate as to the first two reliefs the Claimant succeeds.

12. With regard to damages for breach of contract, it is my finding that the Claim by the Claimant for that relief has not been made out so that any additional damages can be awarded. The damages awarded will be limited to the amounts owed from invoices under the original contract and during the Interim Agreement period.

13. The Claimant seeks the additional relief of payment of a loan amount of $11,926,610 inclusive of interest. The Claimant contended that because of the non-payment of the invoices it was forced to access two loan facilities from Scotia Bank. These pre-approved loans were initially intended to be used by the Claimant for other purposes but they opted in good faith to use it to maintain day to day operations for the work being done for the Defendant.

14. Counsel for the Defendant submitted in response that the evidence of the Claimant shows that one loan was taken in the name of Novo International Limited rather than Novo Technology Incorporation Limited while another was in the name of Glen Ramdhani, CEO of the Claimant. Mr Ramdhani indicated under cross examination that Novo International is its parent company. No documentary evidence was supplied to show this. Additionally Ms. Danielle Phillip from Scotia Bank testified as a witness on behalf of the Claimant. She stated that she manages both NOVO TECHNOLOGY and NOVO INTERNATIONAL LIMITED and that no loans were granted to NOVO TECHNOLOGY. Counsel for the Defendant further argued that considering the nature of the Claim and the amount claimed more should have been presented to prove the connection of the claimant to these loans, since documentation showing this would not have been difficult for the Claimant to obtain.

15. I agree with Counsel for the Defendant that the loan sum of $11,926,610.54 should not be awarded. This is so because it would amount to a double award, the Claimant having been awarded the full amount for the work that was done. To also get a repayment of the money they used from an alleged loan would be double payment.

16. In addition, I do accept the submission of Counsel for the Defendant that although evidence was presented it was not sufficient to accept that the loans related to Novo Technology Incorporation Limited. The evidence was that the loans were to other persons namely, another company which although the Claimant's CEO says was a parent company there wasn't sufficient evidence of that. The other loan was to the CEO of the company, so that wasn't sufficiently connected. The Claim for relief in the amount of the loan fails.

Interest and Costs

17. With regard to interest on the amounts claimed, interest is claimed at 6% per annum which seems reasonable, I know that the courts had been giving 9% so 6% seems reasonable, is there any submission with regard to the prevailing interest rate in commercial matters?

18. Ms. Prosper: Excuse my lady, in our submissions we refer to the Court of the case of **Attorney General v Fitzroy Brown** where the court considered 2.5 per cent.

19. Ct: But that wasn't for a commercial matter, I think the court made the distinction between commercial cases and other cases.

20. Ms. Prosper: My lady the court speaks also of the Claimant presenting evidence to the court as the commercial rate and that was not presented in this particular case because we are not sure what rate.

21. Ct: I can't go to the 2.5 and I agree and I don't have information right now at the commercial rate. If anyone has a cell phone or so I don't know whether you can just check for me in court. If you are saying it is not 6% what is the commercial rate now?

22. Ms Prosper: The Claimant should have presented that evidence.

23. Ct: And that is what I am asking for now, it need not be documentary. I am saying I am giving permission for you to check on the internet to see what the prevailing rate at the Central Bank is. Do you have access to the internet here? With cell phones you would have, sometimes your cell phone has data. You are not supposed to have on a cell phone in the Court but I am asking you now if you can check.

24. Ms. Prosper: The Central Bank Website.

25. Ct: That's what I am saying it can be checked. Ok so it is 9%, as I thought so that's why I thought that 6% was reasonable which is what they claimed, so I am going to award interest at the 6% claimed because it's much lower than the prevailing rate.

26. The Defendant is to pay the Claimant's costs on the prescribed basis.

The un-pleaded CTB Act breach submission

27. With regard to the point about breach of the **Central Tenders Board Act** ("CTBA") that was very strongly made by Counsel for the Defendant, I just want to reiterate that it was not pleaded. While I take judicial notice of the Act itself, I don't think that there is sufficient in the pleadings to show that there is a breach of the Act. In addition to that, even if there is no new contract agreed pursuant to under the Central Tenders Board Act, and as Counsel for the Defendant seems to contend, the Ministry/the Permanent Secretary, may have acted wrongly or as I put it 'as a rogue' in asking the Claimant to do the work, there is no denial however that the request was made. The connection was not made clear to me as to why it is that if the Permanent Secretary did the wrong thing by not following CTBA procedures, the claimant should be penalised by non-payment when the Permanent Secretary asked them to continue the work. That was not clear to me.

28. I did hear those submissions on the CTBA breach point. I did hear the objection by Mr. Scotland that I should not hear those submissions but I did allow counsel for the Defendant to present on the issue.

29. I don't accept that breach of the CTBA was properly pleaded. In any event it does not affect my decision. Such a breach has not been pleaded or shown by evidence to impact in any way on the fact that payment of money due and owing for work done should be awarded on the quantum merit basis.

30. Based on the Interim Agreement the Claimant was entitled to the money due and owing on the invoices that the Defendant Ministry asked them to submit for the work that was done.

That in essence is my understanding of quantum merit. I do not see the whole question of unjust enrichment introduced in the submissions of the Defendant as though it was the basis for the Claimant's Claim as being relevant at all in this matter. The Claim is not a plea to equity at all. It is just a request for payment of invoices for work done. It is not an equitable claim as far as can be seen from the pleadings.

Order

31. The Defendant is to pay to the Claimant the sums of $5,455,149.05 and $21,484,761.65 plus interest on both sums at 6% per annum from September 5, 2015 to the date of Judgement.

32. The Claims for further relief for breach of contract and for the sum of $11,926,610.54 with regard to a loan are dismissed.

33. The Defendant is to pay the costs of the Claimant on the prescribed basis.

Dated this 21st day of May 2018

……

Eleanor Joye Donaldson-Honeywell
Judge.