

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV NO. 2014 -01724

BETWEEN

JASPAL BHOGAL & ASSOCIATES

Claimant

AND

**URBAN DEVELOPMENT CORPORATION
OF TRINIDAD AND TOBAGO**

Defendant

BEFORE THE HONOURABLE MADAM JUSTICE JONES

Appearances:

Mr. F. Gilkes instructed by Mr. A. Rudder for the Claimant.

Ms. C. Ramnarine for the Defendant

RULING (Oral)

During the period 2005 to 8th August 2007 the Claimant performed services for the Defendant on a number of jobs including work on the Diego Martin Regional Corporation project (“the project”). The Claimant was not paid the full amount of the sums claimed by it on all of the jobs. By this action filed on 16th May 2014, almost 7 years after the completion of the work, the Claimant claims that there is still due to it on the project the sum of \$210,000.00 plus VAT. The Defendant contends that any claim that the Claimant may have against it is statute-barred and relies on the Limitation of Personal Actions Act. In truth and in fact the relevant Act is the

Limitation of Certain Actions Act Chap.7:09 (“the Act”). The case has proceeded as though this was the relevant legislation.

The facts are not in dispute and are disclosed in the pleadings filed and by the correspondence passing between the parties annexed to the pleadings. By letters dated 7th May 2008; 26th January 2009 and 18th February 2009 the Claimant wrote to the Defendant reminding it that the sum of \$2,115,000.00 (VAT exclusive) was due to it on the project. Initially by a letter dated 11th March 2009 the Defendant claimed to have paid to the Claimant, by cheque dated the 31/12/2007, the sum of \$2,190,750.00 (VAT inclusive) on the project and requested that the Claimant compare that payment with the amount noted as outstanding in their letter. Subsequently however by a letter dated 25th March 2009 the Defendant confirmed that the sum of \$2,190,750.00 had in fact not been paid to the Claimant on the project as it had claimed.

By a letter dated 11th November 2009 the Claimant enclosed an invoice for the work done on the project and by letter dated 26th April 2010 the Claimant itemized the sums due to it from the Defendant for all completed work including work done on the project. With respect to the project the Claimant stated that the Defendant had made on account an interim payment towards the consultancy services but the balance of the design fees remained outstanding. Although both letters make reference to invoices identifying the outstanding sums copies of those invoices were not annexed to the letters exhibited to the statement of case. It is reasonable to assume however that insofar that the invoices related to the project the Claimant by the invoices sought the total sum claimed by it to be outstanding on the project, that is, \$2,115,000 VAT exclusive.

By a cheque dated the 17th May 2010 and enclosed in a letter of 24th May 2010 the Defendant made a payment of \$5,000,000.00 to the Claimant. The letter advised that the cheque represented payment on a number of projects including the project. The exact sum paid by the Defendant on the project was not stated. By letter dated the 15th June 2010 the Defendant identified the payment made by it on the project to be \$2,190,750.00.

In its reply the Claimant relies on the letters of 24th May 2010 and the 15th June 2010 as acknowledgements within the meaning of the Act. In addition, by its reply, the Claimant relies on an additional letter dated the 1st December 2011 that it avers also amounts to an acknowledgement of indebtedness by the Defendant. In its oral submissions the Claimant indicated that it no longer relied on this letter.

It is not in dispute that the cause of action arose in 2007. Nor is it in dispute that unless the Claimant can apply section 12 of the Act to the facts of this case the claim is statute-barred. The sole issue for my determination therefore is whether there was a part payment or acknowledgment in accordance with section 12(2) of the Act so as to extend the time for bringing the claim.

Section 12 (2) of the Act states:

“where any right of action has accrued to recover any debt or liquidated pecuniary claim..... and the person liable or accountable acknowledges the claim or makes any payment in

respect thereof, the right shall be deemed to have accrued on and not before the date of the acknowledgement or payment.”

It is not in dispute that payment under the section refers to a part payment of the claim.

The Defendant relies on the cases of PCA/Interplan Group(J-V) Limited v UDECOTT¹ and Adams Project Management v Amenable Habitat Limited and Another² in support of its submission that there has been no acknowledgement or part payment sufficient to delay the accrual of the cause of action. It submits that in accordance with section 3 of the Act the cause of action became statute-barred in August 2011.

The Claimant has abandoned its position with respect to there being an acknowledgment and hangs his hat on that part of the section that refers to a part payment. The submissions in this regard are simply that the claim was for the sum of \$2,115,000.00 plus VAT; the Defendant on the 24th May 2010 only paid the sum of \$2,190,750.00 VAT inclusive therefore the Defendant only paid a part of the sum claimed. This it submits therefor amounted to a part payment under the Act and time starts to run anew from the date of that payment.

While not disputing the effect of the cases relied on by the Defendant the Claimant submits that the facts in the instant case are distinguishable from the cases relied on by the Defendant. In all the cases, it submits, there was clearly a dispute as to the amount to be paid. In the instant case however there is no indication of a dispute.

¹ CV 2005-00766

² CV 2009-02686

According to the Defendant therefore the payment is really exactly what it is: a part payment on the sum due. As I understand the submission, but rephrasing it, since the Defendant did not pay the full amount and did not indicate that it disputed the amount claimed by the Claimant a payment of a part amounts to a part payment under the Act.

The effect of this submission is that where a person pays only a part of the sum claimed in order to avoid an extension of the period within which the debt may be enforced the payer must indicate that the amount claimed by the payee is in dispute. If that is not done then the payment being only a part of what was claimed amounts to a part payment under the Act and the accrual of the cause of action takes effect from the date of the payment.

I do not understand this to be the law. The whole point of a part payment that delays the accrual of a cause of action is that such payment is akin to an acknowledgement of an outstanding debt. In the case of *Surrendra Overseas Ltd. v Government of Sri Lanka*³ relied in both the *PCA/Interplan Group (J-V) Limited* case and the *Adams Project Management* case after reviewing the authorities the Court concluded that:

“A part payment, like an acknowledgment, can only revive the cause of action and start time running afresh if it provides evidence in the form of an admission by the debtor that the debt remains due despite the passage of time.”⁴

As I did in the *PCA/Interplan Group(J-V) Limited* case I accept the reasoning of Kerr J. in *Surrendra* and find it to be consistent with the earlier authorities on the point.

³ [1977] 2 All ER 480

⁴ per Kerr J at page 490

While the Claimant is correct in his submission that the facts in both of the cases relied on by the Defendant are somewhat different in my opinion these differences make do not affect the applicable law. It is clear from the correspondence that at no time prior to the extinguishment of the debt, that is prior to 9th August 2011, did the Defendant acknowledge that the debt remained due. I do not accept that the Defendant's silence or its failure to state that it disputed the amount claimed by the Claimant can on any stretch of imagination be considered an admission that the debt was due.

Indeed, on the facts presented, I do not accept the Claimant's conclusion that there was no dispute as to the amount payable. While the defendant may not have used the words 'I dispute' in my opinion at all times and in the face of the Claimant's insistence that the sum due was \$2,115,000.00 VAT exclusive the Defendant maintained that the sum of \$2,190,750.00 VAT inclusive was payable.

In the circumstances it seems to me that there was no part payment within the meaning of the Act which would have extended the time for the Claimant to institute the claim Section 12 of the Act therefore does not apply. Accordingly I find that the claim is statute-barred by virtue of section 3 of the Limitation of Certain Actions Act.

Dated this 11th day of May, 2015.

Judith Jones
Judge