

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No: CV2017-02848

Between

BISNATH BALLY

Claimant

And

ANNE MAHABIR

First defendant

IVY MAHABIR

Second defendant

Before the Honourable Mr. Justice R. Rahim

Date of Delivery: May 15, 2019

Appearances:

Claimant: Ms. S. Waite

Defendants: Mr. S. Boodoo instructed by Ms. R. Balkaran

JUDGMENT

1. This claim is for breach of contract. The claimant is the cousin of the defendants who are sisters. It is the claimant's case that in or around April, 2015 he was approached by the first defendant, Anne Mahabir ("Anne") and the second defendant, Ivy Mahabir ("Ivy") to construct a bridge to access a parcel of land owned by the defendants situate off of the Tabaquite Main Road, Mahabir Trace, Tabaquite ("the land").

2. Ivy resides in the United States of America and so the claimant met with Anne at Price Plaza in Chaguanas to discuss the construction of the bridge. According to the claimant, by virtue of that meeting with Anne, it was orally agreed that he would finance and employ workers for the construction of the bridge and that when Ivy returned from the States, he would be paid for the construction inclusive of all costs. Consequently, in reliance on the aforementioned oral promise, the claimant commenced construction of the bridge.

3. After completing the initial stage of the construction, the claimant approached Anne for the first tranche of payment. Anne indicated that Ivy would be returning with the funds and that the claimant would be paid. In reliance on the aforementioned assurance, the claimant continued the construction of the bridge. On June 13, 2015 the construction of the bridge was completed. Consequently, the claimant contacted Anne to make the necessary arrangements for payment. It was verbally agreed that when Ivy arrived in Trinidad on June 18, 2015 the claimant would receive all the monies due to him.

4. On June 18, 2015 the claimant received a phone call from Anne who indicated that Ivy was unable to return to Trinidad due to job

commitments and that Ivy was expected to come to Trinidad within two weeks' time. To date he has not been paid. The claimant has tried all avenues available in an effort to resolve the matter amicably but to no avail as the defendants are insistent on offering him the sum of \$80,000.00 for the construction of the bridge which would amount to half of the sum used.

5. As such, by Claim Form filed on December 11, 2017 the claimant seeks the following relief;
 - i. That the defendants do pay the claimant the sum of \$166,200.00;
 - ii. Interest;
 - iii. Costs and
 - iv. Such further and/or other relief as the court may deem fit.

The Defence

6. By Defence filed on January 8, 2018 the defendants admit that there was a discussion between the claimant and Anne concerning the status of the land. The defendants further admit that Anne met with the claimant at Price Plaza. However, the defendants deny that the purpose of the meeting was in relation to the construction of the bridge. According to the defendants, that meeting was to discuss the conveyance of certain portions of land which the claimant was desirous of acquiring from the defendants.
7. As such, it is the case of the defendants that there was neither any offer, acceptance of proposal nor passing of consideration for the construction of any bridge. According to the defendants, prior to the construction of the bridge, Ivy sought to secure the claimant's signature upon a document which she prepared outlining the terms and conditions of the work to be

completed, together with an agreed price. However, upon making attempts to obtain the claimant's signature, the defendants were unable to do so and as such formed the belief that the claimant was no longer interested in undertaking the said works.

8. In or about June, 2015 the claimant informed Anne that the bridge was completed. During April, 2015 the defendants were unable to contact the claimant and so could not inform him of their position. According to the defendants, when they were notified that the bridge was completed, Anne conducted an inspection of same and found the quality of work to be subpar.
9. The defendants admit that they offered the claimant \$80,000.00 for the construction of the bridge. The defendants aver that that offer was made out of good faith for the work completed, notwithstanding that same was done without authorization whatsoever. According to the defendants, they are now left with the expense and inconvenience of remedying the issues left behind by the claimant's substandard work relative to the bridge.

ISSUES

10. The issues for determination by this court are as follows;
 - i. Whether there was an oral agreement between the claimant and the defendants for the construction of the bridge;
 - ii. If the answer to (i) is yes, whether the defendants breached the agreement by failing to pay the claimant the sum of \$166,200.00; and
 - iii. Whether the claimant is entitled to damages.

CASE FOR THE CLAIMANT

11. The claimant gave evidence and called three witnesses; Terrence Richards, Clint Langton and Mamoun Al-Khatib also called Hasiba AL-Khatib.

The evidence of the claimant

12. In or about April, 2015 Anne and Ivy asked the claimant to construct a concrete cylinder bridge (“the project”) so that they could have access to two parcels of land that they owned separately. The two parcels of land are located off of Tabaquite Main Road, Mahabir Trace, Tabaquite (“the lands”). It was difficult to access the lands as there was a river on same.
13. The claimant has been a contractor for over forty years, and has throughout the years progressed to be an expert in the field. He has over the years constructed major bridges, roads and enormous buildings throughout this island and regionally.
14. After Anne and Ivy orally indicated their desire to have the claimant construct the bridge over the river, the claimant was a bit hesitant. However, since Anne and Ivy were blood relatives and the claimant considered them as sisters and they indicated that they did not have anyone else to construct the bridge for them, the claimant graciously obliged.
15. As such, the claimant made the necessary arrangements to visit the lands with his son and another worker, Terrence Richards (“Richards”). The claimant programmed in his mind, what needed to be done, how many workers were needed and the duration of the project.

16. Approximately one week later, the claimant was contacted by Anne and Ivy over the telephone and they arranged to meet at Price Plaza in Chaguanas to discuss the project at 7:00 p.m.
17. At that time, Ivy was not in the country as she resided in the United States of America. Consequently, the claimant met with Anne and her daughter, Trisha to discuss the duration of the project together with the cost and the way forward. At the meeting, Anne together with her daughter, agreed with the proposals the claimant proposed. The proposals the claimant suggested were to begin the construction of the bridge with workers he had sourced and with his own finances. They all agreed that when Ivy returned from the States, the claimant would have been remunerated, whatever the cost was.
18. The aforementioned transaction was done in the presence of Anne, her daughter, and Ivy via telephone. Anne called Ivy and placed the call on speaker so that Ivy would always be a part of the conversations and transactions.
19. The claimant relied heavily on the oral promise made by Anne and Ivy and little did he know it was to his detriment. Within one week thereafter, the claimant organized a team of workers and the project commenced. The project involved the workers cutting down huge trees, clearing the highly forested area of all the bush to extend the roadway and preparing the site for the construction of the bridge.
20. Thereafter, the claimant organized the team of workers to remove other huge trees and bushes from inside the river and from the river bank. The main work for the construction of the bridge commenced approximately two to three weeks thereafter.

21. After completing the clearing of the river bed with the excavator, the claimant approached Anne for the first tranche of payment. Anne indicated to the claimant that Ivy would be returning to make a deposit. The claimant relied on the aforementioned as Anne and Ivy were his blood relatives and he was assured that payments would be made.
22. As such, given the fact that he was given that oral assurance, the claimant continued with the construction of the bridge on the lands. At all material times, he was always given the oral assurance by Anne that upon the arrival of Ivy, funds would have been disbursed.
23. The claimant continued to organize with workers and with companies to rent equipment to embark upon the second stage. The second stage involved the claimant constructing the actual bridge and that process involved the following;
- i. The purchase of the cylinders;
 - ii. The transport of the cylinders to the work site;
 - iii. The offloading of the cylinders (which involved the hiring of an excavator together with hiring of police to transport same);
 - iv. Transporting the cylinders down to the river under difficult weather conditions (the hill was steep);
 - v. The excavator had to clear the river to prepare to place the cylinders;
 - vi. The river was prepared in anticipation of the placement of the cylinders. Therefore materials were placed at the bottom of the river and the cylinders were placed at the top of it;
 - vii. Materials from the quarry were brought to lock the cylinders;
 - viii. Additional quarry materials were brought and;
 - ix. The final stage involved the claimant hiring a roller to compact it.

24. All of the above mentioned works were completed within a corridor of twelve days which was from June 1 to June 12, 2015. On June 13, 2015 the bridge was fully completed.
25. Thereafter, the claimant contacted Anne to make the necessary arrangements for payments. There and then the claimant submitted copies of the invoices for the cylinders as well as receipts for the rental of the equipment.¹
26. The claimant testified that after Anne received the invoice, expressions of gratification were verbally communicated to him as she was very much satisfied with the work done. Anne also indicated to the claimant that there were plans to construct a wall at the side of the bridge and enquired as to what the cost would have been like. The claimant informed Anne that it would cost approximately \$30,000.00. Anne was pleased with the work and the price and contacted Ivy via telephone who indicated to the claimant that he should “hold his hand” until she arrived in Trinidad within one week’s time.
27. As such, it was the claimant’s testimony that it was verbally agreed that when Ivy arrived in Trinidad on June 18, 2015, he would be paid all the monies owed to him as well as commence the construction of the wall. On June 18, 2015 the claimant received a telephone call from Anne who indicated that Ivy was unable to return to Trinidad due to her job commitments. Thereafter, Ivy was expected in Trinidad within two weeks’ time.

¹ A copy of the invoices were annexed to the claimant’s witness statement at “A”.

28. At all material times, Anne always assured the claimant that all the funds would have been paid as per the quota submitted. As such, the claimant trusted and relied on that promise.

29. On June 28, 2015, Anne contacted the claimant and indicated that she hired an Attorney-at-Law to discuss the outstanding monies. Within a couple of days thereafter, the claimant received letter dated July 6, 2015 from the defendants' Attorney-at-Law.² In that letter, the following was stated;

"1... on 29th day of May, 2015...our clients discussed with you the proposal of retaining your services to construct a bridge... to gain access to their lands.

2... after negotiations it was mutually agreed that upon completion of the bridge you will be paid the sum of \$100,000.00 (...for your labour, material and transportation with all bills included) as agreed by both you, the contractor and our clients upon the sale of land by my clients or after 2 months of total completion.

3. It was mutually agreed that you will construct the bridge in accordance with the following:-

(a) To use ten (10) concrete cylinder so that the bridge will be of sufficient width of forty (40) feet.

(b) That you use and or place adequate blue metal and boulders on the ground before the cylinders are placed.

(c) Steel rods and BRC Wire will be placed in the blue metal and then tied into the cylinders giving full support to withstand heavy vehicles and or trucks.

² A copy of the letter was annexed to the claimant's witness statement at "B".

(d) Cast same using quality concrete ensuring that the cylinders are properly affixed so avoid movement and or cracking.

(e) To build a three (3) feet foot path with railings along both sides of the bridge to allow person to walk while the bridge is being used by vehicle.

(f) That you will be responsible for the provision of labour, transportation and material to complete the bridge.

(g) Once this is done in accordance with the agreement and to our clients' satisfaction, you shall be paid all monies as set out in invoices provided to them.

4. On June 13th 2015 via phone with our client Ms. Ivy and in person with Ms. Anne that you have completed the bridge with life time warranty and wanted your money. However, on inspection of the bridge on June 13th 2015 it was clear that it was not constructed in accordance with agreement. As only seven (7) cylinders were used and little or no blue metal and or boulder were used in the construction of the bridge...

5. The bridge constructed is not what our clients negotiated and agreed upon.

In the circumstances, we hereby call upon you to provide our office with a detailed breakdown of the list of material used including transportation and labour costs (bills must be included) utilized in the construction of the bridge to on or before the expiration of fourteen (14) days from the receipt of this missive.

Once same is in our possession our clients shall make all payments to you within one (1) month thereafter..."

30. The claimant subsequently visited the offices of Mr. Saiyad Ali, Attorney at Law and discussed with him what had transpired between Anne, Ivy and him. As a consequence of the aforementioned, letter dated October 19,

2015 was dispatched on the claimant's behalf to Anne and Ivy.³ In that letter, the following was stated;

"...my client admits that on May 29, 2015 there was discussion between your client and himself pertaining to the construction of a bridge and roadway... However, my client denies that the agreed price for the work to be done was not \$100,000.00... but the sum of \$166,200.00 and further that payment of the said sum of my client was never premised upon the sale of any land by your clients but was to be paid on June 18, 2015.

My further instructions are that my client clearly pointed out to your clients that given the nature of the construction to be done it was inconceivable to use ten concrete cylinders so as to have a bridge expanse of 40 feet when the width of the roadway was 30 feet and same would have protruded into adjoining lands belonging to third parties and it was inconceivable that blue metals and boulders should be used since same was not consistent with the type of work to be done and as my client pointed out to your clients the best material to be used was Guaracara materials before the cylinders are placed. Further my client denies that there was any agreement for the use of steel rods and BRC wire since the use of same was not consistent with the type of bridge to be built. In fact there was no agreement as to concrete to be used. My client further denies that any foot path was discussed.

In good faith and to the best of his ability my client completed the said bridge and roadway without any monies paid by your clients and in fact on completion which was done some 2 weeks after the agreement he had presented an invoice in the sum of \$166,200.00 and your clients had expressed their satisfaction with the job done and promised to make full payment by June 18, 2015 which was extended for a further 6 weeks by

³ A copy of the letter was annexed to the claimant's witness statement at "C".

your clients. It is only now that your clients have set up spurious claims that the bridge and roadway had so many defects. In fact my client had done certain preparatory work with respect to the nature of the land and in good faith did not bill your clients for same.

In the circumstances my client's invoices are hereto attached for your perusal and or payment by your clients within 28 days from this letter.

Should your clients fail to pay my client within 28 days of this letter the stipulated sum of \$166,200.00 I shall have no other recourse but to initiate legal proceedings against them in the High Court of Justice....”

31. When the claimant was retained by Anne and Ivy to construct the bridge, he had to employ workers as laborers, employ trucks/excavator drivers, rent bulldozers and hire quarry men. As such, to date the claimant still owe the workers for their services rendered.
32. In the initial verbal agreement between Anne, Ivy and the claimant it was agreed that the claimant would use his personal funds to purchase the materials and commence the works and he would have been reimbursed. The claimant therefore had cause to borrow \$125,000.00 from a friend and it was from those funds the materials were purchased, tools were rented and laborers were partially paid. To date those funds remain outstanding.⁴
33. Anne and Ivy never responded to the claimant despite him making several attempts to contact them. The claimant gave Anne and Ivy time and borrowed finances, all in the hope and in the expectation that he would have been remunerated. The claimant testified that he entered into the oral contract candidly but that same was detrimental to him as Anne and

⁴ A copy of the letter from Hasiba Alkhatib was annexed to the claimant's witness statement at "D".

Ivy never paid him a dime. As a matter of fact, Anne and Ivy have resorted to asserting that the project was not done at a substantial standard.

34. At present, the claimant is not in the best of health and in an effort to amicably resolve this matter, his Attorney-at-Law sent several correspondences to Anne and Ivy's two Attorneys-at-Law.⁵

35. According to the claimant, Anne and Ivy have had an independent valuation report done, which did not reflect an accurate value of the materials used.⁶ The claimant therefore had cause to commission a proper quantity surveyor's report.⁷ This report is treated with later on in this judgment.

36. Anne and Ivy have also been advertising the lands for sale in the Daily Express newspaper as of September, 2015.⁸ As such, the claimant is unsure as to the lands' current status.

The cross-examination of the claimant

37. The meeting in or about April, 2015 when the claimant was asked by Anne and Ivy to construct the bridge took place at Anne's home. Ivy was not present but spoke at the meeting via telephone.

38. The claimant is familiar with the Tabaquite area. Although he was familiar with the Tabaquite area, the claimant was unsure as to where the defendants wanted the bridge built after the first discussion. After the first

⁵ Copies of those correspondences were annexed to the claimant's witness statement at "E".

⁶ A copy of the report was annexed to the claimant's witness statement at "F".

⁷ A copy of the Quantity Surveyor's report was annexed to the claimant's witness statement at "G".

⁸ A copy of the Newspaper clipping was annexed to the claimant's witness statement at "H".

discussion, it was mutually agreed that a concrete cylinder bridge should be built. The claimant accepted that the defendants were relying on his expertise and that he confirmed that the best type of bridge to be built on the lands was a concrete cylinder bridge. All this occurred prior to the claimant visiting the lands.

39. The claimant was a bit hesitant to build the bridge for the defendants because he was retired, the defendants did not have the funds to build the bridge and the defendants told him that they had no one else to build the bridge and needed his help. The claimant also had no funds at the time and so he indicated to the defendants that he would borrow the funds to build the bridge. The claimant did not inform the defendants of exactly where he was sourcing the funds from.

40. Richards worked with the claimant over the years. At the material time, Richards was not employed with the claimant and so Richards simply accompanied the claimant on the site visit to the lands. The claimant, his son and Richards went with Anne and her daughter, Trisha to visit the lands to determine where the bridge had to be built. The road that leads to the lands is a downhill slope. Anne cannot walk properly.

41. When the claimant went to visit the lands, he had a measuring tape with him. At the time of the site visit, the claimant did not take any measurements for the bridge he had to build. He stated that as he has a knack for measurements, he easily estimated the measurements because they could not go into the bushes to do the measurements. The bridge had to be built approximately one hundred feet into the bushes. He and Richards also had cutlasses with them. The claimant went into the bushes and was approximately twenty-five feet away from the river. From that twenty-five feet away from the river, he could have easily seen the width

of the river as the western side of the river was already cleared and drenched. At this time, the claimant was roughly quoting prices to Anne. The claimant estimated that he would have needed seven, four foot cylinders.

42. The claimant denied that the meeting at Price Plaza was to discuss the conveyance of certain portions of land which he was desirous of acquiring from the defendants. At the meeting at Price Plaza, the claimant discussed the costs for the ground works of the bridge with Anne. The ground works was the clearing of the site in preparation for the building of the bridge. The claimant told Anne that the ground works would cost approximately \$10,000.00. That \$10,000.00 was the first tranche of payment the claimant had approached Anne for after he had completed the clearing of the river bed with the excavator. The excavator was used for two days at \$3000.00 per day.

43. The clearing of the lands was done in April. Coming to the end of the month of May, the claimant discussed with the defendants the costs of the major part of the project. The claimant was unsure as to the cost for the construction of the bridge. As such, he and the defendants were still having discussions pertaining to the actual construction of the bridge. An exact figure for the construction of the bridge was not arrived at. The claimant then testified that the cost of constructing the bridge was estimated at \$180,000.00 but that whatever the cost was, he would have presented the bills accordingly.

44. Anne visited the lands three or four times during the twelve day construction period.

45. The sum of \$125,000.00 which was borrowed by the claimant was used to pay for the excavator, materials and part of the labour costs. The balancing figure to add up to \$166,200.00 were other miscellaneous costs.
46. The claimant was referred to receipt dated June 14, 2015 which was the payment of \$102,200.00 by the claimant for *“supply + transport + Quarry materials, Supply + transport Excavator Roller and trailer for building Rdway & bridge at Mahabir Road Tabaquite”*. This receipt was signed by the claimant’s nephew, Shem Bally.
47. The claimant denied that he began the construction of the bridge without the consent of the defendants. He further denied not seeing the defendants and informing them of the final cost of the project.
48. The claimant went to the Government valuation department to get a valuator because he did not have money to get a quantity survey done on the bridge. At that office, he meet with a lady who referred him to Clint Langton (“Langton”). Langton did not inform the claimant that the defendants needed to be present when he (Langton) visited the lands to execute the quantity survey. The claimant did not inform the defendants that he was going with Langton on the lands to have the survey done.
49. Langton visited the lands some two years after the bridge was constructed. The claimant and his wife were present with Langton when Langton visited the lands. At the time Langton visited the lands because there were no walls alongside the bridge, there was some erosion. Side walls would have prevented the erosion from occurring. The claimant denied that the construction of the bridge was of sub-par work.

The evidence of Richards

50. Richards has known the claimant for over eighteen years. Richards worked with the claimant as a construction worker on many projects over the years.
51. In or about the early part of April 2015, the claimant went to Richards' home and spoke to him about a bridge he was asked to construct in Tabaquite over a river. The claimant asked Richards whether he wanted to accompany him to Tabaquite as he (the claimant) had to meet with the owners. Richards agreed to accompany the claimant as he did not have anything planned at the time.
52. Upon their arrival at Tabaquite, on the lands, Richards observed two females exiting a vehicle and they approached the claimant and began speaking. Richards did not hear the conversation as he walked away and continued to observe the lands.
53. On the said date, Richards observed that the lands were heavily forested, there were huge trees, a lot of citrus trees and a lot of over grown grass. In his estimation, the lands could have been a couple of acres.
54. Within a couple of minutes, the claimant called Richards and he observed the two ladies returning to the vehicle they exited and they eventually drove off. The claimant and Richards remained on the lands and the claimant continued to speak to Richards about his plans for the job he was asked to carry out.
55. The claimant informed Richards that he was asked to build a bridge and that his (Richards') job entailed getting other workers to cut down the huge

trees and clear the land in preparation for the construction of the bridge over the river.

56. The claimant further informed Richards that he wanted to start a couple of days after, if the weather permitted. Consequently, Richards gathered three additional labourers to cut down the huge trees, clear the overgrown bushes and prepare the land for the construction of the bridge. Richards and the labourers were also responsible for clearing the trees and bushes at the bank of the river. Some of those trees, due to their age, were deep rooted inside the actual river bed.

57. The agreed sum for payment was \$300.00 per day. As Richards was the supervisor, the claimant informed him that he would have been paid more. Richards ensured that the labourers were paid but to date, he is still owed part of his earnings.

58. When the job started, the task was very tough as the place was highly forested. The citrus trees, due to its age was also difficult to cut. The claimant rented a power saw to enable Richards and the labourers to perform their duties efficiently. Persons who lived nearby warned them about the venomous snakes that lived in the area. This job lasted approximately five days.

59. After Richards' men and he completed their tasks, Richards continued to accompany the claimant to the job site. Richards testified that one thing that would forever remain in his memory for this job was the size of the concrete cylinders. The concrete cylinders were taller than the claimant. Richards saw an excavator offload the concrete cylinders and he assisted by tying the chains onto same. Richards did not assist with anything else because he was a bit afraid, given the size of the concrete cylinders.

Richards also witnessed other materials, such as the gravel and sand being delivered to the job site.

The cross-examination of Richards

60. Richards has worked with the claimant on previous projects. Those projects included the building of houses, drains and small bridges. However, the bridges that he assisted the claimant in building were purportedly smaller in size than the bridge in this matter.

61. Anne was one of the two females who Richards saw existing the vehicle on the day he accompanied the claimant to the lands. The claimant, his son, Richards and the two females were present that day. They met on the top of the hill as the road which led to the lands was a downhill slope. The claimant assisted Anne in coming down the hill to reach the lands. She stopped at a certain point but Richards and the claimant continued further into the bushes on the lands. The claimant stopped a little before the river but Richards continued up to the river's mouth. Richards saw marijuana seedlings in cups in the bushes. After that time, Richards saw Anne on the lands about two times during the construction of the bridge.

62. Before the claimant did any works on the river, Richards observed that part of the river was already dredged.

63. During discussions with the claimant, Richards informed the claimant that he had labourers who did not work for anything less than \$300.00 per day. Richards further informed the claimant that he would charge him \$10,000.00 for clearing the lands in preparation for the construction of the bridge and that the duration of the work would have been approximately six days. However, the works actually took five days. Richards only got

\$6,000.00. He had three labourers and so after paying the labourers for the five days he remained with \$1,500.00. Therefore, Richards is owed a balance of \$4,000.00.

64. After completing the clearing of the lands, Richards had no other involvement in the construction of the bridge. He continued to accompany the claimant to the lands because he was interested in getting the monies which was owed to him.

65. The claimant did not inform Richards of the size of the bridge, how the bridge would be constructed or who would be constructing the bridge. The discussions Richards had with the claimant concerning the project was in relation to the area which Richards had to clear in preparation for the construction of the bridge.

The evidence of Mamoun Al-Khatib otherwise called Hasiba Alkhatib

66. Mamoun Al-Khatib otherwise called Hasiba Alkhatib (Al-Khatib) is a chef and has been self-employed since 2008. He is the owner of Ali Baba Gyros. Al-Khatib together with his wife, Wendy Bally (“Wendy”) maintain the business that has been profitable over the years. Al-Khatib and Wendy have been married to since 1994. The claimant is the uncle of Wendy. Since Al-Khatib’s marriage and even prior to his marriage, he has known the claimant. Al-Khatib considers the claimant as his uncle and the claimant also considers Al-Khatib as his family.

67. In April, 2015 the claimant approached Al-Khatib and informed him that he was constructing a bridge in Tabaquite for his cousins and that he (the claimant) wanted to borrow the sum of \$125,000.00. As Al-Khatib trusts the claimant, he did not have any difficulty loaning the claimant the said

sum of money. The claimant further indicated that the arrangement between himself and his cousins was that after the job was completed he would have gotten paid. As a result, Al-Khatib loaned the claimant the funds in tranches. Al-Khatib initially gave the claimant \$20,000.00 then another \$20,000.00, then \$10,000.00 and then the last payment of \$75,000.00. Al-Khatib gave the claimant the said funds during the period of April to June, 2015.

68. Whenever the claimant went to Al-Khatib's home to collect the said sums, he always indicated how he was utilizing same. The claimant indicated that the sums went towards the purchasing of materials, the rental of tools and machinery or towards the payment of labour.

The cross-examination of Al-Khatib

69. This was not the first time the claimant borrowed money from Al-Khatib. The sum of \$125,000.00 which was loaned to the claimant by Al-Khatib was monies Al-Khatib had saved during the years. Al-Khatib had some of the monies in cash at home.

70. The claimant did inform Al-Khatib that the money was for the construction of a bridge and roadway for his cousins but the claimant did not inform Al-Khatib how much the bridge and roadway was going to cost.

71. Al-Khatib did not make out any receipts to the claimant when the claimant borrowed the money from him because he did not have that kind of relationship with the claimant. The first \$20,000.00 was given to the claimant sometime in April. Al-Khatib did not have any one present to witness when he gave the claimant the first \$20,000.00. The second \$20,000.00 was given to the claimant at the end of April. Wendy was

probably around when the second \$20,000.00 was given to the claimant. A little while thereafter, the claimant borrowed the \$10,000.00 to pay the workers.

72. When the claimant borrowed the \$75,000.00, he informed Al-Khatib that he needed that sum to finish the job as the lady did not arrive from the States just yet. That sum was most likely lent to the claimant in June.

The evidence of Clint Langton

73. Clint Langton (“Langton”) is a Quantity Surveyor. He is employed with Clint Langton & Associates Limited. He holds a BSc (1st Class Hons) in Quantity Surveying from the London South Bank University. Langton has been a Quantity Surveyor since 2005 and has held various positions within the industry since that time.⁹

74. As a Quantity Surveyor, his normal duties include; preparation of preliminary budget estimates; tendering and procurement advice; meetings with the client and the design team; preparation of tender documentation for selection of contractors (those are the bills of quantities, including measured works, preliminaries and specifications sections); administer tender processes, inviting, vetting and selecting of contractors; monthly interim valuations to assess and make recommendations for the remuneration of the contractors; preparing client supplies material lists when necessary; contract administration; preparing and agreeing the final accounts for the project.

⁹ A copy of Langton’s curriculum vitae and the profile of the Company Clint Langton and Associates Limited was attached to his witness statement at “C.L.1”.

75. Given his position as Quantity Surveyor, he is very familiar and has experience with valuing and assessing building and construction works. Over the years, he has been involved in many disputed claims and has given evidence as a Quantity Surveyor.
76. In or around May, 2017 the claimant retained Clint Langton & Associates Limited, to value and assess the total value of the work done on the river crossing along Mahabir Drive, Tabaquite. Langton was the Quantity Surveyor assigned to the job. Langton spoke with the claimant over the telephone sometime in May, 2017. Whilst conversing with the claimant, he (the claimant) described the work that he had carried out on the said work site in a very detailed manner. At that point, the claimant requested a Quantity Surveyor's report for the value of work done to date, to which Langton agreed to undertake.
77. The claimant and Langton made the necessary arrangements to meet on the said location on May 25, 2017. Langton took the necessary photographs, notes and measurements. During that exercise, Langton observed and noted the extent of the works executed.
78. At a later date at his office, Langton calculated the value of works completed to date based on the photographs and notes taken during the said site visit and he was able to assess the cost of the works carried out by the claimant using the total value of the work for the project. Langton then prepared a Quantity Surveyor's Cost Estimate Report. He submitted that report dated June 5, 2017 to the claimant whereby he valued the work done on the said river crossing at \$115,073.03.¹⁰

¹⁰ A copy of the report was annexed to Langton's witness statement at "C.L.2".

The cross-examination of Langton

79. Langton was contacted by the claimant via telephone and the claimant explained to him that he was referred to Langton by a professional colleague of Langton and that he (the claimant) needed to get a report done for some work he had done. Langton asked the claimant for some brief details and where the site was located. That was the first time Langton spoke to the claimant.
80. When Langton went to the lands, he met with the claimant and his wife.
81. Langton's Quantity Surveyor's report did not include Part 33.10 of the CPR because at the time he executed the report, the claimant did not indicate that same would have been used in legal proceedings. The claimant simply indicated that he needed to get a Quantity Surveyor's report done for his clients because they were disputing the value of the works done.
82. Langton was referred to his report. At page two of his report, it was stated that the claimant supplied him with the actual bills and invoices of items purchased. Those bills and invoices were supplied to Langton on the day of the site visit. Langton informed the claimant that he needed to see the bills for reference but that he was not going to rubber stamp whatever he (the claimant) was claiming. As such, Langton did not use those bills as part of his calculation to value the works done.
83. Further at page two of the report, it was stated that the works were priced using the current industry rates or all input resources. As such, Langton's estimation of the value of works which was \$115,073.03 was based on 2017 prices. The fact that the bridge was built in 2015 was not featured in the report.

84. When Langton visited the lands, he observed that there were no visible cracks or seeps that would prevent the bridge from acting as its designed purpose to serve the function of a bridge crossing. He further did not see any evidence of substandard quality. However, as there was no embankment at the opening on either side of the bridge to withhold the soil, there was some extent of erosion on the right side of the bridge but the carriage way, the space for vehicles to traverse was still more than adequate even with some erosion on the right side of the bridge. Ideally, for the job to be completed, some sort of embankment need to form the opening to withhold the soil.

THE CASE FOR THE DEFENDANTS

85. The defendants gave evidence for themselves.

The evidence of Anne

86. By Order of the Justice Rajkumar in the matter of CV2008–01105, the defendants became seised and possessed of a parcel of land located at Main Road, Tabaquite comprising approximately seven acres (“the lands”).

87. Anne testified that the claimant is her cousin but that they do not maintain a close relationship. In or about February, 2015, the claimant visited Anne at her home while he was on his way to visit his daughter, whom Anne believes lives close to her. During that visit, the claimant indicated to Anne that he wished to speak to her about the lands. He did not go into any more detail. They agreed to meet at Price Plaza, Chaguanas, the following night.

88. Anne arrived at Price Plaza, Chaguanas around 7:30 p.m. she was parked in the vicinity of Subway and her daughter Trisha Ramsamooj (“Trisha”)

accompanied her as she did not feel safe going out at that time of the night. Anne called the claimant to let him know that she had arrived. He indicated that he was in the car park as well and would come to meet her.

89. After parking, Trisha exited the vehicle and met with the claimant and his son, Ian who was approximately thirteen years old at the time. The two of them then began to walk around the car park. The claimant exited his motor vehicle and came into the front passenger seat of Anne's vehicle. He reclined the seat and made himself comfortable.

90. The claimant began to tell Anne that he wanted to bulldoze the lands and that he would charge the sum of \$50,000.00 to do so. Anne told the claimant that she could not embark on that project as her other daughter was not well as she had just been in a motor vehicular accident and would have required corrective surgery in short course.

91. In response, the claimant told Anne that they could make an arrangement instead whereby she could give him about four lots of the lands as payment as he wanted to construct a Ranch, close to the river. The claimant told Anne that he could take her to his lawyer, one Mr. Boucard of Woodbrook, to prepare the paperwork to effect the transfer.

92. Anne informed the claimant that she could not do that as there was no access throughout the lands and that she needed to build a bridge to access the back portion of the lands before she could consider selling any portion of same.

93. The claimant informed Anne that he was in the contracting business and that he could construct the bridge for her as he had experience in those types of projects. Anne informed the claimant that she would think about

it and that she needed to discuss same with Ivy before she could give him an answer. The claimant agreed with that course of action and stated that he would wait to hear from Anne. He then exited the vehicle.

94. Approximately one week later, Anne spoke to Ivy about the claimant's proposition to construct the bridge to run through the back portion of the lands. Ivy informed Anne that she wanted to speak to the claimant on it further. Anne and Ivy made arrangements for Ivy and the claimant to speak directly to each other. Ivy and the claimant spoke to each other via MagicJack. Anne could not recall the date on which they spoke.

95. Anne was present during the conversation as the claimant went to her house in order to use the MagicJack which was installed on her computer. Ivy enquired from the claimant about his expertise in such projects. The claimant assured Ivy and Anne that he was very experienced in building bridges in such terrain and that he could complete same in a short period of time.

96. Ivy also told the claimant that she would want the bridge to be wide enough to accommodate a truck in the event that any person would want to build upon the back portions of the lands and required material to be delivered to do so. Ivy further specified that she wanted the bridge itself to have railings on each side. The claimant agreed and said it was not a problem to construct a bridge to those specifications. After listening to the specifications of the bridge given by Ivy, the claimant indicated that the cost of such a project would be in the range of \$100,000.00.

97. Ivy informed the claimant that they needed to speak further on it before deciding on the proposed construction and that if they decided to go that

route, they would prepare a contract outlining the terms and conditions which would govern the project and the specifications of the bridge itself.

98. The defendants did not hear from the claimant after that conversation and although Anne made numerous attempts to telephone him, she was unsuccessful so that she thought that he did not wish to go forward with the construction of the bridge. The claimant never contacted Anne. At that time, Anne was working at the Civilian Conservation Corps, Mausica office and she was there from 7:00 am and only returned home at about 5:30 pm so that she did not have the time to visit the lands.

99. On or about June, 2015, Anne received a telephone call from the claimant who stated that the bridge at the lands was completed. Anne expressed surprise to the claimant and asked how that could have happened since they never agreed on the final terms and conditions so that he could commence the works.

100. The next day, Anne went to see the bridge which the claimant purportedly constructed. She was accompanied by her friends, Jeffrey John, his wife, Sherina John and a Real Estate Agent by the name of Carlton. They arrived at the lands at approximately 4:30 pm and when they arrived, the claimant was not there. Anne went to the site and she immediately noted that the bridge which was constructed was not what they had discussed.

101. Firstly, there were no railings on the side of the bridge. Also, the cylinders were not the size that they had discussed and there was no basket to hold the gravel from sliding down from the cylinders. Anne took photographs of the bridge with her cell phone and she saved them on phone. She has control over the phone and when she arrived home, she downloaded the

photographs to her USB flash drive and printed out same using her printer at her home.¹¹

102. Anne called the claimant later that week after her visit to the lands and she informed him that she was not happy with the outcome of the project. He told her that he did not want to hear that, that he spent his money and that he wanted his money back. The claimant did not tell Anne that he ever had cause to borrow any money to complete the project.

103. Anne further informed the claimant that the gravel was skating down from the cylinders and running into the river and that they never even agreed to the construction of the bridge. The claimant continued saying that he did not care. Later, after discussing with Ivy, Anne sought legal advice and she retained the services of Mr. Gerard Raphael, from whose office she called the claimant.

104. Anne caused correspondence to be sent to the claimant under the hand of Mr. Raphael dated June 23, 2015 in which their dissatisfaction of the manner in which the bridge was constructed was expressed.¹²

The cross-examination of Anne

105. Anne was referred to letter dated June 23, 2015 which was sent to the claimant by Mr. Raphael on behalf of the defendants. In this letter, the following was stated;

¹¹ A copy of the photographs was annexed at TAB 3 to the defendants' List of Documents filed on May 22, 2018.

¹² A copy of the correspondence was annexed at TAB 1 to the defendants' List of Documents filed on May 22, 2018.

“...I represent Ms. Anne Mahabir and Ms. Ivy Mahabir who inform me that two weeks ago they retained your services to construct a bridge over a river to access their lands...

I am instructed that you agreed to place ten cylinders across the river to assist in building the bridge. However instead of the ten cylinders you have placed seven cylinders across the river.

I am therefore to call upon you to provide my client with a written breakdown of expenses for materials and labour utilized in constructing the said bridge.

My client undertakes to make payment to you of the said expenses within one month of the date of the breakdown as my client Ivy Mahabir resides abroad...”

106. Anne accepted that she gave instructions to Mr. Raphael to write the aforementioned letter on her behalf to the claimant. Notwithstanding the aforementioned, Anne denied that there was an agreement between Ivy, the claimant and her to construct the bridge. She testified that they had discussions about the construction of the bridge but no agreement.

107. Anne was then referred to letter dated July 6, 2015 which was sent to the claimant by Mr. Seecharan on behalf of the defendants. In that letter as laid out above, it was stated that it was mutually agreed that upon the completion of the bridge, the claimant would be paid the sum of \$100,000.00. Notwithstanding the aforementioned, Anne reiterated that there was no agreement between Ivy, the claimant and her for the construction of the bridge, that they were in discussions and that she did not know when the claimant went to build the bridge. Anne was then asked if she recalled giving instructions to Mr. Seecharan with respect to the bridge that was built to the claimant and she stated yes she did.

108. The numerous unsuccessful attempts to contact the claimant by telephone occurred in the early part of June, 2015. When Anne contacted the claimant from the offices of Mr. Raphael, she used the same number she had previously used to contact the claimant. That call took place around June 23, 2015.

109. When Anne took the photographs of the bridge with her phone, she went to a stationery store to get the photographs downloaded onto a USB flash drive. Those photographs were taken some time in June, 2015

The evidence of Ivy

110. Some of the evidence of Ivy was the same as the evidence given by Anne and as such that evidence need not be repeated. The first time Ivy saw the claimant was in 2018, when she attended the present proceedings. According to Ivy, the claimant knew of her joint acquisition of the lands owing to the familial relation and approached Anne with a proposal to construct a bridge running through their land in order to provide some access to the back portion of the lands. Ivy could not recall the date on which they spoke as she was not present. However, she recalled that Anne told her that the claimant wished to speak to her about constructing the bridge across the river which ran through their portion of the lands and that he was a contractor so that that was his area of expertise.

111. On or about May, 2015, Ivy spoke to the claimant via MagicJack, which was installed on Anne's computer at her home. Anne was also present during the conversation. During that conversation, the claimant told Ivy that he would be able construct the bridge as he was familiar with the terrain which is very undulating and through which a river was passing.

112. Ivy was very skeptical of the proposal as she had not, prior to the conversation, known the claimant in that capacity or at all. Accordingly, Ivy indicated to him that the bridge she envisioned would have to be wide enough to accommodate load bearing trucks in the event that building material needed to be transported over same and that same should use cylinders and secured by railings on both sides.

113. The claimant listened to the specifications Ivy indicated to him and assured her that he was capable of delivering on those wishes. The claimant estimated the cost of the bridge at approximately \$100,000.00.

114. Ivy informed the claimant that she would have to discuss same with Anne and that based on what they decided, she would send to him a contract outlining the terms and conditions under which they would proceed. The claimant agreed.

115. A few days later, Ivy sent a draft of the proposed agreement to the claimant to read based on the conversation they had via MagicJack. Ivy received no response. Ivy called Anne to ask her to call the claimant and Anne indicated to her that she was unable to reach him.

116. On or about June 13, 2015, the defendants were finally able to contact the claimant who told them that the bridge was completed. Ivy was confused by that as the agreement was as yet not signed. Anne agreed to visit the location of the bridge and from there, Anne video called Ivy so that she could see the work which was done by the claimant.

117. Ivy was appalled when Anne placed the screen of the mobile phone towards the river so that she could see the work done as she observed that there were no steel rods or boulders used in the construction of the bridge. There were also no handrails to the side of the purported bridge and Ivy

observed that the gravel which was placed over the cylinders was already washing off into the river.

118. Shortly thereafter, the defendants took a decision to obtain legal advice and thereafter retained the services of Mr. Raphael.

119. Ivy testified that at no point in time, did she or Anne agree to let the claimant commence any works upon the lands.

The cross-examination of Ivy

120. Ivy has been residing in the States for twenty-two years. She is fifty-five years of age. Prior to residing in the States, she lived in Trinidad. Ivy does not know the claimant. The first time she interacted with the claimant was when she spoke to him via the telephone in relation to the construction of the bridge. Ivy spoke to the claimant on three occasions on the telephone. The first conversation took place sometime in April, 2015 when she was introduced to the claimant and the other two conversations took place in May, 2015 during which they discussed the construction of the bridge.

121. Ivy does not have much knowledge in the construction industry. She knew what equipment and materials were needed for the construction of the bridge after having discussions with the claimant. The claimant suggested that cylinders should be used in the construction of the bridge. Anne was then referred to her witness statement wherein she stated that she indicated to the claimant that the bridge she envisioned would have to be wide enough to accommodate load bearing trucks in the event that building material needed to be transported over same and that same should use cylinders and secured by railings on both sides. In response, she

stated that if she was asking someone to do work for her, she must have some idea as to what she wanted to be done.

122. In May, 2015 Ivy sent the draft of the proposed agreement to Anne to be passed to the claimant. She sent the draft to Anne via the telephone. When asked what she meant by she sent the draft via telephone, Ivy stated that she *“snapped it and sent it”*. The proposed agreement contained the details on the construction of the bridge and a suggested amount of \$100,000.00 for the works to be done. Ivy does not have a copy of the *“snap”* she sent to Anne as she changed phones. She accepted that the *“snap”* would have been important. She was then asked if she asked Anne if Anne had a copy of the *“snap”* and she (Ivy) stated that she did not because she did not think it was important as same was discussions and not a final agreement.

123. The claimant called Anne on June 13, 2015 to inform Anne that the bridge was completed. Anne visited the lands to view the bridge a day or two after the claimant contacted her. Anne would have visited the lands after work to view the bridge.

124. On June 23, 2015 Ivy and Anne sought legal advice from Mr. Raphael. Ivy was referred to letter dated June 23, 2015 which was written to the claimant by Mr. Raphael. Ivy testified that although the letter stated that Anne and she retained the services of the claimant, they did not retain the services of the claimant as they never reached any agreement with the claimant.

125. Ivy accepted that she and Anne retained the services of Mr. Seecharan and that they gave Mr. Seecharan instructions to write to the claimant on their behalf. Ivy was then referred to letter dated July 6, 2015.

Notwithstanding the contents of that letter, Ivy reiterated that there was no agreement between Anne, the claimant and she for the construction of the bridge and that there were only discussions pertaining to same amongst them.

ISSUE 1 - *whether there was an oral agreement between the claimant and the defendants for the construction of the bridge*

Law

126. Before a contract can become legally binding and enforceable, the parties must have the capacity to contract, there must be an intention to create legal relations, there must be the consent of the parties coupled with offer and acceptance and there must be valuable consideration.¹³

127. An offer is an expression by one person or group of persons made to another of his willingness to be bound to a contract with that other on terms either certain or capable of being rendered certain.¹⁴ An offer must be distinguished from a mere invitation to treat. An invitation to treat is a mere declaration of willingness to enter into negotiations; it is not an offer, and cannot be accepted so as to form a binding contract.¹⁵

128. An acceptance of an offer is an indication, express or implied, by the offeree made whilst the offer remains open and in the manner requested in that offer of the offeree's willingness to be bound unconditionally to a contract with the offeror on the terms stated in the offer.¹⁶

¹³ See CV 2017–04051 *Jerwyn Balthazar and Others v the Trinidad and Tobago Football Federation*, paragraph 35 per Justice M. Mohammed

¹⁴ Halsbury's Laws of England, Volume 22 (2012), paragraph 234.

¹⁵ Halsbury's Laws of England, Volume 22 (2012), paragraph 235.

¹⁶ Halsbury's Laws of England, Volume 22 (2012), paragraph 251.

129. Consideration for a promise may consist in either some benefit conferred on the promisor, or detriment suffered by the promisee, or both. On the other hand, that benefit or detriment can only amount to consideration sufficient to support a binding promise where it is causally linked to that promise. It is not necessary that the promisor should benefit by the consideration. It is sufficient if the promisee does some act from which a third person benefits, and which he would not have done but for the promise.¹⁷

130. The test to be applied in determining whether an agreement has been made is an objective one. Lord Clarke in **RTS Flexible Systems Ltd v Molkerei Alois Muller GmbH and Co KG**¹⁸ (a case relied on by both parties) had the following to say;

"...The general principles are not in doubt. Whether there is a binding contract between the parties and, if so, upon what terms depends upon what they have agreed. It depends not upon their subjective state of mind, but upon a consideration of what was communicated between them by words or conduct, and whether that leads objectively to a conclusion that they intended to create legal relations and had agreed upon all the terms which they regarded or the law requires as essential for the formation of legally binding relations."

Analysis and findings

131. The court agrees with the submission of the defendant that the burden of proof rests with the claimant to demonstrate that 1) there was a valid

¹⁷ Halsbury's Laws of England, Volume 22 (2012), paragraph 309

¹⁸ [2010] 1 WLR 753 at 771

oral contract subsisting between the parties, 2) the defendants breached that agreement and 3) there was resultant loss flowing therefrom.

Oral Agreement

Offer or invitation to treat

132. According to the defendants, the fact that they were in discussions with the claimant for the construction of the concrete cylinder bridge, without more, was not indicative of the formation of an agreement and/or consensus between the parties. The defendants submitted that the claimant has led no further evidence to establish such an oral agreement.

133. It is undisputed that the claimant met with Anne at Price Plaza. According to the claimant, he met with Anne and her daughter, Trisha to discuss the duration of the project together with the cost and the way forward. He testified that at the meeting, Anne together with her daughter, agreed with the proposals he proposed. The proposals he suggested were to begin the construction of the bridge with workers he had sourced and with his own finances. They all agreed that when Ivy returned from the States, the claimant would have been remunerated, whatever the cost was.

134. The defendants on the other hand testified that the claimant indicated to Anne that he wished to speak to her about the lands and that they agreed to meet at Price Plaza, Chaguanas, the following night. At the meeting the claimant began to tell Anne that he wanted to bulldoze the lands and that he would charge the sum of \$50,000.00 to do so. Anne informed the claimant that she could not embark on that project as her other daughter was not well as she had just been in a motor vehicular accident and would have required corrective surgery in short course.

135. In response, the claimant told Anne that they could make an arrangement instead whereby she could give him about four lots of the lands as payment as he wanted to construct a Ranch, close to the river. The claimant told Anne that he could take her to his lawyer, one Mr. Boucard of Woodbrook, to prepare the paperwork to effect the transfer.

136. Anne informed the claimant that she could not do that as there was no access throughout the lands and that she needed to build a bridge to access the back portion of the lands before she could consider selling any portion of same. The claimant then informed Anne that he was in the contracting business and that he could construct the bridge for her as he had experience in those types of projects. Anne informed the claimant that she would think about it and that she needed to discuss same with Ivy before she could give him an answer. The claimant agreed with that course of action and stated that he would wait to hear from Anne. He then exited the vehicle.

137. The court finds that the meeting at Price Plaza, was a mere invitation to treat. That the claimant during that meeting informed Anne of his willingness to enter into negotiations with Ivy and her to build the bridge. His proposal was a mere declaration of willingness to enter into negotiations to build the bridge. It was not an offer, and therefore did not require acceptance so as to form a binding contract. As such, the court finds that no binding contract was formed at the meeting at Price Plaza. Whether it was also in the interest of the claimant that the bridge be built is irrelevant to the issue.

Agreement

138. According to the evidence of the defendants, after the meeting at Price Plaza they made arrangements for the claimant to speak with Ivy. Ivy and the claimant spoke to each other via MagicJack. Ivy enquired from the claimant about his expertise in such projects. The claimant assured Ivy and Anne that he was very experienced in building bridges in such terrain and that he could complete same in a short period of time. Ivy told the claimant that she would want the bridge to be wide enough to accommodate a truck in the event that any person would want to build upon the back portions of the lands and required material to be delivered to do so. Ivy further specified that she wanted the bridge itself to have railings on each side. The claimant agreed and said it was not a problem to construct a bridge to those specifications. After listening to the specifications of the bridge given by Ivy, the claimant indicated that the cost of such a project would be in the range of \$100,000.00.

139. Ivy informed the claimant that they needed to speak further on it before deciding on the proposed construction and that if they decided to go that route, they would prepare a contract outlining the terms and conditions which would govern the project and the specifications of the bridge itself.

140. A few days later, Ivy sent a draft of the proposed agreement to the claimant to read based on the conversation they had via MagicJack. Ivy received no response. Ivy called Anne to ask her to call the claimant and Anne indicated to her that she was unable to reach him. On or about June, 2015, Anne received a telephone call from the claimant who stated that the bridge at the lands was completed. Anne expressed surprise to the claimant and asked how that could have happened since they never agreed on the final terms and conditions so that he could commence the works.

141. The court finds that the phone call between Ivy and the claimant was the point at which the oral agreement between the claimant and the defendants for the construction of the bridge was made. It is pellucid to this court that during the telephone call, the offer to build the bridge was made by Ivy on the part of both sisters and that the claimant accepted that offer. Ivy further informed the claimant that she wanted the bridge built to certain specifications and the claimant agreed that he had no problems constructing such a bridge with those specifications. Further, that the price agreed upon was in the range of \$100,000.00, not the sum of \$100,000.00. So that it had been made clear to Ivy and Anne that there was an approximate price at that stage.

142. As there was no documentary evidence to support the assertion of an alleged draft proposed agreement, the court does not believe Ivy when she says that she informed the claimant that they would prepare a contract outlining the terms and conditions which would govern the project and the specifications of the bridge itself. Further, in her witness statement Ivy testified that she sent a draft of the proposed agreement to the claimant to read but received no response. However, during cross-examination Ivy testified that she sent the draft to Anne via the telephone. When asked what she meant by she sent the draft via telephone, Ivy stated that she *“snapped it and sent it”*. Ivy did not have a copy of the *“snap”* she sent to Anne as she changed phones. As such, it was clear to this court that there was no evidence that Ivy told the claimant that she would draft terms and send it so that the court does not believe it to be the case that she did not give him instructions to proceed. The assertion of a draft agreement may have been an afterthought on her part for it is not mentioned in the first letter by her lawyer Mr. Raphael. What remains clear is whether subject to detailed terms of the contract, on the day of the phone conversation, there was offer and acceptance and a price range set.

Consideration

143. For the agreement to be valid, consideration must move from the promisee. In this case, the claimant was the promisee and the defendants the promisor. The claimant suffered a detriment by building the bridge with his funds and was supposed to gain a benefit when paid for works done. He also suffered detriment by obtaining financing for the construction. The defendants gained a benefit by the construction of the bridge. The court finds therefore that the benefit by the defendants and the detriment of the claimant amounted to consideration sufficient to support a binding agreement.

144. Additionally, the letters dated June 23, 2015 and July 6, 2015 make it clear to this court that there was an agreement between the claimant and the defendants. In letter dated June 23, 2015 which was sent to the claimant by Mr. Raphael on behalf of the defendants it was stated that the defendants retained the services of the claimant to build the bridge. The tone of this letter was that there was an agreement between the claimant and the defendants to build the bridge but that the claimant failed to abide by certain instructions in relation to the specifications of the bridge and so the defendants needed him to provide proof of his expenditures in order to facilitate the payment of the works done.

145. Letter dated July 6, 2015 which was sent to the claimant by Mr. Seecharan on behalf of the claimant set out a detailed agreement which was purportedly mutually agreed to by the claimant and the defendants. Again the tone of this letter was that the claimant failed to abide by the mutually agreed terms and so the defendants were seeking documentary proof of his expenses in order to pay him for his works.

146. Consequently, the court finds that based on the admissions of the defendants and the aforementioned letters, the claimant has proven that there was an agreement between the defendants and him for the construction of the bridge.

ISSUES 2 AND 3 – breach and damages

Analysis and findings

147. The claimant relied on the case of **Peak Petroleum Trinidad Limited v Primera Oil and Gas Limited; Primera East Brighton Limited; Primera Oilfield Management Services Limited**,¹⁹ wherein Justice Jones at paragraph 91 had the following to say;

“...The question of when a breach of a contract occurs is an issue of fact to be determined by the Court in the light of the surrounding circumstances...”

148. Accordingly, the claimant submitted that in this case, the breach of contract occurred when the defendants failed or refused to pay him. The court agrees with the claimant that the defendants breached the contract when they failed and or refused to pay him.

149. The defendants submitted that should the court find that there was an oral agreement between the parties, the claimant has not succeeded in proving his damages as the evidence of Langton cannot be given the sufficient weight in order to so prove by virtue of his exclusion as an expert witness.

¹⁹ CV2011-02039

150. According to the evidence of the claimant, it was agreed that he would use his finances to build the bridge and that when Ivy returned from the States, he would be remunerated, whatever the cost was. The claimant therefore had cause to borrow \$125,000.00 from Al-Khatib to help with the financing of the construction of the bridge. The court believes that Al-Khatib did in fact lend the claimant \$125,000.00 as this modus operandi is not an unreasonable one in light of local small establishments like gyro shops reliance on cash transactions and dealings. Also, the evidence accords with what can be considered family dealings with personal loans within the local culture and prevailing norms. The absence of receipts for the money lent therefore does not cause the court to disbelieve the evidence.

151. During cross-examination, the claimant testified that an exact figure for the construction of the bridge was not arrived at. That the cost of constructing the bridge was estimated at \$180,000.00 but whatever the cost was, he would have presented the bills accordingly.

152. According to the evidence of the defendants, after listening to the specifications of the bridge, the claimant estimated the cost of the bridge at approximately \$100,000.00.

153. In letter dated June 23, 2015 the defendants demanded that the claimant supply them with a written breakdown of expenses for materials used in constructing the bridge and labour. The defendants undertook to make payment to the claimant of the said expenses within one month of the date of the breakdown.

154. In letter dated July 6, 2015 it was stated that after negotiations it was mutually agreed that upon completion of the bridge the claimant would

be paid the sum of \$100,000.00 (for his labour, material and transportation with all bills included) upon the sale of land by my clients or after two months of total completion.

155. By letter dated October 19, 2015 the claimant responded to the defendants' letter and denied that the agreed price for the works was \$100,000.00. This letter stated that the price for the works done was the sum of \$166,200.00 and that payment of the said sum was never premised upon the sale of any land by the defendants but was to be paid on June 18, 2015.

156. On an analysis of the evidence, the court finds that it is plausible that the claimant told the defendants that the cost of constructing the bridge would be in the range of \$100,000.00. As such, the court finds that the claimant is being truthful when he says there was no agreement for the sum of \$100,000.00. The court further finds that as per letter dated June 23, 2015 the agreement was to pay the final sum claimed by the claimant at the end of the project on the provision of a breakdown of the expenses. That letter dated July 6, 2015 was inconsistent with the defendants' first instructions to Mr. Raphael. Consequently, as set out before, the court found that the figure of \$100,000.00 was an afterthought by the defendants claimed to be mutually agreed upon in letter dated July 6, 2015 on the premises that the claimant would have told them that the cost of the project would have been in the range of \$100,000.00.

157. Moreover, the court finds that the evidence of Langton would have only been relevant if it was proceeding on a quantum merit basis. As the court found that the agreement was to pay a final sum claimed by the claimant at the end of the project, the valuation report of Langton made no difference. As such, the issue of whether he is an expert is not relevant

since the significance of his evidence for the court is the fact that he confirmed that work was done. Further, it is not reasonable to believe that the claimant would have embarked upon such work involving such a quantum of money unless he was assured of payment in the future. The claimant is therefore entitled to the sum of \$166,200.00 and the court so finds.

DISPOSITION

158. The order of the court is as follows;

- i. The defendants shall pay to the claimant the sum of \$166,200.00;
- ii. The defendants shall pay to the claimant the prescribed costs of the claim on the basis of the value of the claim being one for \$166,200.00 in the sum of \$33,930.00.
- iii. There shall be a stay of execution of twenty-eight (28) days.

Judge

Ricky Rahim