

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No: CV2017-04662

Between

XANDER CONTRACTORS LIMITED

Claimant

And

THE CEPEP COMPANY LIMITED

Defendant

Before the Honourable Mr. Justice R. Rahim

Date of Delivery: October 17, 2019

Appearances:

Claimant: Mr. J. Singh and Mr. D. Rambally instructed by Mr. S. Ramkissoon

Defendant: Mr. F. Masaisai instructed by Mr. I. Jones

JUDGMENT

THE CLAIM

1. This is a claim for breach of contract. The claimant is a limited liability company engaged in the provision of general contracting services inclusive of construction, repair and maintenance work. The defendant is also a limited liability company, acting as an agent of the Ministry of Rural Development and Local Government.
2. In or around November, 2014 the defendant embarked upon a programme known as the Health Sector Initiative led by the North Central Regional Health Authority (“NCRHA”). The defendant became the executing agent of the Ministry of Health to execute certain construction, repair and maintenance services (“the services”) on various public health sector facilities. Pursuant to its undertaking and/or agency obligations, the defendant was tasked with legally engaging private contractors to perform the services as identified by the Ministry of Health upon various public health institutions.
3. According to the claimant, in or around March, 2015 it was invited by the defendant to tender for the execution of construction, remedial and maintenance works to various health facilities throughout Trinidad and Tobago. The claimant avers that subsequent to the tendering process, it was awarded and entered into a contract for the performance of the renovation services at the Talparo Health Centre.
4. On or around March 27, 2015 the claimant received the letter of award for the Talparo Health Centre in the sum of \$2,570,000.00 VAT exclusive. The letter of award was signed off on by the defendant’s then General

Manager, Carl Jagdeo (“Jagdeo”). Consequently, the claimant undertook upgrade, repairs and maintenance works of the Talparo Health Centre inclusive of infrastructural, civil, electrical, plumbing, air conditioning and roofing system.

5. Upon the completion of the works, the claimant presented Invoice No-CEPEP-0001 dated June 15, 2015 for the sum of \$2,955,500.00 to the defendant. The claimant avers that having performed the aforementioned services, it was issued with a completion certificate by the defendant as evidence of satisfactory completion of works in accordance with the conditions of the contract. The completion certificate was duly approved by the NCRHA.
6. On or around August 2, 2016 the claimant wrote to the defendant informing it that the works pursuant to the said contract having been completed, the sum of \$2,955,500.00 was past due. However, no payments were forthcoming from the defendant. As such, it is the case of the claimant filed by claim of December 28, 2017 that the defendant has breached the contract by failing to pay for the services that were duly and satisfactorily performed. In the alternative, the claimant claims that it is entitled to reasonable compensation for the performance and completion of the services on a *quantum meruit basis*.

THE DEFENCE

7. By Defence filed on June 20, 2018 the defendant denies that it entered into a contract with the claimant for the performance of the renovation services at the Talparo Health Centre. The crux of the defendant’s case is that Jagdeo had no authority to enter into a contract with the claimant on behalf of the defendant.

8. According to the defendant, its process is governed by the State Enterprises Performance Monitoring Manual (“the SEPMM”), the CEPEP Tenders and Disposal Policy and Procedure regulations (“the TDPP regulations”) and its by-laws. The SEPMM provides rules governing the procurement function at the State agency and the roles and responsibilities of personnel involved. The purpose of the TDPP regulations is to ensure that the defendant effectively manages the tendering process while promoting 1) value for money, 2) equity and transparency in all business transactions, 3) adherence to best practices and 4) accountability.

9. The defendant avers that Jagdeo failed to follow the requirements of the SEPMM and the TDPP. Further, that there was no document signed in conformity with the requirements set out by the by-laws of the defendant. Moreover, the defendant avers that the claimant was neither prequalified by the defendant nor tendered for the contract in accordance with the tendering rules. That the claimant was brought into the process by Jagdeo and/or by an improperly constituted tenders committee, was in an illegitimate position and knowingly and willfully cheated the process.

10. The defendant claims that if the court finds that there is in fact a contract issued to the claimant (which is denied), it will argue that the contract was issued in breach of the established provisions of the SEPMM and the TDPP regulations and the implied obligation of good faith which is the result of moral turpitude, willful blindness and/or fraud. That due to the aforementioned the alleged contract is null, void and of no effect as being against public policy.

ISSUES

11. In light of the discovery of what the court considers to be an alarming feature on the evidence in this case (which shall be set out later), the determination of whether the SEPMM and the TDPP regulations governed the defendant at the material time has become of utmost importance. This is so since if it is determined that either the SEPMM or the TDPP regulations was in fact applicable but not complied with, there could have been no validly executed contract between the claimant and the defendant. Consequently, the issues to be determined are as follows;

- i. Whether the SEPMM and/or the TDPP regulations in fact governed the defendant in the procurement process of contracts at the material time;
- ii. If the answer to (i) is no, the following issues would fall to be determined;
 - a) Whether the then General Manager of the defendant had the authority to enter into a contract with the claimant on behalf of the defendant for the refurbishment works to be undertaken at the Talparo Health Centre;
 - b) Whether there is a binding contract between the claimant and the defendant for the refurbishment works to be undertaken at the Talparo Health Centre;
 - c) If there is a binding contract, did the claimant complete the works pursuant to the contract; and
 - d) If there is a binding contract, whether the claimant's actions in the procurement of the contract amounted to willful blindness and/or moral turpitude and/or fraud.
- iii. If the answer to (i) is yes, the following issues would fall to be determined;

- a) Whether the claimant was aware of the non-compliance of the SEPMM and/or the TDPP and/or whether the claimant's actions in the procurement of the works amounted to willful blindness and/or moral turpitude and/or fraud;
- b) Whether the claimant can be compensated on a quantum meruit basis should it be found that there was no legally binding contract between the claimant and the defendant; and
- c) If the answer to (b) is yes, whether the claimant completed the refurbishment works at the Talparo Health Centre.

12. The court noted that the defendant attempted to make an issue of whether the claimant ought to have sued the State in light of the fact that it is undisputed that the defendant acted in the capacity of an agent of the State. In the court's view, this was not an issue to be determined as suit has in fact been brought against the defendant, a limited liability company. This is not a suit against the state. It is equally clear that the defendant is entrusted with the management of public funds and is so accountable to the state but that is quite a different thing from that argued by the defendant.

EVIDENCE FOR THE CLAIMANT

13. The claimant called two witnesses; Avinash Seegobin and Ravi Matadeen.

Avinash Seegobin

14. Avinash Seegobin ("Seegobin") has been the Managing Director of the claimant for nine years and has been involved in the construction industry for over fifteen years. As the Managing Director, his duties included but were not limited to the following;

- i. The supervision of the refurbishment work at the Talparo Health Centre;
- ii. Sourcing and hiring of plumbers, labourers, electrician masons and other skilled personnel;
- iii. Purchasing material for the job sites;
- iv. Paying workers; and
- v. Submitting the tender for projects.

15. The claimant was incorporated on June 25, 2009 and has been involved in the construction industry since its incorporation. Prior to the Health Sector initiative being initiated, in or around August, 2014 Seegobin attended the offices of the defendant to pre-qualify the claimant with a view to be short listed for contracts awarded by the defendant. The defendant requested the following information as listed in a document captioned "*Application to be addressed to: General Manager*" for pre-qualification;

- i. Letter of Application/Company Profile (Contractors Registration Form);
- ii. Certificate of Incorporation of the Company;
- iii. Articles of Incorporation;
- iv. Notice of Address of the Company;
- v. Notice of Directors of the Company;
- vi. Two references;
- vii. Certificate of character for Directors;
- viii. NIB certificate;
- ix. VAT registration certificate (if any); and
- x. BIR certificate.

16. Seegobin testified that during the pre-qualification stage, the process or requirements to be pre-qualified by the defendant were all part of the

internal management of the defendant and were not matters which were within his knowledge or that of any of the claimant's agents. That what was required of the claimant was to address its financial and technical capabilities, which was done when the contractor registration form was completed. According to Seegobin, if after receipt of the contractor registration form, the defendant required additional information regarding the claimant's capabilities, then the information would have been given to the defendant. Seegobin completed the contractor registration form and submitted all the requested documents to the defendant.¹

17. Seegobin testified that at all times, while he acted in his role as Managing Director of the claimant, he followed the procedures presented to him by the defendant. That included but was not limited to the process to be registered as a contractor with the defendant and for submission of the respective tenders.

18. In or around early March, 2015 Seegobin was contacted by a representative of the defendant, who informed him that the claimant passed the pre-qualification process. Thereafter, Seegobin was invited to attend a meeting at the defendant's head office to discuss the health sector initiative.

19. The defendant's officials also announced that upon satisfactory completion of works and the acquisition of a completion certificate, the contractors would be guaranteed payment within ninety days of submitting their invoice.

¹ Copies of the Contractor Registration Form and the bundle of requested documents submitted to the defendant in the pre-qualification process was annexed to Seegobin's witness statement at "A.S.1."

20. At that meeting, Seegobin was invited to tender for the Talparo Health Centre, Arouca Health Centre and St. Joseph Enhanced Health Centre and was given the respective tender documents for same. Those documents included a letter of invitation to tender dated March 4, 2015 from the defendant signed by the then General Manager, Carl Jagdeo (“Jagdeo”). According to Seegobin, that letter indicated that the defendant was the executing agent of the Ministry of Health and Government of Trinidad and Tobago to execute certain refurbishment works on the Talparo Health Centre. The letter of invitation provided as follows;

“Re: Tender for Health Sector Initiative- North Central Regional Health Authority (NCRHA) Reimbursement works to Talparo Health Centre

This invitation to tender is being issued to selected firms by the CEPEP Company Limited for the project as identified above.

A contractor will be selected via the competitive tendering procedures. Bids are to be deposited in the marked Tender Box located at The CEPEP Company Limited, Factory Road Ste. Madeleine, on or before 4:00p.m. on Monday 23rd March, 2015.

SITE VIEWING

Tenderers are advised to visit the site and familiarize themselves with the site conditions for the proposed works....”

21. After leaving the said meeting, Seegobin received an email dated March 13, 2015 from the defendant’s Corporate Secretary, Anees Rahman (“Rahman”) informing the claimant of the dates in which the various contractors were invited to attend the respective site visits for the proposed works.

22. Seegobin contacted Ravi Matadeen (“Matadeen”) on March 16, 2015 to attend the site visits with him in the capacity of Labour Contractor.

Matadeen accepted Seegobin's invitation and on March 17, 2015 they attended the site visits at Maloney Health Centre, La Horquetta Health Centre and Talparo Health Centre. The site visits were conducted by Kevin Lakhram ("Lakhram"), the defendant's Project Manager who gave Seegobin and other representatives of contractors, a walkthrough of the facilities pointing out what was to be done and answering all questions on the part of the contractors.

23. On March 18, 2015 Matadeen and Seegobin attended the site visits at the St. Joseph Enhanced Health Centre and the Arouca Health Centre. Lakhram was again the facilitator and provided them, along with the other contractors, with an in-depth review of the works to be done.

24. Over the next four days, Seegobin priced out and valued the cost of doing the works and completed the tender documents for three Health Centres.

25. Having received the letter of invitation to tender, Seegobin proceeded to prepare the documents for the form of tender and the bill of quantities pursuant to the scope of works. He then submitted the form of tender and the bill of quantities dated March 23, 2015 to the defendant before the 4:00pm deadline as required in the tender document. The form of tender was calculated in the sum of \$2,570,000.00 exclusive of VAT. Seegobin testified that he followed the correct procedure and steps required of the claimant in tendering for the contract as that was the first tender ever made by the claimant to the defendant.²

² Copies of the Letter of Invitation to Tender, Form of Tender, Scope of Works and Bill of Quantities were annexed to Seegobin's witness statement at "A.S.2".

26. Subsequent to submitting the form of tender and bill of quantities, Seegobin was contacted by a representative of the defendant via telephone in the last week of March, 2015, informed of the claimant's successful bid in relation to the works at the Talparo Health Centre and was asked to come into the defendant's Head Office to execute the agreement/contract. At that meeting, Seegobin signed the letter of award on behalf of the claimant which was also signed by Jagdeo who represented the defendant and acted for and on behalf of the defendant. According to Seegobin, that letter of award set out that the contracted cost was \$2,570,000.00 exclusive of VAT.³ The letter of award provided as follows;

"The CEPEP Company Limited (CCL) has accepted your offer in accordance with your tender for the sum of Two Million, Five Hundred and Seventy Thousand Dollars (\$2,570,000.00) Vat Exclusive for the provision of refurbishment works to be undertaken at the Talparo Health Centre, in accordance with your submitted tender documents and Bill and Quantities dated 23rd March, 2015.

As discussed at the meeting held on March 20th, 2015, at The CEPEP Company Limited Board room, all terms and conditions of the draft contract, as well as the Scope of Works and Technical Specifications attached to the said tender document will apply, with the exception that Clause 3 of the said Contract is modified as follows:

3. Billing and Payment

In full consideration of the Contractor's satisfactory completion of the services, the Company shall remit to the Contractor, the sum of Two Million, Five Hundred and Seventy Thousand Dollars (\$2,570,000.00) Vat

³ A copy of the letter of award was annexed to Seegobin's witness statement at "A.S.3".

Exclusive within ninety (90) days of the Company's approval of the works completed and the invoice submitted.

Please note that any variations to the Scope of Works or Technical Specifications, must be authorized prior by The CEPEP Company Limited.

Please acknowledge acceptance of this Letter of Award by signing and returning the attached copy to the office of the Corporate Secretary, The CEPEP Company Limited, Factory Road, Usine, St. Madeleine."

27. Seegobin testified that the letter of award given to the claimant was signed by the defendant's General Manager and as far as he was aware the General Manager was capable of and had the authority to sign the letter to create a binding agreement between both the parties. Seegobin further testified that he had no information or knowledge to suggest otherwise. According to Seegobin, the letter of award is enforceable due to the following;

- i. The letter of award was issued by the defendant and was accepted by the claimant at the inception of the project and with the full approval, consent and knowledge of the defendant;
- ii. The letter of award was signed by the General Manager, Jagdeo and it was represented to Seegobin that the General Manager was the person who was authorized to issue the letter of award;
- iii. The defendant permitted the General Manager to sign the letter of award;
- iv. At no point in time did a member of the defendant's staff or other representative indicate or inform Seegobin or any agent of the claimant that the General Manager was not authorized to sign the letter of award on its behalf.

28. Seegobin testified that at every stage during the tendering process and the completion of the contract, he acted on representations and information which was presented and supplied to him by the defendant.
29. During the tendering process and upon receiving the letter of award from the defendant, Seegobin was neither aware nor had he been notified by any of the officials of the defendant that there existed documents known as the SEPMM or TDPP regulations. Seegobin testified that he first became aware of those documents when the defendant referred to it in its Defence. Further, he was not aware of the defendant's internal workings as the claimant was only a contractor for a specific project. As such, Seegobin testified that any allegations made by the defendant that the claimant and/or its agents would have been aware of the aforementioned is unfounded.
30. Since becoming aware of those documents, Seegobin has caused checks to be done and to his knowledge the SEPMM was neither directly incorporated into the defendant's company documents nor into the contractual documents used between the claimant and the defendant. In addition to not being aware of the internal workings and systems of the defendant in that regard, Seegobin was also never notified or had reason to believe that the provisions of the SEPMM were in force and that the defendant used it as part of its internal workings.
31. Seegobin testified that the alleged tendering process as set out in Sections 4.1.1, 4.1.2 and 14 of the SEPMM were matters which form part of the internal management of the defendant and were not matters which the claimant had any knowledge of.

32. According to Seegobin, the letter of award and the contract entered into with the defendant did not breach the provisions of SEPMM, TDPP regulations and/or any implied obligation of good faith.
33. Further, Seegobin did not have any knowledge of the existence of the requirements as set out in the SEPMM. Therefore, he would not and could not knowingly and willfully or deliberately flout the rules of transparency as alleged.
34. In addition, he was not privy to any information or had knowledge of the proceedings of the TDPP. Also, he was unaware whether the TDPP regulations were adopted by the defendant's Board of Directors and/or approved by its shareholders.
35. Seegobin testified that any requirements and process which were presented to the claimant by the defendant were followed and if there were any requirements which were not followed it would have been as a result of the defendant not adhering to its own rules of its Tender Committee, rules which neither the claimant nor its agents would have been privy to.
36. At all material times, Seegobin and agents of the claimant have always maintained honesty and good faith throughout the contract. If there was any noncompliance, then that was a matter for the defendant. At no stage during the tendering process did Seegobin have notice or knowledge of any irregularities since it was the first tender made by the claimant for a contract of the defendant.
37. Subsequent to the executing of the said contract and/or letter of award, Seegobin was informed by representatives of the defendant that should

the claimant have any questions and/or concerns about the works that it was contracted to do at the Talparo Health Facility, they should contact Lakhram to alleviate same.

38. Therefore, prior to starting the project, Seegobin informed Lakhram that the claimant would be starting work on April 10, 2015 and given that the Health Centre operated only on weekdays, it would be working every weekend from 5:00pm on Friday until 5:00 am on Monday in an effort to minimize the disruption to the facility and to maximize productivity. Lakhram stated that the persons at the defendant and the health facility would be advised and the claimant could proceed as planned.

39. In or around April 9, 2015 the claimant entered into an agreement with the Labour contractor, Matadeen, to provide and/or supply all labour, materials and equipment to perform the works pursuant to said scope of works and/or bill of quantities. It was agreed that Matadeen would perform the said works for the sum of \$1,489,000.00 VAT exclusive.⁴

40. The work which the claimant duly performed on the Talparo Health Centre started in April, 2015 and particulars of services provided by the claimant, its employees and/or servants and/or its agents and/or representatives were detailed in the scope of works and consisted of the following works;

A. Plumbing;

- i. Repair leaking faucets & taps;
- ii. Complete servicing and repairs of all plumbing lines, fixtures & pumps to ensure proper functionality;
- iii. Install grab bars in all washrooms;

B. Electrical;

⁴⁴ A copy of the agreement between the claimant and Matadeen was annexed to Seegobin's witness statement at "A.S.4".

- iv. Install new external security lighting fixtures (solar powered-LED: IP67&IP69);
 - v. Complete servicing and repairs of all electrical fixtures, wiring & panels to ensure proper functionality;
- C. Air Conditioning;
- vi. Supply and install new A.C unit to examination room;
 - vii. Complete servicing of all air-conditioning systems to ensure proper functionality;
 - viii. Installation of A.C units in waiting areas as specified;
 - ix. Installation of extractor fan in dressing room;
- D. Cupboards, door and windows;
- x. Complete servicing, repairs & painting to all cupboards and drawers to ensure proper functionality;
 - xi. Complete servicing, repairs & painting of all doors, windows & locking devices to ensure proper functionality;
 - xii. Removal of main entrance door and door frames and replace with automated sliding doors and air curtains;
- E. Roofing and Ceiling;
- xiii. Repairs to all leaks to roofing;
 - xiv. Clean & repair guttering of all debris and leaks to ensure proper functionality;
 - xv. Repair and replace all damaged gypsum ceiling to internal of facility;
 - xvi. Clean & paint external metal soffit ceiling;
 - xvii. Install aluzine soffits for all external ceiling;
- F. Masonry & Painting;
- xviii. Minor masonry repairs to internal wall;
 - xix. Minor masonry repairs to external walls and fencing;

- xx. Apply 1 coat emulsion paint to gypsum ceiling to internal of building;
- xxi. Apply 2 coats emulsion paint all internal & external walls of building;
- xxii. Apply 2 coats emulsion paint all external fence walls;
- xxiii. Apply 1 coat metal primer and 2 coats oil base paint to metal posts and gates;

G. Carpark & Fencing

- xxiv. Complete servicing and repairs of all metal gates & locking devices to ensure proper functionality: Install new 20'-0" sliding entrance gate and Install 5'-0" entrance gate;
- xxv. Repair and install Coated Chain-link fencing.

H. Other Miscellaneous Works

- xxvi. Power wash and clean concrete apron and driveways;
- xxvii. Allow for securing furniture and equipment as identified as site visit and keep free from debris within health centre;
- xxviii. Remove and cart away all debris, plant and material used ensuring that work area is kept clean;
- xxix. Strip, sanitize, polish and seal vinyl floors;
- xxx. Supply and install flag pole at designated area;
- xxxi. Allow for repairs to flooring in wellness area as specified;
- xxxii. Allow for structural analysis of facility and perform remedial works as necessary;
- xxxiii. Allow for construction/retrofitting of a sluice room within the existing facility;
- xxxiv. Allow for construction/retrofitting of an extra consultation room within the existing facility;
- xxxv. Allow for construction/retrofitting of extra storage room within the existing facility;

xxxvi. Allow for a provision sum for maintenance works for a period of 12 months.

41. Seegobin testified that all of the items detailed above and particularized under the rubric headings plumbing, electrical, air conditioning, cupboards, door & windows, roofing and ceiling, masonry and painting, carpark and fencing and other miscellaneous works were the works according to the defendant's specifications which were all performed and carried out by the claimant.

42. The claimant's workmen reported to the Health Centre at approximately 4:00pm on April 10, 2015 with Lakhram where they met with the nurses and Brendon David ("David"). David was the NCRHA official responsible for the Health Centre during non-working hours. His responsibility with regards to the claimant's operations was to open and close the facility and allow it to access to sensitive areas and supervise its activity.

43. On April 14, 2015, Seegobin attended a Safety Meeting with Lakhram and Ishmael Dyett ("Dyett") (OSH Coordinator for NCRHA) on the Talparo Site. They advised that all OSHA standards had to be followed and that signage had to be erected in and around the work zone. Dyett also requested that an employee listing as well as Job Safety Analysis forms (JSA's), Accident/Incident Report Forms and a Vehicle Listing be submitted. Seegobin prepared the data and sent same via email to Dyett and Lakhram on April 16, 2015.

44. On April 17, 2015, Seegobin collected the signage and purchased a tent and erected same onsite. The work that was scheduled to be done which was the building of an extra storage room to the pharmacy had to be postponed due to the Pharmacist not showing up to open the pharmacy

and to secure the inventory. That delay was related to Lakhram and he assured the claimant that it would be passed on to the necessary parties so that the necessary arrangements could be made. The claimant's workmen continued with their work and adjusted their work schedule as necessary.

45. On April 20, 2015, Seegobin was contacted by Lakhram with a complaint that he had received about the condition of the site. Nurses at the health centre reported that the place was left in a mess. Seegobin assured Lakhram that that was untrue as he was present at the end of the work period and ensured it was up to standard. Seegobin addressed the situation by creating a Verification form which David would sign off on to certify that they had left the site in a proper condition.

46. An email was sent to Lakhram and Rahman on April 23, 2015 requesting their assistance in ensuring that arrangements would be made to allow for the pharmacist to report to the site so that the claimant's workmen could proceed with the extension of the pharmacy.⁵

47. On April 24, 2015 the claimant's workmen once again reported to the site and proceeded with their work schedule. On April 25, 2015 the pharmacist once again failed to report to the site. Seegobin was informed by Lakhram that his pharmacist's absence was due to some "red tape" with regards to overtime pay as it did not fall within the regular work arrangement. Once again, the claimant's workmen adjusted their work schedule in an effort to not further deviate their project timeline. They left the facility at 7:00am

⁵ Copies of all relevant emails in relation to the project were annexed to Seegobin's witness statement at "A.S.6."

on April 26, 2015 after doing a walk about site inspection with David at 6:45am. He signed the verification form and gave them a good review.⁶

48. The claimant's workmen reported to the site on May 1, 2015 as per usual and started work. Kazim Koon Koon ("Koon Koon") and his crew also reported to the site. Koon Koon was hired to handle the masonry and painting work to be done at the Health Facility. A contract between the claimant and Koon Koon dated May 1, 2015 was executed by both parties.⁷ Work at the site continued until Monday morning at 5:00am without incident.

49. The claimant's workmen reported to the site on May 8, 2015 and started work immediately. On May 9, 2015, TBIS Ltd. visited the site to measure and advise on masonry work to be done to outfit the facility with an automatic electronic sliding door. All masonry work was completed later on that day and Seegobin contacted Taran Bissessar, the Managing Director of TBIS Ltd. who assured him that they would install the electronic door the following week.

50. On May 16, 2015 TBIS Ltd's crew reported to the site and began the installation of the automatic door. They worked until roughly 11:00pm and returned on May 17, 2015 to test and configure. Seegobin witnessed the testing of the door and signed the automatic door warranty form.⁸

⁶ A copy of the verification form was annexed to Seegobin's witness statement at "A.S.5."

⁷ A copy of the contract between the claimant and Koon Koon was annexed to Seegobin's witness statement at "A.S.7."

⁸ Copies of the invoice from TBIS Limited and the Automatic Door Warrantee Form were annexed to Seegobin's witness statement at marked "A.S.8."

51. The claimant's workmen reported to the site on May 22, 2015 and proceeded to perform the scheduled work according to the work schedule. The workmen left the site on May 25, 2015 at approximately 6:00am.
52. The claimant's workmen reported to the site on May 29, 2015 at 5:00pm and began emptying the building of all furniture to allow for work to be done to the floor the following day. On May 29, 2015, Ryan Ali ("Ali") and his crew arrived at the site. Ali was hired to strip, sanitize, polish and seal the vinyl floor. They stripped and sanitized the floor and returned on May 24, 2015 to polish and seal.⁹
53. At that point, the claimant's workmen were finished with the scope of work and notified Lakhram of same. In early June, Lakhram and NCRHA officials did a walk about of the site to verify that the work had been done according to scope and that the standard of work was acceptable. The claimant was commended on the standard of work delivered and given a verbal job well done and proceeded to de-mobilize from the site.
54. The works as specified in the scope of works were completed by the claimant and/or servants and/or employees and/or its agents and/or representative and/or workers. Those workers included labourers, masons, plumbers and electricians. Those workers have been paid for their services rendered by the claimant and/or its agents and/or representatives.
55. Having completed all of the stipulated work on the Talparo Health Centre, Seegobin ensured that the invoice was prepared and sent to the defendant for payment. Invoice # CEPEP-0001 dated June 15, 2015 was prepared for

⁹ A copy of the invoice from Ali was annexed to Seegobin's witness statement at "A.S.9."

the sum of \$2,955,599.00. That figure was inclusive of VAT in the sum of \$385,500.00.¹⁰

56. When the work was completed on the Talparo Health Centre, same was inspected on June 30, 2015 and approved on July 8, 2015 by a representative of the NCRHA. A completion certificate was also signed and stamped by a NCRHA's representative. That was the approval by the Area Administrator. The claimant was then issued with a completion certificate by the defendant which stated that the construction work had been completed in accordance with the conditions of the contract.

57. The completion certificate was prepared by a representative and/or agent of the defendant. Seegobin testified that he has no knowledge of the allegation of willful blindness or fraud in issuing the completion certificate as alleged by the defendant. That the work was completed and a completion certificate was issued showing that the work was completed. Seegobin further testified that the claimant was entitled to have the certificate issued because the work was duly performed and completed. That the defendant has therefore received the benefit of the work done by the claimant without paying it any compensation for same.

58. Seegobin testified the completion certificate was signed by a Lakhram and that the completion certificate is evidence of the completion of the works. It stated that works were completed. Seegobin further testified that the existence of the completion certificate is within the knowledge of the defendant.¹¹

¹⁰ A copy of the Invoice #CEPEP-0001 was annexed to Seegobin's witness statement at A.S.10".

¹¹ A copy of the Completion Certificate was annexed to Seegobin's witness statement at "A.S.11".

59. The contract for the Talparo Health Centre was for remedial works and there was no requirement for any approvals and/or required documentation to complete the project. Seegobin was provided with technical specification and a draft contract from the defendant for the project.¹²

60. The Consultant associated with the defendant prepared reports after the site visits and Seegobin was never issued with a copy of the report for the claimant. Seegobin testified that as far as he was aware it was the engineers who would evaluate the work completed and prepare the reports which would have been supplied to the defendant.

61. In the claimant's entire dealing with the defendant, the defendant acted with knowledge of its officers and without any objection to their actions. The defendant benefited from the claimant's works as outlined. At all times, Seegobin believed that the officers whom were acting under the control, supervision and authority of the defendant. At all times the claimant followed the procedure/s laid down by the defendant.

62. Since the completion of the repair work on the Talparo Health Centre in 2015, Seegobin has made several demands to the defendant for the payment of its outstanding fees for the work done by the claimant. The defendant did not pay any of the money owed and so Seegobin caused a letter dated August 2, 2016 to be sent on behalf of the claimant in his capacity as Managing Director. The letter stated that the refurbishment work was completed and demanded the sum of \$2,570,000.00 VAT Exclusive for the work completed. On August 5, 2016 Seegobin received a

¹² Copies of the Technical Specifications and Draft Contract were annexed to Seegobin's witness statement at "A.S.12".

response from the defendant requesting a period of twenty eight days to provide a response to his letter.¹³

63. Having received no substantive response from the defendant, Seegobin instructed his attorney at law to send a pre-action letter to the defendant seeking to obtain payment of the monies due and owing to the claimant.¹⁴

The cross-examination of Seegobin

64. In the early part of 2014, Seegobin did renovations works for the Ministry of Tertiary Education Science and Technology. Seegobin tendered for those works in 2014.

65. Seegobin agreed that whilst one of his duties as Project Manager was to purchase material for the job at the Talparo Health Centre, he did not produce any receipts for those purchases.

66. Seegobin agreed that the documents he submitted to the defendant in 2014 for the pre-qualification of the claimant did not include any documents to show that the claimant had experience in 1) renovating health centres, 2) electrical work, 3) plumbing, 4) painting, 5) roofing, and 6) air conditioning. Such documents were not submitted because the defendant did not ask the claimant to submit same. Seegobin disagreed that the claimant was not prequalified by the defendant.

67. Seegobin was referred to the form of tender dated March 23, 2015 which was sent to the Chairman of the Tenders Committee of the defendant.

¹³ A copy of the letter and the defendant's response were annexed to Seegobin's witness statement at "A.S.13".

¹⁴ A copy of the Pre-action letter was annexed to Seegobin's witness statement at "A.S.14".

Seegobin signed that form of tender. In tendering for the works, Seegobin attached a bill of quantities which was prepared by him and Matadeen. On March 27, 2015 Seegobin received the letter of award which was signed by Jagdeo. Seegobin did not make any enquires as to whether Jagdeo was authorized to award the contract to the claimant because he (Seegobin) was of the view that Jagdeo was authorized to so do. He further did not enquire why he did not receive a response from the Tenders Committee.

68. Paragraph 2 of the letter of award spoke about a draft contract. Seegobin agreed that the draft contract was never executed by the claimant and the defendant.

69. Seegobin was referred to the bill of quantities attached to the form of tender. He testified that the bill of quantities would have been an estimate for the job. He agreed that the bill of quantities mirrored the invoice dated June 15, 2015 issued by the claimant for the works completed on the Talparo Health Centre. Seegobin testified that all the tasks identified on the bill of quantities were completed.

70. Seegobin agreed that there was no evidence before the court showing that the electrical works done on the Talparo Health Centre was inspected by T&TEC. However, he testified that the electrical works done did not require the inspection of T&TEC. Moreover, Seegobin agreed that there was no evidence before the court as to parts which were replaced in the air conditioning units.

71. According to Seegobin, Koon Koon was paid \$98,000.00 in cash for his services. Seegobin testified that not all of the contractors were paid in cash. That TBIS may have been paid by cheque.

72. Seegobin testified that there were more days of work than those mentioned in his witness statement. That the dates mentioned in his witness statement were a rough estimate of the days worked. He however agreed that the working days were approximately twenty days.

73. Seegobin was referred to the completion certificate. He testified that he believed that Lakhram signed the completion certificate although he was not present when Lakhram would have signed the completion certificate. There were two other signatures on the completion certificate. Seegobin did not know who the authors of those two other signatures were. There was however a North Central Regional Health Authority Arima Health Facility stamp. There was neither a signature on the space provided for the defendant nor a stamp from the defendant. Further, under agreed date of completion, there was no date inserted.

The evidence of Matadeen

74. Matadeen is a Labourer. Some of his evidence was the same as the evidence given by Seegobin and as such repetition is unnecessary.

75. Seegobin contacted Matadeen on March 16, 2015 and indicated that the government of the day had tasked the defendant to upgrade and refurbish various health facilities throughout the country through a governmental undertaking known as the Health Sector Initiative. Seegobin further indicated to Matadeen that he was desirous of hiring him as the principal labourer, should he be awarded a contract, and therefore asked that Matadeen accompany him to site visits at the Talparo Health Centre, the St. Joseph Health Centre and the Arouca Health Centre.

76. After seeing and examining the respective Health Centres, Matadeen submitted labour and material prices to Seegobin's company for the performance of the majority of the works stated in the scope of work document for each respective project. On April 3, 2015 Matadeen was contacted by Seegobin who informed him that he was successful in his bid to do the work at the Talparo Health Centre. Seegobin again inquired whether Matadeen would be available to be the principal and/or main labour contractor.

77. Matadeen signed a contract agreement with the claimant on April 9, 2015 for the sum of \$1,489,000.00 and with a time frame of six weeks to complete the work as stated in the scope of works. After consultation with Seegobin, Matadeen and he came to the agreement that all works would be carried out every weekend starting at 5:00pm on Friday evenings until 5:00am on Monday mornings. Matadeen and his workers stayed on the compound in an effort to maximize the production and carry out the tasks set out in the work programme.

78. Matadeen and his team reported to the Talparo Health Centre on April 10, 2015 to begin work at 5:00pm. After a short safety meeting with Seegobin, they began work and finished at 5:00am on April 12, 2015. Over that weekend, they accomplished the work set out in the work schedule without any problems. Seegobin and Matadeen had a meeting later in the week concerning sleeping accommodations for Matadeen's team. Seegobin agreed that he would provide them with a 20 x 20 tent which they could set up on site to be used as a base camp.

79. Matadeen attended a safety meeting along with Seegobin which was held on April 14, 2015 on site by members of the NCRHA and Lakhram and was informed that all OSHA rules had to be followed. Job Safety Analysis (JSA)

forms, employee listings and vehicle listings were asked to be supplied to Seegobin to which Matadeen conformed. Proper construction signage was to be put up and all protective equipment was required to be worn at all times. Seegobin assured them that he would provide them with everything they requested and he did so.

80. On April 17, 2015 Seegobin met Matadeen and his team on the site at 5:00pm with the signage and a 20 x 20 tent complete with sidewalls. All the signage were erected in the necessary locations and the tent was erected in the grassy area of the health centre. They finished work on Sunday at around 11:00 pm due to the main task which was construction of the pharmacy extension not being possible due to the pharmacist not reporting to the site. Seegobin stated that he would handle the matter.

81. At the next safety meeting on April 24, 2015 Seegobin invited the NCRHA night supervisor for the compound, David and asked him to facilitate them with a walk through of the compound to ensure they had left the compound in a suitable manner at the end of every work period.

82. On May 1, 2015 Matadeen and his team reported to the site and met with Koon Koon who was hired to do painting works. They did a walk through and Matadeen had to rearrange his work for the weekend to accommodate Koon Koon's crew. Seegobin informed Matadeen that no positive assurance was given that the pharmacist would be there to facilitate them. After consultation with Seegobin it was decided to build the storage room from the outside, so that the time the pharmacist would have to report to the site would be a maximum of three hours to allow them to create and install a doorway. The work weekend went without any problems and they left the site on Monday morning at approximately 6:00am.

83. Matadeen and his team reported to the site at 5:00 pm on May 8, 2015 and resumed work. On May 9, 2015, workers from TBIS Ltd. did measurements for installation of an automatic door. Due to the span of the door, some masonry adjustments had to be done. Seegobin asked Matadeen whether he could do it and he agreed to at no extra cost. On May 10, 2015, Seegobin asked Matadeen to do a walk through with Koon Koon and his painting crew to verify that the work was done correctly. Matadeen informed Seegobin that the work was up to standard and Koon Koon and his crew proceeded to de-mobilize from the site. Matadeen and his team continued working until 5:00am on May 11, 2015.
84. On May 12, 2015, Matadeen and his team reported to the site at 5:00pm. Matadeen had contacted Seegobin earlier in the day and he made the necessary arrangements with David to facilitate them to install the new gates that were built off-site. Matadeen and his team worked until 4:00am on May 13, 2015 and installed both gates successfully.
85. Matadeen and his team reported to the site and began work at 5:00pm on May 15, 2015. On May 16, 2015, workers from TBIS Ltd. arrived and began installing the door. Matadeen and his team continued with their work schedule and assisted TBIS Ltd. when necessary. TBIS Ltd. completed installation of the door on May 17, 2015. Matadeen and his team worked until 5:00am on May 18, 2015.
86. On May 22, 2015 Matadeen and his team reported to the site at 5:00pm. They began pressure washing the facility as the scope of work was almost complete with regards to major construction and painting works. Matadeen did a walk through with Seegobin on May 24, 2015 to verify what items on the scope of work was still incomplete. Matadeen and his team left the work site at 5:00 am on May 25, 2015.

87. Matadeen and his team reported to the site on May 29, 2015 at 5:00 pm. On May 30, 2015, Seegobin instructed Matadeen to let his workers assist Ali and his crew with moving around furniture to clean the floors. Ali and his crew returned on May 31, 2015 and completed their work. On Sunday night, Seegobin and Matadeen went through the scope of works and agreed that all items were complete except for the installation of a ball atop the flag pole. Locally it was not available and the shipping time had extended due to circumstances beyond his control. Matadeen and his team proceeded to demobilize from the sight and they left on June 1, 2015 at 6:00am.
88. On June 4, 2015, Matadeen received a call from David who informed him that someone had broken a toilet. Matadeen informed David that they had officially finished work at the site and so referred him to Seegobin. Seegobin instructed Matadeen to report to the site the next day and have the toilet fixed as a sign of goodwill. Matadeen proceeded to report to the site on June 5, 2015 and sent pictures of the broken toilet to Seegobin. It was clear that it was not an accident and Matadeen advised Seegobin to inform the necessary parties. Matadeen returned on June 6, 2015 and replaced the toilet tank and flushing mechanism.
89. Matadeen returned to the site and installed the balls atop the flagpole on June 24, 2015 as same had arrived that day.
90. Matadeen testified that throughout his time at the Talparo Health Centre, they took various photographs, however due to the length of time, he was only able to retrieve a few of the photographs.¹⁵ Those photographs depicted the following;

¹⁵ Copies of those photographs were annexed to Matadeen's witness statement at "R.M.1, R.M.2, R.M.3, R.M.4, R.M.5, and R.M.6".

- i. R.M.1 - a photograph of the construction works of the medical examination room at the Talparo Health Centre. The individuals in this photo were a part of Matadeen's work crew and were as follows;
 - a. Blue T-shirt - Kielle Gabriel;
 - b. Green T-shirt- Steven Matadeen (aka Bumpy);
 - c. Kneeling- Ravindra Ramjit (aka Toolerman);
 - d. Back in Shirt- Afraz Ali.
 - ii. R.M.2- this photograph shows Matadeen's crew performing cleaning works to the guttering at the Talparo Health Centre. The individuals in the photograph were as follows;
 - a. Blue T-shirt- Kielle Gabriel;
 - b. Green Coveralls- Indarjit Matadeen (aka Gary)
 - iii. R.M.3 - this was a photograph showing Matadeen's crew performing cleaning works/ pressure washing to the roof of the Talparo Health Centre. The individuals in the photo were as follows;
 - a. rooftop- Albert Rowe;
 - b. white t-shirt by gate- Dianand Ramdhanie (aka Dio)
 - iv. R.M.4 and R.M.5 - those were photographs showing Matadeen's crew conducting works for the removal and installation of the main gates to the Talparo Health Centre. The workers in those photographs were as follows;
 - a. R.M.4-blue t-shirt- Kielle Gabriel, green coveralls- Indarjit Matadeen (aka Gary).
 - b. R.M.5- blue t-shirt holding gate- Denish Ramdhanie, green coveralls- Indarjit Matadeen (aka Gary).
 - v. R.M.6 - those were photographs of the installation of the electronic door at the Talparo Health Centre and the finished product.
-

Holding Door Frame left to right- TBIS worker, Indarjit Matadeen (aka Gary), Anthony Nanton (XANDER), Robert Gobin (XANDER), TBIS worker, background white Polo- Taran Bissessar (owner TBIS LTD.), background blue polo - Matadeen

91. As the defendant has failed and/or neglected and/or refused to pay the claimant, Matadeen has not been paid for the work done on the Talparo Health Centre.

The cross-examination of Matadeen

92. Matadeen testified that the profit he was supposed to make was approximately \$350,000.00. At the commencement of the job, Matadeen was given approximately \$600,000.00. Matadeen and Seegobin purchased material for the job. Matadeen agreed that he did not disclose any receipts for the materials purchased.

93. Matadeen testified that all the works in the scope of works were completed. That some extra plumbing and electrical works were done at the request of the Head Nurse of the Talparo Health Centre.

94. The Talparo Health Centre was the first health centre Matadeen renovated. Prior to the renovation of the health centre, he renovated schools.

95. Matadeen agreed that the photographs he annexed to his witness statement were not time stamped.

THE CASE FOR THE DEFENDANT

96. The defendant called two witnesses, Keith Eddy and Merrill Jacob.

The evidence of Keith Eddy

97. Keith Eddy (“Eddy”) is General Manager of the defendant. He has been employed with the defendant since July, 2016. He is therefore unaware of the facts of this case from personal knowledge. The defendant has been in existence since 2004 and has always been an environmental enhancement and/or Management Company, the primary activity being to assist local government bodies, the government and in some instances private companies in keeping the environment clean.

98. The defendant is a one hundred percent owned state enterprise established by Cabinet minute No. 1927 of August 3, 2006 and it was established with the responsibility for the management and execution of the Community-based Environmental protection and enhancement programme that was established by Cabinet minute No. 1003 of February 28, 2002. The defendant is financed by the Ministry of Finance, it occupies buildings belonging to the Government of Trinidad and Tobago (“GORTT”) and the equipment which the company uses belongs to the GORTT.¹⁶

99. Additionally, the *“State Enterprise – Board of Directors Appointment Listings”* listed the defendant as being fully owned by the State.¹⁷

¹⁶ A copy of the cabinet note was annexed to Eddy’s witness statement at KE.1.

¹⁷ A copy of the Appointment Listings together with the Information from that Gazette which are all available to the public were annexed to Eddy’s witness statement at “K.E 2.”

100. This particular action as well as other similar actions brought against the defendant arose due to the fact that sometime in 2014, a Cabinet note mandated a contractual agreement between the defendant and the Ministry of Health whereby the defendant would provide project management and general management services for the refurbishment and maintenance of all District Health Facilities, Health Centers and hospitals in the North Central and North West Regional Health Authorities and the Ministry of Health would finance the project. The project came to be known as the Health Sector Initiative Program.¹⁸

101. Despite searching the defendant's company records at the head office, Eddy has not found any board minutes or resolutions changing the operations of the defendant from an environmental management company to a construction or project management company.

102. The Health Sector Initiative Program originated when the then corporate secretary to the defendant, Rahman on August 8, 2014 drafted a note to cabinet which in Eddy's view misrepresented the capabilities of the defendant. Rahman stated that the defendant had expertise in project management and contract management and was capable of undertaking multi-million dollar property and/or hospital renovation contracts when that was not the case.

103. Eddy testified that the defendant never had the expertise that the then corporate secretary represented to the Cabinet that the defendant had. The defendant no longer renovates hospitals but continues to be an environmental enhancement and maintenance company.

¹⁸ A copy of the cabinet note was annexed to Eddy's witness statement at "K.E.3".

104. Through the program, the defendant inherited a debt of approximately \$148,000,000.00 from the previous administration under the Health Sector Initiative Program. The contracts were given out in or about April, 2015 and in August, 2015 all contractors under the Health Sector Initiative simultaneously downed tools and claimed that all works were completed.

105. The Ministry of Health has not paid the defendant for any of the work that this contractor or any contractors have done as they were not satisfied with the quality of the work, neither has the defendant been satisfied with the work purported to be done. Eddy spoke to the Deputy Permanent Secretary, who indicated that he was not aware of the Health Sector Initiative and that he would have to find out more about it. Subsequently, he informed Eddy that the Ministry of Health did not have sufficient funding to facilitate payments for the said initiative.

106. According to Eddy, the claimant allegedly tendered to carry out repair and maintenance services at the Talparo Health Centre and thereafter entered into a purported contract with the defendant. It is that alleged contract which the defendant say is unenforceable.¹⁹

107. Eddy testified that the defendant's practices and procedures are governed by the SEPMM and in relation to the tendering process to the finalizing of contracts, the defendant is mandated to comply with the CEPEP Tendering Disposal and Procurement Policy ("the CEPEP TDPP") which was put in place by the Board of the defendant in February, 2011.

¹⁹ A copy of the documentation which Eddy has been able to find in relation to the alleged contract was annexed to his witness statement at "K.E.4."

The practices of the defendant are also subject to the bylaws of the company as well as the bylaws appended to the Companies Act.²⁰

108. Eddy testified that all state enterprises are required to comply with the guidelines set out in the SEPMM, and that is well known by any contractor doing business with State Companies as it is on the website of the Ministry of Finance who is the sole shareholder in the defendant. The SEPMM has been on the website and a public document since 2011.

109. Eddy testified that he believes that there was no enforceable contract between the claimant and the defendant. That the entire process from pre-qualification to the tendering stage and letter of award has been flawed and has not complied with State procurement regulations as well as the Companies tendering and procurement regulations. Eddy further testified that the claimant has had notice of the aforementioned by reason of the publication being on the Corporation's sole website.

110. The defendant is mandated by the CEPEP TDPP and the SEPMM to issue invitations for contractors to pre-qualify themselves to then be approved by the pre-qualification and registration committee. The procurement officials in the defendant are required to bring the matters contained in the SEPMM to the notice of prospective contractors, and ensure that such contractors understand the requirements of transparency and honesty in public affairs. That is the first step in the procedure from tendering to the finalizing of contracts and that practice has been in place since 2011 as that is when the then Board adopted the CEPEP Tendering Disposal and Procurement Policy.

²⁰ Copies of these documents were annexed to Eddy's witness statement at "K.E.5."

111. The SEPMM Appendix B section 5.1 requires amongst other things, the registration and prequalification of contractors. While SEPMM cannot mandate upon contractors, the defendant is required to ensure contractors comply with same and as a matter of public policy contractors ought to comply with the procedures outlined by the SEPMM as it is a public document which guides the procurement process and safe guards public funds.
112. Under the CEPEP TDPP, a Tenders Committee must be established for the purpose of being responsible for inviting tenders and all matters relating to tenders within its scope and authority. The Tenders Committee of the defendant ought to be properly formed and to properly evaluate the tender proposed by the vendor (see paragraphs 2.2, 2.3 and 6 of Appendix B to the State Enterprise Performance Monitoring Manual). Eddy testified that at the time when the invitation to tender relating to this matter was sent out, there was no properly constituted Tenders Committee as no Tenders Committee minutes have been found for the period in which these alleged contracts were given.
113. Under SEPMM, the Tenders Committee shall comprise a minimum of five members including two Board members one of whom shall be Chairman. The CEO is a member of that committee, but is not its secretary, and the secretary shall not vote. The General Manager or in his absence his nominee shall be present at all meetings of the Tenders Committee but shall not have the right to vote.
114. The CEO of a State Enterprise cannot usurp the function of the Tenders Committee without any Board resolution permitting him to do so. His function is to ensure the strategic objectives established by the Board are implemented as set out in 2.2. According to Eddy, the aforementioned

is something that contractors with a State Enterprise must know actually or constructively.

115. Additionally, under the SEPMM, specifically at clause 6.7 and notwithstanding regulation 6.1 it states that the Secretary shall be responsible for all invitations to tender including the signing of the Notice of Invitation to Tender. The said Invitation to Tender in contention exhibited by the claimant, was signed by the then General Manager of the defendant, Jagdeo. Eddy testified that such action was in breach of the regulations, thereby resulting in the invitation to tender being invalid.

116. Similarly, the defendant is mandated by the SEPMM and the CEPEP TDPP to send written notification to the successful party to be signed by the Secretary and thereafter enter into a formal contract which shall contain inter alia such terms, conditions and provisions as the defendant may determine. It was necessary for both parties to agree all contractual clauses and signify this by signing a formal contract. Eddy testified that that regulation was breached when Jagdeo signed the letter of award in place of the Secretary and assumed that there was a contract in force without entering into the formal contract as stipulated by the regulations. According to Eddy, the contractor either knew of those defaults actually or constructively and willfully turned a blind eye to it as it benefited him.

117. Upon Eddy's review of the Board Minutes of the 70th Statutory Board of Directors Meeting of the defendant held on August 20, 2014 up to the 75th Board Minutes dated February 25, 2015 and the 79th and 80th Board Minutes of June 24, 2015 and July 22, 2015 respectively ("the Board Minutes") there was no record of the Board authorizing Jagdeo as the then General Manager to sign Invitations to Tender or contracts entered into.²¹

²¹ A copy of the said Board Minutes was annexed to Eddy's witness statement at "K.E.6."

118. In the same Board Minutes reviewed there was also no evidence that the Board had any specific knowledge and/or input in the specifics of the transactions between the claimant and defendant.

119. Eddy has perused all the relevant documentation that was available to the defendant, including the abovementioned Board Minutes, and there was no document that demonstrated that an estimate of the contract cost was prepared as required by section 6.12 of the SPEMM and the evaluation process pursuant to section 6.18 of the SEPMM was followed in the purported award of the said contract to the claimant.

120. Based on the tendering process and letter of award which the defendant stated was invalid and a draft contract which the defendant stated was not validly entered into, the claimant purportedly conducted work at the Talparo Health Centre of which an invoice was exhibited in that regard. According to Eddy, the invoice failed to give details of any work that was done and the report of IT McLeod indicated that no works were purportedly done.²²

121. Eddy testified that the works were not completed to the satisfaction of the defendant nor to the satisfaction of GORTT. That there has been only one alleged invoice for the project presented to the defendant. The defendant has never seen and has no record of any invoices prior to the invoice exhibited. The defendant also has no record showing that it had an opportunity to inspect the works while same were ongoing. After the last election, there was an abrupt mass exodus of staff

²² A copy of the quantity survey report from I.T. McLeod Projects Ltd dated November 30, 2018 was annexed to Eddy's witness statement at "K.E.7."

and Board members, which left the defendant without institutional memory and at a significant disadvantage.

122. According to Eddy, completion certificates were done and were signed by the Business Development Manager, Suresh Lutchmeesingh (“Lutchmeesingh”) as directed by Jagdeo and were done without reviewing any documentation or doing any site visits with the quantity surveyor to verify the works done.²³ Lutchmeesingh has been issued a pre-action protocol letter by the defendant in an effort to begin the process to hold him accountable for his actions against the defendant.

123. Eddy testified that upon a review of the Business Development Manager’s position, it revealed that Lutchmeesingh had no authority to sign off on the completion certificates and therefore the completion certificates could not be valid.²⁴

124. Additionally, upon a review of the Board Minutes, there was no authorization from the Board for completion certificates to be created for the claimant or any contractor for that matter. Pre-action protocol letters have since been sent to the Former CEO, Former Corporate Secretary and Former Business Development Manager for them to account for their role in the unlawful award of contracts and acts of fraud perpetrated against the defendant.²⁵ To date those persons have not responded to the pre-action letters.

²³ A copy of an interview that S Lutchmeesingh gave to the defendant in March, 2016 and signed on April 13, 2016 as annexed to Eddy’s witness statement at “K.E.8.”

²⁴ A copy of the Business Development Manager Job description was annexed to Eddy’s witness statement “K.E.9.”

²⁵ Copies of the Pre-Action Letters were annexed to Eddy’s witness statement at “K.E.10”.

125. According to Eddy, the claimant knew or ought to have known that the defendant was and still is a state company, spending public monies, operating closely with and as an arm of the State, was governed by the SEPMM, and by specific by laws. That was so because the SEPMM has been published on GORTT websites since 2011 and has been drawn to the attention of the public and specifically contractors seeking to do public works as contractors with a public company. Consequently, Eddy testified that attempting to circumvent those documents, or claiming ignorance of same and seeking to rely on the said completion certificates for works done was dishonest and/or contrary to public policy.

126. Further, Eddy testified that the claimant knew or ought to have known that the CEO of the defendant had no authority to spend money to the value of the alleged award. As CEO there is a limit imposed on the size of cheque that Eddy can write without the authorization of the line Minister.

127. The defendant has since hired the services of IT Mc Leod to give an independent assessment of the works done on the said projects. The claimant exhibited one invoice for the Talparo Health Centre in the sum of \$2,955,500.00. After having visited the site and conducting their assessment, the report from I.T. Mc Leod valued the work done at the Talparo Health Centre at Zero Dollars and Zero Cents.

128. Eddy testified that no CEO of the defendant has the authority to sign cheques of the amounts claimed without the authority of the line Minister. Eddy has not seen any such authorization in any of the records now held by the defendant. Eddy further testified that no CEO of a government company such as the defendant and certainly no CEO of the defendant has any usual or customary authority, without authorisation of

the line Minister, to enter into and execute the contract upon which the claimant relies. The present line Minister has not authorized the signing of any cheque for any such amount.

129. Eddy testified that the previous management of the defendant acted in a questionable manner and with moral turpitude and without authority. He further testified that the actions of Jagdeo and/or Lutchmeesingh were ultra vires their powers and were subversive of the objectives of honesty and transparency promoted by the State Enterprise Performance Monitoring Manual and the CEPEP TDPP. Additionally that the claimant knew the aforementioned either actually or constructively and ought not to be allowed to profit from willfully closing its eye to published documentation and a public policy of transparency and honesty.

130. Consequently, Eddy testified that based on all of those circumstances, there was no enforceable contract between the claimant and defendant.

The cross-examination of Eddy

131. Eddy never visited the Talparo Health Centre.

132. Eddy testified that the Board of Directors of the defendant sets the policy for the defendant. Eddy was referred to the minutes of the 70th Statutory Board Directors meeting of the defendant held on August 20, 2014. At 6.2 of the minutes, the following was stated;

“CEPEP and the Inter-Ministerial Health Committee

The chairman announced that CEPEP was invited to several meetings with the Cabinet appointed Inter-ministerial Committee on Health to assist with

the renovation and beautification of Health Facilities under the four (4) Regional Health Authorities in Trinidad and Tobago. The Chairman indicated that CEPEP was providing assistance in drafting a Cabinet Note to give effect to the decision and more information will be given. He further noted that the Inter-ministerial Health Committee had advised that CEPEP would be allocated two (2) RHAs in Trinidad and URP would be allocated the other two (2) RHAs. The General Manager then indicated that a Project Engineering Consultant would have to be recruited to assist with the renovation work. The Board discussed the issue and requested that the management develop an RFP (request for proposal) to recruit a suitable Project Engineering Consultant to oversee and project manage the said works.”

133. Eddy agreed that the Board rectified and established the participation of the defendant in the initiative of the Inter-Ministerial Health Committee.

134. Eddy was then referred to the minutes of the 71st Statutory Board of Directors meeting of the defendant held on September, 2014. At 4.12 of these minutes, the following was stated;

“CEPEP and the Inter-Ministerial Health Committee

The Chairman announced that a further meeting was held with the Inter-ministerial Health Committee on 27th August 2014. He stated at that meetings, CEPEP was allocated the North Central Regional Health Authority (NCRHA) and the North West Regional Health Authority (NWRHA) and the RHAs supplied CEPEP with the scope of works for the various public health facilities managed by the two RHAs. The Chairman further indicated that they were informed by the Inter-Ministerial Health Committee that Cabinet had approved an initial amount One Hundred

Million Dollars (\$100M) for the project. The General Manager then indicated that based on the Board request for the RFP, recommendations from the Tenders Committee for a Project Engineering Consultant would be forthcoming in the Tenders Committee report.”

135. Further, at 5.10 of those minutes the following was stated;

“Tenders Committee Report

The Board approved the recommendation of the Tenders Committee to award the following:

(a) Tender for the hiring of a Project Manager/Project Engineering consultant for Health projects.

The committee approved the award of the contract for the hiring of a Project Manager/Project Engineering Consultant for Health projects with Peter Coolman & Associates, based on a percentage of the total project cost to develop the tender packages based on their Inter-Ministerial Health Committee approved scope of works.”

136. Eddy accepted that he did not have any witnesses to dispute the veracity and/or truthfulness of what was contained in those minutes.

137. Eddy was then referred to the minutes of the 72nd Statutory Board of Directors meeting of the defendant held on October 29, 2014. At 4.12 of those minutes, the following was stated;

“CEPEP and the Inter-Ministerial Health Committee

The Chairman informed the Board that regular meetings were being held with the Inter-Ministerial Health Committee to provide updates on the progress of the project. He further indicated that the scope of works were reviewed and approved by the Inter-Ministerial Health Committee. He

further indicated that a priority listing was developed to undertake urgently needed works at various healthcare facilities.

The General Manager then advised the board that tender packages for the first phase being the priority listing were being developed and would come to the Board for approval at the next Statutory Meeting.”

138. Eddy was then referred to the minutes of the 73rd Statutory Board of Directors meeting of the defendant held on November 26, 2014. At 4.12 of those minutes, the following was stated;

“CEPEP and the Inter-Ministerial Health Committee

The Chairman informed the Board that priority was being given to the health facilities renovations and related procurement processes. He further indicated that the Inter-Ministerial Health Committee emphasized the urgent nature of the renovation works bearing in mind that the health facilities could not be totally shutdown to facilitate the said works and contractors should be prepared to undertake works during the afternoon, nights and weekends. The General Manager then indicated that the first phase of contracts were ready to be awarded and would be in the Tenders Committee Report.”

139. Further at 5.10 of those minutes, it was stated that *“The board approved the recommendation of the Tenders Committee to award the following...”* Eddy agreed that what those minutes purported to state was that the Board approved the recommendation of the Tenders Committee to award certain contracts.

140. Eddy was referred to the minutes of the 74th Statutory Board of Directors meeting of the defendant held on January 21, 2015. At 4.12 of those minutes, the following was stated;

“CEPEP and the Inter-Ministerial Health Committee

The Chairman advised the Board that updates on the progress of the project were relayed to the Inter-Ministerial Health Committee who were pleased with the pace of work undertaken. The Corporate Secretary informed the Board that only two (2) contracts for RHA facilities would be tabled at this meeting for approval and that recommendations for awards for the second phase would come at the following meeting.”

141. Eddy accepted that those minutes showed that the Board was fully aware of what was taking place with the project, the Board was appraised of the progress and the Board approved the projects and the award of the contracts. Eddy further accepted that at 5.10 of those minutes it was stated that the Board accepted the recommendations of the Tenders Committee and approved the award of contracts.

142. Eddy was referred to the minutes of the 75th Statutory Board of Directors meeting of the defendant held on February 25, 2015. At 4.12 of those minutes, the following was stated;

“CEPEP and the Inter-Ministerial Health Committee

The Chairman announced in the Meeting that works were proceeding on the contracts that were awarded in the previous month and updates were being submitted to the Inter-Ministerial Health Committee. The General Manager then informed the Board that progress reports were submitted along with the site visits indicated that the project was on schedule. He further indicated that the second phase of recommendations would be tabled in the Tenders Committee Report for this month.”

143. Further at 5.10 of those minutes, the following was stated;

“The Board approved the recommendation of the Tenders Committee to award the following;

...

3 Talparo Health Centre Xander Contractors Ltd. \$2,570,000.00

Vat Exclusive

...”

144. Eddy agreed that those minutes reflected the Board’s approval of the contract to the claimant. However, he testified that after the Board approves the award of a contract, a letter signed by the Secretary has to be sent out and a contract has to be executed by the parties. According to Eddy, that process is outlined in the SEPMM. Eddy accepted that he did not bring any witnesses to testify to the process which was employed by the defendant at the material time, he not being part of the company at that time. He was then asked to show the Board minutes where the Board of Directors of the defendant adopted and approved the SEPMM. In response, he testified that as he was not there at the time, he did not know. He then testified that he did not find any evidence that the Board did or did not approve and adopt the SEPMM.

145. Eddy was referred to the SEPMM. At paragraph 2.1 of the SEPMM, the following was stated;

“APPLICATION

(i) These procedures shall not apply to State Agencies which fall under the purview of the Central Tenders Board Ordinance.

(ii) These procedures shall apply to all State Agencies (except those referred to in (i) above) for the procurement of Goods and Services and/or undertaking of Works of a Recurrent or Capital Nature and/or the disposal of Unserviceable Items.

(iii) *These procedures shall be placed before the Board of Directors to be approved.*"

146. Eddy was again asked where were the minutes in which the Board of Directors of the defendant approved and adopted the SEPMM. Eddy again testified that he did not know as he was not there at that time. He agreed that the Board minutes and other documents that are created by the defendant are sent to its line Ministry. He further agreed that he did not mention in his witness statement that he wrote to the Permanent Secretary of the Line Ministry to request those documents.

147. Eddy was then referred to the minutes of the 79th Statutory Board of Directors meeting of the defendant held on June 24, 2015. At 4.12 of those minutes, the following was stated;

"CEPEP and the Inter-Ministerial Health Committee

The General Manager reported to the Board that the CEPEP consultants were doing a snag listing for the completed Health Centres..."

148. Again Eddy agreed that those minutes reflected that the Board was being fully aware of the projects.

149. Eddy was then referred to the minutes of the 80th Statutory Board of Directors meeting of the defendant held on July 22, 2015. At 4.12 of those minutes, the following was stated;

"CEPEP and the Inter-Ministerial Health Committee

The General Manager reported to the Board that the CEPEP consultants reported that 90% of the Health Centre works was completed and a comprehensive review and close off by a team comprising the CEPEP Consultants and the respective Regional Health Authorities would be done

in the following month. The General Manager further indicated that requests for funding was sent to the Line Ministry as Contractors were submitting invoices currently for the Health Centres for which completion certifications would be granted.”

150. Eddy agreed that those minutes indicated that the Board was fully aware of the progress and that the project was 90% completed. He further agreed that those minutes indicated that the Board was informed that completion certificates would be signed off by the consultant and the reps of the Regional Health Authorities. Moreover, Eddy agreed that those minutes did not indicate that there was a requirement for the completion certificate to be signed by an employee of the defendant.

151. Eddy was referred to an affidavit he swore to on March 7, 2018 which was in support of an application to set aside the default judgment in these proceedings. In that affidavit, Eddy stated that the works that were done on the Talparo Health Centre were incomplete. He agreed that it was implicit from that statement that works were done by the claimant on the Talparo Health Centre. He was asked what evidence he had at that time to state that the works were incomplete. He testified that a forensic audit was done but that that forensic audit was not disclosed because he signed a non-disclosure in relation to same. The court notes that in the defendant's list of disclosure that document was not listed with an attached reason for non-disclosure.

152. Eddy was referred to the defendant's bylaws. He agreed that the bylaws which he produced were not signed. He further agreed that he did not produce any minutes wherein it was stated that those bylaws were incorporated into the defendant.

The evidence of Merrill Jacob

153. Merrill Jacob (“Jacob”) is a Quantity Surveyor. He obtained his Bachelor of Science Degree in Quantity Surveying from the University of Reading situate in the United Kingdom.²⁶ Jacob has worked as a Quantity Surveyor since 2009, when he started his career as an Assistant Quantity Surveyor.
154. He is currently employed as a Quantity Surveyor at IT McLeod Projects Ltd (“ITMP”). ITMP has operated as Quantity Surveyors, Project Managers, Project Monitors and Construction Managers in the construction industry of Trinidad and Tobago and the English speaking Caribbean for several years.
155. ITMP was engaged by lawyers acting for the defendant to conduct an independent assessment determining the extent of works completed by the claimant on Talparo Health Centre which included a review of the claim for payment submitted by the claimant. ITMP had to provide a valuation of the works properly executed by the contractors and to make recommendations for payment to be made on a quantum meruit basis. ITMP was supplied with the project scope of works and the contractors’ claim for payment to assist with the assessment.
156. On November 2, 2018, Jacob along with Quantity Surveyor, Eje Celestine (“Celestine”) also attached to ITMP, met with the Chief Operations Officer for the North Central Regional Authority, Stacy Thomas-Lewis (“Thomas-Lewis”) and her team at the Talparo Health Centre for the purpose of conducting a site visit to establish or confirm which items on

²⁶ A copy of Jacob’s company profile was annexed to his witness statement at “M.J.1”.

the scope of works provided by the defendant were completed by the claimant.

157. Jacob along with Celestine were responsible for identifying the items within the scope which were completed and taking measurements where necessary. Jacob received assistance from Thomas-Lewis and her team whose role was to verify the items of work done by the claimant.

158. Jacob along with Celestine applied their professional judgement and experience to arrive at a fair value for the executed works. It was their determination that no works were done by the claimant at the Talparo Health Centre.

159. The invoice issued by the claimant for the Talparo Health Centre was in the sum of \$2,955,500.00. However, Jacob and Celestine recommended that the value of the works done to be zero dollars on a quantum meruit basis.

160. A quantity survey report for the health centre dated November 30, 2018 was prepared which included the assessment of the works done.²⁷ It is to be noted that the said report was done in relation to several health centers.

The cross-examination of Jacob

161. Jacob is enrolled in the Royal Institute of Chartered Surveyors (“RICS”) but he is not a member of same. Nonetheless, Jacob agreed that he considered himself bound by the Code of Ethics of the RICS. He further

²⁷ A copy of the quantity survey report from I.T. McLeod Projects Ltd dated November 29, 2018 was annexed to Jacob’s witness statement at “M.J.2”.

agreed that in doing the report he was in contravention of certain parts of the Code of Ethics of the RICS.

162. Jacob was referred to the quantity survey report. He accepted that his signature does not appear on the report.

ISSUE 1 - *Whether the SEPMM and/or the TDPP regulations governed the defendant at the material time*

The SEPMM

163. The defendant did not provide any evidence to this court that the SEPMM had been approved by its Board at the material time. Paragraph 2.1 of the SEPMM specifically provides that the procedures therein had to be placed before the Board of Directors to be approved. During cross-examination, Eddy testified that he did not find any evidence that the Board did or did not approve and adopt the SEPMM. In the absence of evidence the court cannot find that the SEPMM was adopted by the defendant at the material time the contract was tendered for. It follows that based on the evidence before it, the court finds that at the material time the defendant was not governed by the guidelines set out in SEPMM and so same was not applicable.

164. Further, even if it did apply, it was clear that the defendant at that time chose not to follow the said guidelines and it would be unfair to any party with whom it may have contracted to be disadvantaged because such a decision was in fact taken by the defendant.

165. According to the evidence of Eddy, all state enterprises are required to comply with the guidelines set out in the SEPMM. He testified

that the aforementioned ought to be well known by any contractor doing business with State Companies as it is on the website of the Ministry of Finance who is the sole shareholder in the defendant. That the SEPMM has been on the website and a public document since 2011.

166. However, in the same breath, Eddy testified that the procurement officials in the defendant are required to bring the matters contained in the SEPMM to the notice of prospective contractors, and ensure that such contractors understand the requirements of transparency and honesty in public affairs. That that is the first step in the procedure from the tendering to the finalizing of contracts and that practice has been in place since 2011 which is when the then Board adopted the CEPEP TDPP regulations. The defendant has provided no evidence that its procurement officials did at the material time bring the matters contained in the SEPMM to the claimant. As such, the court finds that the fact that the SEPMM had been on the website and a public document since 2011 was insufficient to show that the claimant was aware of same especially in light of the fact that this was the first time the claimant tendered for a contract from the defendant.

The CEPEP TDPP Regulations

167. **Clause 7 of the TDPP regulations** provides as follows;

“POWERS OF THE COMMITTEE

7.1(a) The Tenders Committee shall act in the Company’s name for and on behalf of the Company. In accordance with the level of authority invite and consider Tenders for the undertaking of works and services necessary for carrying out the objects of the Company and shall make recommendations

on the acceptance or rejection of such Tenders in accordance with these rules.

(b) the Tenders Committee shall have such functions and duties as the Board may assign from time to time the General Manager in accordance with the levels of authority invite tenders for consideration by Evaluation Committee, for the undertaking of works or services necessary for carrying out the objects of the Company and the Evaluation Committee shall make recommendations on the acceptance or rejection of such Tenders in accordance with these rules.”

168. **Clause 14.1 of the TDPP regulations** provides as follow;

“INVITATION OF OFFERS

“(a) Whenever goods or services are required to be supplied to, or works are required to be undertaken on behalf of the Company, a sufficient description of the goods and services to be supplied or the works to be undertaken, together with an in-house estimate of the cost shall be prepared by the executing/relevant Division shall be prepared. The requisition noted above and for obtaining approval from the General Manager for all invitations to Tender.

(b) Where the value of Articles or works or any service is in excess of the authorised financial limits of the General Manager, a requisition in writing shall be made to the Tenders Committee by the General Manager.”

169. **Clause 21 of the TDPP regulations** provides as follows;

“ACCEPTANCE OF TENDER of the reads as follows:

(21.1) The successful tenderer shall be notified in writing by the Secretary by and on behalf of the Company of the acceptance of the Tender and of

the requirement in appropriate cases for him to enter into formal contract with the Company.”

170. **Further, Clause 23.3 of the TDPP regulations** provides as follows;
“Where the values of the goods, services or the undertaking of works is an amount exceeding \$100,000.00 (VAT Exclusive) a recommendation shall be made by the General Manager to the Tenders Committee. Where the values of the goods, services or the undertaking of works is an amount, which does not exceed \$100,000.00 (VAT Exclusive) prior approval, is required from the General Manager.”

171. **Moreover, Clause 27 of the TDPP Regulations** provides as follows;

“LEVELS OF AUTHORITY

For the purposes of exercising the functions under the Tenders Policy, the following limits exist:

- *For contracts valued \$5 Million and over, the Tenders Committee shall make recommendations to the Board of Directors for the award of the contracts. The Ministry of Finance may be informed of all contracts awarded in excess of \$5M.*
- *For Contracts valued \$1 Million or more but less than \$5 Million, the Committee shall make recommendations to the Board of Directors for the award of contracts.*
- *For Contracts valued \$100,000.00 or more but less than \$1 Million, the Committee shall make the award, if required.*
- *Contracts valued less than \$100,000 shall be awarded by the General Manager.”*

172. Consequently, it is pellucid to this court that pursuant to the TDPP regulations, for contracts valued at \$1M or more but less than \$5M, the

Tenders Committee of the defendant is mandated to send out invitations to tender, consider those tenders upon receipt of same and make recommendations thereon to the Board of Directors for the award of the contract. When a tenderer is successful, he ought to be notified in writing by the Secretary and of the requirement in appropriate cases for him to enter into formal contract with the Company. The defendant was bound to follow these regulations in the procurement and award of contracts and the court so finds.

173. In so finding the court notes that on its face the TDPP states that it was adopted by the board on February 23, 2011. The court accepts this to be the case in the absence of evidence to the contrary.

Compliance with the TDPP

174. While the minutes produced by the claimant for many board meetings has been disputed by the defendant on its pleadings, evidentially, the defendant has failed to prove otherwise than the minutes are genuine. So that in the absence of such evidence the court accepts the minutes to be the true and correct minutes of Board Meetings for the periods set out therein. In so saying the court must record a certain level of discomfort in the fact that it is a private contractor, the claimant, who has produced minutes of the Board whereas the defendant appears to have not been in possession of any minutes whatsoever. How the claimant comes to be in possession of those minutes while the defendant who is the custodian of the minutes is left empty handed remains a mystery. Be that as it may, the rules of evidence must prevail.

175. The minutes of the 75th Statutory Board of Directors meeting of the defendant held on February 25, 2015 shows that the Board approved the

recommendation of the Tenders Committee to award the refurbishment works to be undertaken at the Talparo Health Centre to the claimant. As such, when viewed by itself it can be argued as the claimant did that the logical inference to be drawn from those minutes is that Jagdeo was carrying out the resolved decisions of the board when he executed the letter of award to the claimant.

176. Likewise there are several other minutes of subsequent board meetings that demonstrate that the board was fully aware of the works and had in fact kept abreast of the progress. Further, the minutes demonstrate that the Board in fact gave instructions to prepare payment for the claimant, the works having been completed.

177. However, the alarming aspect of this case becomes evident when one recognizes that the letter of invitation to tender is dated the 4th March 2015. It follows on the evidence that the clear inference and perhaps the only possible inference is that the Board approved the claimant's tender some eight days before he and others were even invited to tender. In the absence of a demonstrated error in the minutes, of which there is no such evidence before this court, it the evidence must be accepted as it is.

178. But it gets worse. The evidence shows that the claimant's form of tender submitted by him is dated March 23, 2015. It therefore means that the claimant's award of the contract would have been approved by the board before he even tendered for the job.

179. The letter of award is dated March 27, 2015.

180. This state of affairs must be cause for tremendous concern as it is explicit from the minutes of the 75th Statutory Board of Directors meeting

that the Tenders Committee recommended to the Board that the contract for the refurbishment works to be undertaken at the Talparo Health Centre be awarded to the claimant and the Board approved that recommendation before the Tender Committee invited the claimant to tender for those works and before the claimant tendered for those works. These actions demonstrate a clear and wanton disregard for process and fairness in the award of contracts with the consequent mismanagement of public funds to say the least.

181. There is therefore a fundamental issue as to what if any information the Tenders Committee would have considered in making its recommendation to the board that the claimant be awarded the specific contract in preference to others or at all and by extension what information would the board have had in acting on the recommendation. The answer is equally obvious. They would both have had no information in that regard as tenders had not been solicited and neither the claimant nor anyone else had, on the evidence submitted any tenders by then.

182. It is therefore pellucid to this court that the defendant failed to follow its procedures as per the TDPP regulations in awarding the refurbishment works to the claimant. Having not followed the TDPP regulations, the tendering process, the consideration of the tenders and the awarding of the contract to the claimant were all improper. In bypassing the regulations altogether, the defendant would have had no reasonable basis to award the contract to the claimant in preference to any other tenderer. It follows that the tendering process that followed was a sham, designed to cover up the fact that the claimant was given preference to others in the absence of a rational basis for so doing. The type of behaviour employed by the defendant in that regard is not to be tolerated as it derogates from the established fair and transparent public

process in the award of contracts funded by the national purse. Consequently, the court finds that the contract having been awarded by a process otherwise than the process by which the defendant was bound to operate and which itself was unfair to all other tenderers is null, void and of no effect.

ISSUE 2 - *Whether the claimant was aware of the non-compliance with the TDPP and/or whether the claimant's actions in the procurement of the works amounted to willful blindness and/or moral turpitude and/or fraud*

The submissions of the defendant

183. The defendant relied on the case of **Ronsan Trading Limited v Trinidad and Tobago National Petroleum Marketing Company Limited**,²⁸ wherein the claimant acquired a contract from the defendant to run a gas station. In order to acquire that contract, the claimant along with others had to go through a particular process, beginning with the acquisition of a prequalifying package, submitting a tender and being successful at the interview process. Justice Rampersad found that the claimant did not purchase a prequalifying package, had not submitted a tender and therefore had not undergone the prescribed process. That the claimant was inserted into the process by the defendant's then CEO, was successful at the interview stage and was given a gas station to manage.

184. There was no evidence that the claimant knew the CEO who had inserted him but the defendant, however, claimed to be able to terminate the contract on the grounds of gross moral turpitude because the claimant

²⁸ CV 2014 –02441

had acquired the contract without going through the stipulated process. His Lordship had the following to say at paragraph 86 of the judgment;

“Having been dissatisfied with his evidence, the court is of the respectful view that his presence in the process was deliberately designed to cheat the process. The fact that he would have known that he had not gone through the prequalification tender would have been a red flag to him when he received the invitation for the interview. He would then have known that he was being invited to an interview in relation to a contract that he had not tendered for...To my mind, it goes against the grain of all right-thinking members of the community and the society at large in the Republic of Trinidad and Tobago that, having cheated the process, the claimant can still enjoy the benefit of a 10-year contract with the defendant, all other things being equal. Such an outcome seems morally reprehensible and is further exacerbated in this case where taxpayers’ funds are involved since the defendant is a State enterprise. It would be contrary to the sensibilities of the society at large that someone who did not conform with the system in place would be allowed to maintain the benefit of any contract awarded as a result. Therefore to me it would be reasonable for the defendant to come to the opinion that even though it failed to properly monitor and vigilate its records in relation to the defendant’s lack of proper credentials, he ought not to enjoy the benefit of it through the contract...he remained in the process knowing fully well that he was not entitled to be there having not provided any prequalification documents and successfully relied on the incompetence or inefficiency of the defendant in spotting his deficiency. Whether by luck or by design, he successfully rode the wave to the contract. How can any court condone such conduct or state of affairs?”

185. The defendant submitted that in the Ronsan case, the clause permitting the State enterprises to terminate the contract for moral turpitude was an express term of the contract. That in the alleged contract in this matter there was no such express term but such a term must be implied into contracts with a state enterprise. According to the defendant, it must have been the intention of the parties to comply with the standards of probity set by the SEPMM, available to the public online, and the TDPP regulations, freely available from the company. The further defendant submitted that such an implication represents the obvious intention of the parties.²⁹ That if that was not so, then the parties would not be contracting in good faith, and as such the contract would be ultra vires the powers of the defendant company to make.

186. The defendant submitted that the State requires and espouses a principle of openness, transparency, accountability and due process. To that end, it created the SEPMM. It was that manual which was being followed in the Ronsan case. According to the defendant, in the Ronsan case, the claimant essentially lost because he failed to follow the process laid out in the SEPMM, which was the process being followed by the State Enterprise.

187. The defendant submitted that cheating the process while it may not amount to misrepresentation or fraud, as it did not in Ronsan supra, amounts to moral turpitude and means that the contract can be set aside as being against public policy. The defendant further submitted that at the very least, specific performance is an equitable relief, and the claimant must come to equity with clean hands. That the claimant cannot seek the assistance of a court of equity where he himself has not acted equitably.

²⁹ See Hamlyn v Wood 1891 2 QB 488

188. According to the defendant, the claimant must have known the following;

- i. that he did not properly participate in any prequalification process as he failed to submit relevant documents required and further was awarded the contract before he was even pre-qualified (In his evidence the claimant says he was pre-qualified in March, 2015 yet the 75th Board Minutes reveal that the contract was approved in February, 2015);
- ii. that there was no proper tender process in that there was neither open tendering nor selective tendering;
- iii. that there were no approved site visits by the defendant;
- iv. that the contract and/or letters of invitation to tender and letter of award were signed by a person with no authority to bind the defendant;
- v. That he had no experience whatsoever in renovating Hospitals or Health Centres;
- vi. that he was not registered as a contractor for the purpose of renovating Health Centres;
- vii. that he did not send in and put on file an application in accordance with the Proceeds of Crime Act.

189. The defendant further relied on the case of ***Carrington v UTT***³⁰ wherein the claimant was a lecturer at UTT who having served two three-year contracts with some distinction, fully expected a third contract. He never received a written contract, and after one year of working in expectation of a renewal he was terminated. He sued inter alia alleging a breach of the implied terms of trust and confidence, and of good faith. In dealing with the latter, Kokaram J at paragraphs 116 to 118 referred to

³⁰ CV 2017—03482

what he had said in the case of Lutchmeesingh’s Transport Contractors Limited v National Infrastructure Development Company Limited³¹ and had the following to say;

“116....The principle of good faith exemplifies the notion that, in carrying out his or her performance of the contract, a contracting party should have appropriate regard to the legitimate contractual interests of the contracting partner. While “appropriate regard” for the other party’s interest will vary depending on the context of the contractual relationship, it does not require acting to serve those interests in all cases. It merely requires that a party not seek to undermine those interests in bad faith.”
Bhasin v Hrynew [2014] 3 S.C.R. 494, para 67...

117. I recognised the possibility of implying such a term in commercial contracts as a matter of fact, sensitive to context and with the challenge for the Claimant in identifying the content of the particular duty. A relational contract such as in the employment contract lends itself however, in my view to an easy acceptance that it should be an obvious duty on both parties implied by law.

118. In Bhasin and Hrynew (cited in Lutchmeesingh) the Supreme Court of Canada for the first time recognized that good faith is a general organizing principle of contract law, and they crafted a new substantive doctrine of honest contractual relations which was based on that general organizing principle...”

190. The defendant further submitted that the circumstances present pervasive and consistent willful blindness on the part of the claimant. That falling under the broad tort of fraud, an action in willful blindness seeks to highlight a certain level of dishonesty but carries the burden a step further

³¹ CV2015-01192

than a mere negligent failure to enquire. The defendant relied on the case of **James Wattley v Ronald Lopez and others**,³² wherein Justice Rajkumar (as he then was) outlined the principles surrounding that cause of action. At paragraph 57, His Lordship stated as follows;

“57. Additionally in Macquarie Bank Ltd v Sixty-Fourth Throne Pty Ltd - [1998] 3 VR 133 the Supreme Court of Victoria found that:

Per Tadgell J.A. at 146 “There was no evidence, in my opinion, to support a finding of willful blindness in the sense in which that expression is commonly used in order to indicate a form of cognizance which law and equity alike equate to subjective knowledge from which dishonesty may be inferred. I understand the expression to connote more than a failure to see or look: the adjective is to be given its due value. The compound expression connotes a concealment, deliberately and by pretence, from oneself, a dissembling or dissimulation. In other words willful blindness connotes a form of designed or calculated ignorance, of which none on the part of the appellant or its agents was proved.

Per Ashley A.J.A. at 159 (The description willful blindness) “imports a certain dishonesty. It is something more than negligent failure to inquire.But in so far as recklessness could amount to statutory fraud it must mean, I think, a reckless indifference to consideration of a relevant matter - this again importing something with a flavour of dishonesty rather than mere negligence.”

191. The defendant submitted that the claimant eagerly turned a blind eye to the lack of proper tendering procedure on the part of the defendant at the time of receiving the letter of award from Jagdeo and not from the Secretary or Chairman of the Tenders Committee and to the fact that the

³² CV 2014-00845

letter of award was granted in just a short three clear days on March 27, 2015 after having put in his tender on March 23, 2015.

The submissions of the claimant

192. The claimant submitted that the defendant failed and/or neglected to fully particularize the alleged fraud and/or bring any evidence of same to the court. That when one looks at the witness statement of Eddy, it is clear that the particulars required to plead fraud, willful blindness and/or moral turpitude are not met. In so submitting, the claimant relied on the cases of ***Three Rivers DC v Bank of England (No. 3)***³³ and ***Andre Monteil v Central Bank of Trinidad and Tobago***³⁴

Findings

193. The court agrees with the submission of the claimant that the defendant has failed to produce any evidence that the claimant was aware of the non-compliance with the TDPP and/or that the claimant's actions in the procurement of the works amounted to willful blindness, moral turpitude and/or fraud.

194. The court finds that the case of ***Ronsan*** supra is distinguishable from the facts of this case. In the instant matter, there was no evidence that the claimant was aware that the Board had approved the Tenders Committee recommendation to award it the contract for the refurbishment works to be undertaken at the Talparo Health Centre prior to its tendering for same. Further, Seegobin gave evidence that in or

³³ [2003] 2 AC 1

³⁴ Civ. App. No. P 19 of 2015

around August, 2014 he went into the offices of the defendant to pre-qualify the claimant with the defendant so that he could be, if accepted, short listed for contracts awarded by the defendant. Seegobin provided the defendant with certain documents for the pre-qualification process to occur. During cross-examination, Seegobin agreed that those documents did not include any documents to show that the claimant had experience in 1) renovating health centres, 2) electrical work, 3) plumbing, 4) painting, 5) roofing, and 6) air conditioning. However, the court noted that such documents were not requested by the defendant.

195. Seegobin further testified that in or around early March, 2015 he was contacted by a representative of the defendant, who informed him that the claimant passed the pre-qualification process. The defendant failed to provide any evidence to rebut the claimant's evidence that it was pre-qualified. As such, the court accepts the evidence of the claimant that it was in fact pre-qualified.

196. Thereafter, Seegobin was invited to attend a meeting at the defendant's head office to discuss the health sector initiative. At that meeting, Seegobin was invited to tender for the Talparo Health Centre, Arouca Health Centre and St. Joseph Enhanced Health Centre and was given the respective tender documents for same. Subsequent to attending site visits to the health centres, Seegobin submitted his tender to the defendant which was accepted.

197. The court finds that the claimant followed all the procedures presented to it by the defendant for the tendering of the refurbishments works. That processes and policies to be pre-qualified and to be awarded a contract by the defendant were matters which were within the knowledge of the defendant. It was the defendant's duty to ensure that its

policies and regulations were followed. The court further finds that the defendant failed to provide any evidence to demonstrate that the TDPP regulations were within the knowledge of the claimant. As such, the claimant cannot be faulted for the defendant's indiscretions.

198. Moreover, the court finds that the defendant has failed to provide any evidence to demonstrate that the claimant knew or ought to have known that Jagdeo did not have the authority to sign the letter of invitation to tender and the letter of award (it must be noted that the court has not found that Jagdeo did not have the authority to execute the letters as this matter does not now arise having regard to the finding on the first issue). As such, the fact that the claimant failed to enquire whether Jagdeo had authority to sign off on those letters was insufficient to prove that the claimant acted with moral turpitude, willful blindness and/or fraudulently.

199. Moreover, the court finds that the defendant has failed to provide any evidence to show that the claimant knew or ought to have known that the defendant's tendering process was not complied with. In fact as far as the claimant was aware on the evidence he had tendered and had been awarded the contract. As such, the court finds that the claimant's actions in the procurement of the works did not amount to willful blindness, moral turpitude and/or fraud.

ISSUE 3 - *whether the claimant can be compensated on a quantum meruit basis the court having found the contract to be null and void.*

200. In the Court of Appeal case of **the Attorney General of Trinidad and Tobago v Trinsalvage Enterprises Limited**³⁵, Their Lordships held that although the contract was ultra vires because the Permanent Secretary as agent of the State had no authority to bind the State for so large an amount of works and services, the respondent was entitled to be paid, on a quantum meruit basis, for the work effected. It is important to set out the relevant dicta in extensive form.

201. Bereaux J.A. had the following to say at paragraphs 23 to 29;

*“[23] Unjust enrichment is a direct issue in this appeal. I have carefully considered the provisions of the Act and I can discern no policy within the provisions of the CTB Act, express or implied, which will be stultified if the claimant succeeds in his claim in unjust enrichment. The Act establishes the Board but its provisions do not show any underlying intention to prohibit the enforcement of the rights of an innocent party who has entered into a contract which is ultra vires its provisions. I consider that the limitations placed on the P/S’ power to contract appear at best to be for purely administrative convenience. I would also have expected that the Act would have explicitly prohibited the enforceability of any legal or equitable rights arising out of any contract which was outwit its provisions. The decisions of this court in **Water and Sewerage Authority v. Sooknanan Singh, Civil Appeal No. 106 of 1989** and **The Attorney General of Trinidad and Tobago v. Mootilal Ramhit and Sons Contracting Ltd., Civil Appeal No. 124 of 1996** (to which I shall come) support this approach.*

[24] ...I do not agree that the grant of damages on a quantum meruit basis legitimises the ultra vires act, rather, it does justice between the parties...

³⁵ Civ. App. No. P 0009 of 2014

[25] I am fortified in my view by the dictum of de la Bastide CJ in **Water and Sewerage Authority v Sooknanan Singh**. One of the issues in that case was whether the failure of the parties to sign a formal agreement (after the acceptance of the respondent's tender by a letter dated 8th May 1981 and the payment of a performance deposit) meant that the contract was illegal and unenforceable. The Court of Appeal upheld the contract even though no formal contract had been executed. Section 26(1) of the Act provided (as relevant):

"Where an offer has been accepted by the Board ... the Government or the statutory body at whose request the invitation to offer was issued and the person whose offer has been accepted shall enter into a formal contract for the supply of the articles or the undertaking of the works or services, as the case may be."

Subsection 2 of the same section 26 provides:

"A formal contract shall be in such form, and contain such terms, conditions and provisions, as the Board may determine."

[26] ...de la Bastide CJ considered that section 26(1) was not mandatory, and in doing so he looked at the intention of the Act:

"I have no hesitation in holding that it is purely directory. If it were otherwise, and it was intended to visit non-compliance with the section with the extreme penalty of rendering void contractual arrangements made by a statutory authority after negotiations, consisting of tender and acceptance, have been properly conducted through the agency of the Central Tenders Board, I would have expected that there would have been some more explicit indication of such an intention in the statute. I am not prepared to accept that the failure to enter into a formal contract, which one would normally expect to be initiated by the statutory authority, would serve to defeat the contractual rights of a party who, as in this case, has been assured by the Central Tenders Board that it has succeeded in

establishing a binding contractual nexus between himself and the statutory body in question.”

The issue in Sooknanan Singh was different of course. The contract was awarded by the Central Tenders Board and there was no doubt that the Central Tenders Board intended to contract with the claimant. But the dictum of de la Bastide CJ supports the view that any prohibition against the enforceability of the informal contract should be, as a matter of policy, clearly spelt out in the Act.

[27] In my judgment, the same applies to the case at bar. If it were intended to prohibit the enforcement of rights other than through a contract issued under the authority of the Central Tenders Board, it surely, as a matter of policy, would have been expressly set out in the Act... The approach of de la Bastide CJ in Sooknanan Singh is consistent with the modern approach.

[28] In The Attorney General of Trinidad and Tobago v Mootilal Ramhit and Sons Contracting Limited Civil Appeal No. 124 of 1996, a similar argument was made that the contracting officer lacked the actual authority to contract with the respondent under the Central Tenders Board Ordinance. Nelson JA stated at page 7:

“The provision of work and services to the government is not expressly or impliedly prohibited by the Ordinance. In the present case the Ordinance prescribes penalties for illegal performance on the part of the government and public officers only: see section 16(1) and (3) of the Ordinance. When “the policy of the Act in question is to protect the general public or a class of persons by requiring that a contract shall be accompanied by certain formalities or conditions, and a penalty is imposed on the person omitting those formalities or conditions, the contract and its performance without those formalities or conditions is illegal, and cannot be sued upon by the person liable to the penalties... But the other party to the contract is not deprived of his civil remedies because of the criminal default of the guilty

party”: see Chitty on Contracts 25th edition para 1152. Where a government agent breaches the Ordinance in the absence of knowledge or collusion the other contracting party is entitled to avail itself of its civil remedies. The Respondent is therefore entitled to recover the sums claimed.”

[29] The same must apply here. There is no suggestion that the claimant was aware of the P/S’ lack of authority or that there was otherwise some element of collusion on its part such as to circumvent the provisions of the Act. The respondent was not seeking to go behind the Act’s provisions. It is simply that the P/S, as a matter of fact, lacked the authority which, on the face of it, he appeared to have. The respondent was not deliberately seeking to circumvent the provisions of the Act. It should not be punished except by clear statutory provision for the P/S’s error. Indeed, it would have been an entirely different matter if it had been shown that the respondent was well aware of the P/S’ lack of authority. The Act does not prohibit it from pursuing its remedies. The contract was ultra vires because the P/S as agent of the State had no authority to bind the State for so large an amount of works and services. It does not appear from the Act that there is any penalty imposed on the P/S in this case. Even more compelling is the fact that the principal has been paid in spite of his lack of authority. But there is certainly no provision in the Act barring the claimant, an innocent party, from recovering damages on a quantum meruit basis on a claim for unjust enrichment.”

202. Similarly, in this case, the court cannot discern any policy within the TDPP regulations express or implied, which will be stultified if the claimant succeeds in its claim for recovering damages on a quantum meruit basis. As found above, there was no evidence that the claimant was aware that the Board had approved the Tenders Committee recommendation to award the contract to the claimant prior to the tendering process. Further,

there was no evidence of collusion on the claimant's part such as to circumvent the TDPP regulations. Consequently, without any clear regulation prohibiting the claimant from pursuing its claim, if it is found that the claimant did in fact complete the works at the Talparo Health Centre, justice would require that the claimant be compensated for same and the court so finds.

ISSUE 4 - *whether the claimant completed the refurbishment works at the Talparo Health Centre*

203. The claimant provided evidence through Seegobin and Matadeen that the refurbishment works at the Talparo Health Centre were completed. Seegobin and Matadeen provided details of the days of work and the works which were completed. Matadeen also provided photographs of his team undertaking works. The court agrees with the submission of the defendant that the photographs depicting the men doing work on a building, do not clearly identify the building as being the Talparo Health Center. That the other photographs which clearly show that it is Talparo Health Center do not show the alleged work being done as against the scope of works that was to be carried out. The claimant also provided the court with a completion certificate. However, as a matter of common sense this evidence must be considered in the round with all other relevant evidence.

204. The defendant on the other hand denied that the works were completed. Eddy testified that the claimant's invoice failed to give details of any work that was done and that the report of IT McLeod indicated that no works were purportedly done. He further testified that the works were not completed to the satisfaction of the defendant nor to the satisfaction

of GORTT. Moreover, it was the evidence of Eddy that the Ministry of Health did not pay the defendant for any of the works that the claimant or any contractors have done as they were not satisfied with the quality of the work.

205. According to Eddy, the completion certificates were done and signed by the Business Development Manager, Lutchmeesingh as directed by Jagdeo and were done without reviewing any documentation or doing any site visits with the quantity surveyor to verify the works done. Eddy testified that upon a review of the Business Development Manager's position, it revealed that Lutchmeesingh had no authority to sign off on the completion certificates and therefore the completion certificates could not be valid.

206. The defendant hired the services of IT Mc Leod to give an independent assessment of the works done on the said projects. After having visited the site and conducting their assessment, the report from I.T. Mc Leod valued the work done at the Talparo Health Centre at zero dollars and zero cents. During cross-examination, Jacob accepted that in preparation of the report, he failed to comply with certain parts of the Code of Ethics of the RICS. At page 6 of the report the following was stated;

"On completion of our site visits and cost analysis we recommend no payment be made to Xander Construction Limited as no work was executed on the Talparo Health Centre under the C.E.P.E.P. Health Sector Programme."

207. Lord Ackner in the Privy Council decision of **Horace Reid v Dowling Charles & Anor**,³⁶ had the following to say at page 6;

³⁶ PCA No. 36 of 1987

“Mr. James Guthrie, in his able submissions on behalf of the Mr. Reid, emphasized to Their Lordships that where there is an acute conflict of evidence between neighbours, particularly in rights of way disputes, the impression which their evidence makes upon the trial judge is of the greatest importance. This is certainly true. However, in such a situation, where the wrong impression can be gained by the most experienced of judges if he relies solely on the demeanour of the witnesses, it is important for him to check that impression against contemporary documents, where they exist, against the pleaded case and against the inherent probability or improbability of the rival contentions, in the light in particular of facts and matters which are common ground or unchallenged, or disputed only as an afterthought or otherwise in a very unsatisfactory manner. Unless this approach is adopted, there is a real risk that the evidence will not be properly evaluated and the trial judge will in the result have failed to take proper advantage of having seen and heard the witnesses.”

208. The court finds that no weight is to be given to the quantity surveyor report due to 1) the abundance of evidence that was in direct contravention of same and 2) the length of time that has elapsed since the works were completed and the date of the survey.

209. The court finds that the completion certificate, the minutes of the board, the evidence of Seegobin, Matadeen and even Eddy were in direct contravention of the findings of the quantity surveyor report.

The completion certificate

210. The defendant argued that the completion certificate was null and void. That same was not signed or stamped by the defendant to show that

the works were completed. Further, that the completion certificate was stamped by the Arima Health Facility and not the Talparo Health Facility which is the facility concerned in this matter

211. The completion certificate states that the upgrade and maintenance works to the Talparo Health Centre was completed in accordance with the contract. It further sets out that the certificate was prepared by Lakhram. According to the evidence, Lakhram was at the material time the defendant's project manager. As such, it was clear to this court that the defendant did in fact participate in the preparation and execution of the completion certificate. Further, it was Eddy's evidence that the completion certificates were done and signed by the Business Development Manager, Lutchmeesingh as directed by Jagdeo. That although Lutchmeesingh signed off on the completion certificates, he had no authority to so do and therefore the completion certificates could not be valid. Eddy however did not provide this court with any evidence as to who had the authority to sign off on the completion certificate.

212. Further, although the defendant made an issue out of the fact that the completion certificate was stamped by the North Central Regional Health Authority Arima Health Facility, it did not provide any evidence that either it was not proper procedure for the completion certificate to have a North Central Regional Health Authority Arima Health Facility stamp or that the completion certificate ought to have had a stamp from the Talparo Health Centre. Consequently, the court finds that the defendant has not provided any evidence to disprove that the completion certificate was properly obtained. The court therefore finds that the existence of the completion certificate is evidence that the works on the Talparo Health Facility was completed.

213. Moreover, during cross-examination, Eddy accepted that he has never visited the Talparo Health Centre. After being referred to his affidavit sworn to on March 7, 2018 Eddy accepted that it was implicit from his evidence therein that works were done by the claimant on the Talparo Health Centre. Further, in his witness statement, Eddy testified that the works were not completed to the satisfaction of the defendant and that the Ministry of Health did not pay the defendant for any of the works that were done by the claimant because they were not satisfied with the quality of the work. There was no evidence however, to show that the aforementioned was ever brought to the attention of the claimant when the invoice was presented. It is clear to this court from the admission of Eddy in his affidavit and the inconsistency that the defendant was aware that the claimant did perform works to the Talparo Health Centre.

214. Additionally, at paragraph 4.12 of the minutes of the 80th Statutory Board of Directors meeting of the defendant held on July 22, 2015 the following is stated;

“CEPEP and the Inter-Ministerial Health Committee

The General Manager reported to the Board that the CEPEP consultants reported that 90% of the Health Centre works was completed and a comprehensive review and close off by a team comprising the CEPEP Consultants and the respective Regional Health Authorities would be done in the following month. The General Manager further indicated that requests for funding was sent to the Line Ministry as Contractors were submitting invoices currently for the Health Centres for which completion certifications would be granted.”

215. As such, it was pellucid from the minutes that the defendant’s consultants had reported that 90% of the works on the health centres were

completed and that as a consequence of same requests for funding was sent to the line Ministry.

216. Further, the site visit for the assessment and the valuing of the works completed during the period of March, 2015 to May, 2015 occurred some three years after on November 2, 2018. As such, it is reasonable to conclude that due to usual wear and tear, there would be little or no signs of the works done having regard to the length of time that would have elapsed.

217. Consequently, the court finds that based on the evidence it is more probable than not that the claimant did complete the refurbishment works on the Talparo Health Centre. As such, the claimant is entitled to be compensated for the works done on a quantum merit basis.

218. By form of tender dated March 23, 2015 the claimant offered to do the refurbishment works on the Talparo Health Centre for the sum of \$2,570,000.00 Vat exclusive. By letter of award dated March 27, 2015 the defendant accepted the claimant's offer. The sum of \$2,570,000.00 vat exclusive would not however have been the true value of the works done as same would have included the profits of the claimant.

219. According to the evidence of the claimant, it entered into a contract with Matadeen to provide and/or supply all labour, materials and equipment to perform the works pursuant to the scope of works and/or bill of quantities. It was agreed that Matadeen would perform those works for the sum of \$1,489,000.00 Vat exclusive (\$1,712,350.00 Vat inclusive). During cross-examination, Matadeen testified that his profit would have been around \$350,000.00.

220. Further, the claimant entered into a contract with Koon Koon to provide the masonry and painting works. It was agreed that Koon Koon would perform those works for the sum of \$98,000.00 vat exclusive (\$112,700.00 vat inclusive).
221. Moreover, the claimant hired TBIS Ltd. to install an electronic door at the health centre. By invoice dated June 3, 2015 the claimant paid TBIS Ltd. \$86,250.00 for the electronic door. On the warranty for the electronic door, it was stated that same was installed at the Talparo Health centre on May 16, 2015.
222. Additionally, by invoice dated May 31, 2015 Ali was paid the sum of \$10,000.00 by the claimant to strip, sanitize, polish and seal the vinyl floors of the health centre.
223. Consequently, the court finds that the sum of \$1,921,300.00 (1,712,350.00 + 112,700.00 + 86,250.00 + 10,000.00) is reasonable in these circumstances and it will make such an award.
224. Finally, before disposing of the claim, the court wishes to underscore that it is not oblivious to the fact that Mr. Eddy and the new Board would have on the evidence inherited these circumstances, the fault for which cannot be laid at their feet. The court fully understands and accepts that on the evidence there appears to have been no minutes of the board meetings and no evidence of contracts left with the defendant company upon the previous board having demitted office. To say that this is unfortunate would be an understatement, but the court must be judicious in its language.

225. It is also regrettable that the plethora of similar cases that routinely traverse these courts consistently reflect the abuse of institutions entrusted with the expenditure of what are essentially funds of the state as contributed to by the taxpayer. To that end as a nation we run the risk of such behaviour becoming a stain on the post-colonial existence of our independent nation if it has not already so become. That being said, issues of contract are matters for the courts and the chips must lie where they fall in the court of law, but these cases also raise much wider issues of accountability and transparency in the management of our affairs as a nation for the good of the citizenry as a whole. They are issues in respect of which we all bear an individual and collective responsibility to address regardless of our role and function.

DISPOSITION

226. The judgment of the court is therefore as follows;
- i. The defendant shall pay to the claimant the sum of \$1,921,300.00 on a quantum meruit basis for the refurbishment works done on the Talparo Health Centre together with interest at the rate of 2.5% per annum from December 27, 2017 to the date of judgment; and
 - ii. The defendant shall pay to the claimant the prescribed costs of the claim.

Ricky Rahim

Judge