

THE REPUBLIC OF TRINIDAD AND TOBAGO

In the High Court of Justice

Claim No. CV2014-03259, 03261

CLEOPHAS ALEXANDER ORR AND ASSOCIATES SERVICES

CLAIMANT

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

DEFENDANT

Appearances:

Claimant: Ronald Simon instructed by Kia Baptiste for the Claimant

Defendant: Seenath Jairam S. C. instructed by Nisa Simmons for the Defendant

Before The Honourable Mr. Justice Devindra Rampersad

Dated the 14th day of September, 2017.

EVIDENTIAL OBJECTIONS RULING

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The Defendant's evidential objections

Cleophas Alexander Orr

Paragraph 11 (lines 2 – 5)

1. The court rejects this objection.
2. The claimant's case is that it is owed money for work done at Jalim Street, Phase 1 for \$411,021.00 and Jalim Street, Phase 2 for \$411,021.00 (see paragraphs 3 and 11 of the consolidated statement of case). As a result, the defendant is aware of the case it has to meet. The fact that the claimant did not specifically say in the consolidated statement of case that it received a call and was informed of the grant of the contract is a matter of evidence arising out of the short statement of material facts set out in the consolidated statement of case.

Paragraph 14 (line 5)

3. The court rejects this objection.
4. Paragraph 7 of the consolidated statement of case states that Mr. John "*invited contractors and companies including the claimant to visit proposed worksites and assigned works to the claimant in the Felicity area, Chaguanas.*" This sufficiently lays the basis to expand on what Mr. John did as set out at paragraph 14 of the witness statement.

Paragraph 15 (lines 1-2)

5. The court rejects this objection.
6. The essence of this objection seems to be the use of the words "*agreed upon by the parties.*" This, it is suggested by the defendant's objections, amounts to inadmissible opinion evidence. The court does not agree. The witness is quite entitled to give his evidence of his understanding of what transpired at this meeting or site visit.

Paragraph 15 (line 3)

7. The court rejects this objection.
8. Paragraph 8 of the consolidated statement of case refers to projects being assigned to the claimant under the award letter along with the scope of works which were given orally and later documented. Therefore, this evidence is consistent with this pleading and would therefore be allowed.

Paragraph 16 (lines 2 – 8)

9. At this paragraph of the witness statement, the claimant's representative, for the 1st time, speaks about the engaging a 3rd party for the provision of certain equipment such as excavators, backhoes, rollers and trucks together with the relevant materials to perform the works contracted with the defendant. Essentially, therefore, this alleged subcontract was not specifically pleaded in the consolidated statement of case. The impression given by the claimant in its pleading was that it was solely responsible for the work done. On the other hand, the defendant's position is that no work was done by the claimant or even if it was done, it was not done as a result of any legally binding agreement as there was a failure to follow the tendering process and or it was contrary to the established practice and the regulations set out in the pleadings. Therefore, the issue for determination is whether or not the work claimed to have been done by the claimant was performed at all under a legally binding contract.
10. In this case, the subcontractor has given a witness statement and would be available for cross examination. Consequently, whether the work was done personally by the claimant or by the claimant through a subcontractor is immaterial as the whole subject of work having been done at all is being denied by the defendant. The validity of the alleged contract is another matter.
11. The court is of the respectful view that it is not necessary for the claimant to provide pleadings in its consolidated statement of case to indicate where he got each piece of equipment from and who its labourers/workmen or who it engaged to do its work were. Those are matters of evidence arising in the witness statement. The material fact, as pleaded, is that it did the work and was not paid.
12. The court would therefore allow this evidence as it goes into the details of how the claimant performed the works for which it submitted invoices.

Paragraph 18

13. For the same reasons referred to in relation to the previous objection, the court would allow the evidence in this paragraph which has been objected to in its entirety.
14. This evidence goes to the manner in which the work was done i.e. the scope of works. This scope of works was not detailed in the statement of case and it is an issue raised by the defendant in his defence that the claimant failed to provide a scope of works.
15. Nevertheless, the court is of the respectful view that the claimant's representative can set out what he did, whether by himself or by a subcontractor, and it would then become a matter of what weight the court attaches to that alleged provision of services, after cross examination, against the background of all of the other issues which need

to be addressed such as the issue of the tendering process, procurement and other allegations.

[Paragraphs 22 and 23](#)

16. This information relates to a material fact which ought to have been pleaded by the claimant i.e. that there was some sort of endorsement of the claimant's contract by this function at which the Ministry officials and government ministers mentioned in these paragraphs were present.
17. As a result, in light of the failure to plead it, these paragraphs would be **struck out**.

[Paragraph 24 \(lines 2 – 5\)](#)

18. This evidence relates to a positive step allegedly taken by the assistant engineer of the URP to verify the performance of the contract *after* the completion. This is a material fact which ought to have been pleaded to allow the defendant to have verified the same and to allow it at this stage would be to deny the defendant on the opportunity of confirming this alleged step.
19. Due to this failure to plead this material fact, these words complained of would be **struck out**.

[Paragraph 26 \(lines 5-6\)](#)

20. The court agrees with the objection in relation to the words complained of as there is no foundation for the statement made.
21. As a result, these words would be **struck out**.

[Paragraph 27](#)

22. As in the case with respect to the words complained of at paragraph 24 lines 2 – 5, these positive steps allegedly taken were not pleaded and it would be unfair for this evidence to be allowed.
23. This paragraph is therefore **struck out**.

[Paragraph 29](#)

24. This apparent endorsement by the named then Minister seems to be the subject of paragraph 23 of the consolidated statement of case and pleaded by the claimant. It is a material fact as it goes to an alleged acceptance that the contract was performed. At paragraph 22 of his witness statement, the claimant's representative described Dr. Rambachan as the then Minister of Local Government. However, paragraph 23 of the consolidated statement of case identified the Minister in the Office of the Minister

of Finance and the Minister of Works and Infrastructure informing Parliament that the projects were done and the amount owing to the contractors.

25. The court can take judicial notice of the fact that in 2013, Dr. Rambachan held both portfolios of Minister of Local Government in addition to being Minister of Works and Infrastructure.
26. This objection is therefore rejected.

[Paragraph 30 \(line 2 – 9\)](#)

27. This objection is rejected.
28. The claimant stated at paragraphs 15 and 16 of its consolidated statement of case that there was a recommendation for payment by the URP. To my mind, paragraph 30 of the witness statement elaborates on that and ought to therefore be allowed.

[Paragraph 33 \(lines 8 – 13\)](#)

29. The words complained of in relation to the payment allegedly made for other contractors was not the subject of any pleading in the consolidated statement of case and, in any event, are not relevant to the issue which this court has to determine.
30. As a result, the words complained of would be **struck out**.

[Paragraph 35 \(lines 5 – 8\)](#)

31. The court agrees with the defendant that the words complained of were not part of the pleadings before this court.
32. In any event, these words are irrelevant to the issue that this court has to determine.
33. As a result, these words too would be **struck out**.

[Paragraph 42 \(lines 3 – 8\)](#)

34. Similarly, these words are irrelevant and were not pleaded. The issue before this court is whether the claimant did work, legitimately, and was not paid for it. Whether or not 3rd parties received payment for work they did or did not do does not form a part of the issues for this court's determination and they are not relevant for this court's consideration.
35. These words, and the exhibit, would therefore be **struck out**.

The Claimant's evidential objections

Marissa Chattergoon

Paragraph 4, lines 5 – 6

36. The court rejects this objection.
37. The court cannot find anything objectionable with respect to this evidence. The fact that this witness alleges certain instructions from Mr. Isaac James is a matter which can she speak of firsthand and it gives the motivation for her to attend the alleged meeting.

Paragraph 5, lines 5 – 13

38. Quite obviously, the value of the statements referred to lies in the truth of their contents rather than the fact that they were made. The probative value, if any, in these statements allegedly made by Mr. Christian rests on Mr. Christian's interactions with Mr. John. Therefore, it is apparent that these words are being relied upon for their truth and are therefore objectionable and inadmissible hearsay statements by this witness.
39. These words will be **struck out**.

Paragraph 7, lines 4 – 5

40. The court rejects this objection.
41. It is not objectionable to state the instructions that this witness received. Those instructions, quite obviously, would have provided the motivation for her actions which followed. Therefore, the court does not agree that this statement is inadmissible hearsay.

Paragraph 8, lines 5 – 7

42. The court rejects this objection.
43. It is clear from the paragraph that the inference before objected to from this evidence is that the team came to the common thought. Whether or not that is true i.e. the thought, is irrelevant. It just serves to act as the motivation for the team seeking to obtain the assistance of the engineers. Therefore, the court does not accept that this is inadmissible hearsay. When looked at from the view of objection based on speculation or opinion evidence, the court would still allow the evidence and it would be open to the claimant's attorney to cross examine on this point to determine the manner in which this witness came to the understanding that there was this common thought.

Paragraph 9, lines 4 – 8

44. This evidence would be allowed as it traces the witness' account of the chain of command that she would have followed in order to get a response to her request. The court is mindful of the claimant's objection in relation to the suggestion that the ultimate person, Mr. John, is not a witness in these proceedings so that it would be a matter of weight at the end of the day. It would have been incumbent on the person with the relevant onus of proof to ensure that 1st person accounts were available for the court and it must be patently obvious that the court is entitled, in the weighing process, to consider what inferences ought to be made in the circumstances.

Paragraph 10

45. The court rejects this objection.
46. At paragraph 7 of her witness statement, this witness indicated that she received formal instructions to proceed with the investigation. Even though this was objected to by the claimant's attorney, the court allowed this evidence. Therefore, it can be inferred from paragraph 10 that, since she was proceeding with the investigation, she would have been aware of who the teams for the investigation were. Of course, if reports were submitted to her, she can obviously produce those in evidence. At the end of the day, however, it is a question of weight because the court will take into account that she does not know for a fact whether those reports were based on any actual site visits.

Paragraph 11, lines 2 – 3; 5 – 8

47. With respect to the 1st set of impugned words, the court agrees that they ought to be **struck out**.
48. The words complained of amount to a conclusion drawn by Ms. Chattergoon without giving to the court the facts upon which that conclusion was drawn. Her statement that there was improper procedure and apparent collusion between Mr. John and the contractors, a clear conclusion, has absolutely no foundation on her evidence. Even if one peruses the note which she said that she prepared, the same refers to a generalized position rather than one specific to Mr. John.
49. With respect to the 2nd set of impugned words, the court notes that the contents thereof are obviously accounts received by the witness who had no personal firsthand knowledge of the truth of those facts. The court will **disregard** these accounts for the truth of their contents but, will allow them into evidence to indicate that that was what was told to her which may have motivated any further action which she decided to take.

[Paragraph 12, lines 4 – 7](#)

50. These words would be **struck out**.
51. They are obviously included for the truth of their contents i.e. that despite the letter of 1 October 2013, the further investigation which was recommended to be done was not in fact done. The witness has not even condescended to particulars as to which member of the team informed her that the visits which was supposed to have been done by Mr. Kirton and Mr. Maynard were not done. Clearly, this is inadmissible hearsay.

[Paragraph 13, lines 3 – 8](#)

52. These words would be **struck out**.
53. Once again, this witness has failed to identify which of the team members allegedly raised the issues mentioned therein. If, as seems to be the case, this witness is merely reproducing what was stated in the file note annexed and marked “MC 11”, then it is not necessary for her to add her own elaborations to the same. She has not said that she was the one who made the file note and, in those circumstances, the note would stand on its own and does not require comments and observations from this witness in the manner in which she has done.

[Paragraph 14, line 3](#)

54. These words would be **struck out**.
55. The witness has failed to identify who in the Ministry came to the view that she mentioned therein and “the Ministry” cannot come to such a view without identifying the meeting, conference, memorandum, resolution, etc. which would have dealt with such a view being arrived at.

[Paragraph 15, lines 7 – 12](#)

56. The court rejects this objection.
57. The witness indicated that she was present at the meeting held on 8 January 2014 and the file note which is annexed and marked “MC 14” carries her signature at page 2 thereof. The claimant’s attorney at law would be able to cross-examine on that document. Having stated that she was present at the meeting, she is entitled to speak about what happened and what was said and it would be for the court to attach whatever weight it deems fit in relation to such a statement as has been impugned. This must be viewed against the background of the fact of the witnesses who are to give evidence in this matter and those who have not been called, for whatever reason.

Paragraph 16, lines 2 – 3 and 6 – 8

58. The first impugned statement is **struck out**.
59. The first impugned statement speaks about “the officials within the Ministry discussed...” There is no indication as to who these officials were nor their locus to have any such discussions. Further, there is no foundation for this statement especially in relation to the source of this knowledge – she does not indicate that she was a party to these discussions. Consequently, this is all inadmissible hearsay as it stands.
60. The court rejects the objection to the 2nd impugned statement.
61. The witness was at the meeting and can report what was discussed. The court can attach such weight as is appropriate in the circumstances after her cross examination.

Paragraph 24 – Entirety

62. This objection is rejected.
63. The witness can speak about what happened at a meeting at which she was present and can indicate what was stated by other parties if the statements are not being referred to for the truth of their contents. The document which is attached at “MC 21” is purportedly her own document and she can rely on the same with the appropriate weight to be given to it by the court after cross examination.

Shaheed Shah

Paragraph 4

64. This objection is rejected.
65. The statements objected to lend to the background and narration of this witness’s involvement and therefore the matters referred to therein are admissible. They relate to information which can clearly be relied upon for the fact that such a request was made rather than for the truth of its contents as to whether what was told to him was true or not.

Paragraph 7, lines 4 – 7

66. The witness can obviously indicate what he observed. The objectionable portion of this evidence would tend to relate to the conclusion which he seems to have drawn from what he observed. Obviously, this witness cannot know what Mr. Kirton or Mr. Maynard knew or did not know unless they told him. The words used by this witness

is that certain things became apparent to him. A literal consideration of the word “apparent” and the words “it became apparent” suggests something less than a definitive conclusion. In other words, he could quite easily have said instead “it seemed to me” and the court will so construe it. In that scenario, the court will allow these words as the witness can legitimately express an understanding which he came to base on his observations.

67. This objection is therefore rejected.

[Paragraph 8, lines 6 – 7](#)

68. This objection is rejected.

69. These words would be allowed and the court will attach such weight to it as it deems appropriate after cross examination.

[Paragraph 10, except lines 9 – 10](#)

70. This objection is rejected.

71. Again, some of this information i.e. that given by Mr. Kirton and Mr. Singh, cannot be relied upon for the truth of their contents because this witness cannot speak of this information from his own knowledge. However, that is information which this witness received during the course of his investigation under which, presumably, he had the necessary duty. Therefore, the matters told to him by Mr. Kirton and Mr. Singh would be viewed as such i.e. matters which were indicated to him rather than matters which were true at the time.

[Paragraph 11, lines 1 – 2](#)

72. The court will allow this evidence.

73. The witness is giving evidence of what happened during his investigation and what was told to him by Mr. Kirton and Mr. Maynard. The court does not have from these 2 persons whether what was said was true or not true and therefore the court will attach whatever weight it sees fit to these statements having regard to the fact that the alleged makers of these statements are not before it. However, the court bears in mind that the witness has exhibited a report that he allegedly did somewhat contemporaneously with this site visit and the court will allow the evidence and will allow that evidence to be tested in cross examination.

[Paragraph 13, lines 1 – 2](#)

74. This evidence will be **struck out**.

75. The conclusion which this witness seeks to draw is closely tied to one that this court needs to come to at the end of the trial and therefore the court will reject this conclusion drawn by the witness.

Roger Dabideen

Paragraph 5 (incorrectly referred to as paragraph 9)

76. This objection is rejected.
77. This evidence goes to what he understood the motive for the verification process to be. Whether or not there was actual impropriety is not something that he was giving evidence of. Therefore, he is not presenting a conclusion on whether or not there was actual impropriety. According to his evidence, this witness is in effect stating that based on the allegation or his understanding that there was apparent impropriety, certain steps for the verification of the performance of the works were taken. He is not in fact drawing any conclusion that there was impropriety.

Paragraph 7, lines 2 – 4 and lines 6 – 8

78. The first impugned statement sufficiently identifies that the witness found the process involved to be different from what he was normally accustomed to. The court rejects the objection because the witness identified what he knew to be the normal practice i.e. that he would be aware of the location of the site and works to be identified before site visits.
79. With respect to the 2nd impugned statement, the court also rejects this objection as the witness has identified an anomaly with respect to the vagueness and inconsistency. To my mind, this is relevant to the issue at hand as it goes to the proper identification of the areas where the works were to be done so far as the records stood.

Paragraph 8

80. This impugned evidence is **struck out**.
81. This witness cannot give evidence about matters that were told to him by “some contractors” without identifying who those contractors were for the court to come to a finding as to whether this information is relevant to this case.

Paragraph 10

82. This impugned evidence is also **struck out** for the same reason given in the preceding paragraph.

83. Further, the conversations with villagers were not related to any specific contractor before this court so that, once again, the relevancy of this information has not been established.

Sebastian Edwards

Paragraphs 17 and 18

84. The 1st sentence of paragraph 17 is allowed. This relates to instructions allegedly given to the witness by the deputy program manager.
85. The 2nd sentence and 3rd sentence of paragraph 17 are **struck out**. This is wholly inadmissible in relation to information allegedly given to the deputy program manager by a 3rd party.
86. The last sentence of paragraph 17 is allowed since this relates to what this witness did after receiving instructions.
87. The objection with respect to paragraph 18 is rejected.
88. This evidence gives the basis upon which this witness acted and establishes instructions allegedly given to him with respect to the investigation he was to have conducted. The court bears in mind that this evidence relates to instructions coming from a 3rd party and the court will ascribe such weight as is appropriate in the circumstances after cross examination.

Paragraph 19 (incorrectly referred to as paragraph 18)

89. The impugned portions of this paragraph are **struck out**.
90. The site visit report annexed as "SE1" speaks for itself and no elaboration is necessary. The evidence being given now by this witness seems to be structured differently with a different emphasis than what is set out in the report.

Paragraph 20

91. The impugned portions of this paragraph are **struck out**.
92. The information set out therein is irrelevant to the matters for determination for this court – matters which do not include Sookdeo Transport Services Limited.

Paragraph 23

93. The impugned portions of this paragraph are **struck out**.

94. The witness has not identified the names of the members of the team who would have informed him of the matters which he sets out therein. In any event, the witness has failed to identify the contractors allegedly involved in the matters mentioned therein and, therefore, this witness has not established the relevancy of this information.

Pooran Ragbir

Paragraph 6, lines 4 - 7

95. This objection is rejected, save and except for the last sentence of paragraph 6 which is struck out.
96. This witness can give evidence as to what happened on the site visit but cannot give evidence of what Mr. Shah's view was. In any event, Mr. Shah is giving evidence in this matter so he can express his own view.

Paragraph 7

97. The 1st sentence of this paragraph is allowed. The witness was there to investigate claims and these were complaints allegedly made by villagers during the course of that investigation. It is impractical and unreasonable to expect the defendant to summon each of these villagers who may have made complaints and the witness is quite entitled to speak of what he heard, not for the truth of their contents, but for the fact that these complaints were made.
98. With respect to the 2nd sentence, the court will allow this sentence as it goes to what this witness and Mr. Shah did and why.
99. The last sentence of this paragraph is **struck out**.
100. There is absolutely no mention in the defence of the defendant's servants and or agents and or representatives being hindered in their investigations in the manner which is sought to be introduced here for the 1st time.

Paragraphs 8 and 9 (lines 3 – 5)

101. The court rejects the objection in relation to paragraph 8.
102. The witness is entitled to speak of what transpired during his investigation and, as well, he is entitled to refer to the reactions of Mr. Maynard and Mr. Kirton.
103. The impugned portion of paragraph 9 is **struck out**.
104. The relevancy of this information has not been established. Obviously, this information is being relied upon for the truth of its contents and is therefore inadmissible hearsay.

In any event, the witness has failed to indicate the name of this alleged villager or where this conversation was alleged to have taken place.

[Paragraph 10, lines 1 – 2](#)

105. This objection is sustained and that the impugned statements are **struck out**.
106. As mentioned before, there was no pleading relating to alleged threats in relation to the investigation and, in the circumstances, this evidence is irrelevant to the case on the pleadings.

[Paragraph 13, line 3 \(incorrectly referred to as line 1\)](#)

107. This objection is rejected.
108. The witness can speak of what transpired and his experience with the contractors. This does not amount to hearsay and is therefore admissible.

/s/ Devindra Rampersad J

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Devindra Rampersad J