

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2016-02966

BETWEEN

GARY EWING

T/A EWING'S ELECTRICAL SERVICES

Claimant

AND

BRYAN SINGH

First Defendant

FRAMECAD LIMITED

Second Defendant

Before the Honourable Mr. Justice Frank Seepersad

Date of Delivery: February 13, 2019.

Appearances:

1. R. Bunsee instructed by P. Ramharack for the Claimant.
2. Z. Mohammed for the Defendant.

ORAL DECISION REDUCED INTO WRITING

INTRODUCTION

1. Around September 2012, the defendants secured a contract with the Ministry of National Security to upgrade three police stations in Tobago for which scope of works were provided. Around that same time, the claimant was approached to be a sub-contractor for electrical works by the defendants since, according to the defendants, the contract was delayed.
2. By oral agreement with the defendants, the claimant was to begin the works on September 26, 2012; provide labour and materials and would be paid upon completion of each police station.
3. The claimant expended \$35,747.85 for material and \$37,774.00 for labour costs and completed the scope of works. Invoices were issued on October 14, 2012 to Bryan Singh c/o Framacad Ltd which has since been wound up. The 1st defendant only issued a cheque in the sum of \$1,500.00 in respect of the said works and no further payments were forthcoming.
4. The claimant's claim was premised on agency, with Mr. Singh being the agent of the 2nd defendant or alternatively, that Mr. Singh did not have the authority to bind the 2nd defendant in contract. The claimant therefore prayed for the following reliefs:
 - a. A declaration that the 2nd defendant is in breach of the September 2012 agreement;
 - b. The sum of \$71,977.85 is due and owing by the 2nd defendant to the claimant;
 - c. Damages for breach of contract as against the 2nd defendant;
 - d. Alternatively, a declaration that the 1st defendant misrepresented to the claimant that he was the agent of the 2nd defendant.
 - e. Alternatively, a declaration that the 1st defendant is liable in his personal capacity for breach of contract;
 - f. Alternatively, against the 1st defendant damages for breach of warranty of authority in the said sum;

- g. Statutory interest;
- h. Cost;
- i. Such further and/ or other relief.

ISSUE

5. The issue that the court had to determine was who were the parties to the contractual arrangement. There was no dispute that the claimant was engaged and did work. The real issue is who engaged the claimant and is therefore responsible for servicing his payment for the services rendered.

LAW AND ANALYSIS

6. The 1st defendant's position was that at all material times, as at September 27 when there was a formalisation of the contract arrangement, it was made known to Mr. Ewing that Framecad was the contactor appointed. The 1st defendant further alleged that this position was consistent with the documentary evidence since the invoices generated on October 14 were to Brian Singh c/o Framecad. A previous court action was also filed against Framecad and on a balance of probabilities, the contract was with Framecad.
7. The claimant submitted that prior to going to Tobago, it was Mr. Singh who made representations to the claimant about the relevant particulars of the contract and it was only on the 27th that there was a fleeting conversation during which it was mentioned that Framecad had a sub-contract to do the works. Thereafter, works commenced and there was no involvement with Framecad. At all material times, Mr. Ewing understood that he had a contract with Mr. Singh and based on what was told to him, he filled out

the invoices c/o Framecad because that was what Mr. Singh told him to do.

The Evidence

The Defendant

8. Mr. Bowrin's evidence was that he was Mr. Singh's employee and stated that he transported materials in his truck and was paid by Mr. Singh. There was also an issue with respect to a \$1,500 part-payment for the job which Mr. Bowrin said he witnessed. The claimant stated that the said payment was made by a personal cheque from Mr. Singh. Mr. Singh's evidence was that at some point he was given a cheque from Framecad which was delivered to the claimant no such cheque was however produced.
9. The court was not impressed with Mr. Singh's evidence and found that he was not a witness of truth. He did not instil in the court a feeling that he was a forthright or frank witness as there were several inconsistencies in his evidence, particularly in relation to matters which revolved around whether or not it was represented to the claimant that he was an employee and/or agent of Framecad Ltd. At paragraph 3 of his witness statement, he stated that there was no such representation and that at all times he was there in Tobago on behalf of the 2nd defendant. In cross-examination he made several conflicting statements as to whether he did or did not represent to the claimant that he was a representative or an employee of Framecad Ltd. His evidence provided no explanation for Mr. Ewing's involvement.
10. Mr. Singh's evidence was that he was working for Framecad at the time but he adduced no evidence in support of that contention. He also stated that he had an oral agreement with Framecad but he failed to particularise the nature and extent of the said relationship. The witness also failed to

adduce evidence of payment vouchers or receipts issued by him for his receipt of monies, which he said in cross-examination, he received from Framacad.

11. Mr Singh's evidence as to the scope of works documents was also contradictory. He initially stated that Framacad had one contract and that was for Charlotteville but the document he relied on was for Old Grange.
12. At paragraph 12 of his witness statement he stated that "*subsequent to the works performed by the claimant, he presented me invoices for the work completed on behalf of the second defendant*". Although this was a clear and express statement, under cross-examination he stated that he never considered if it was sent to the 2nd defendant and it wasn't sent to him directly.
13. On the pleadings, it was never disputed that the claimant generated the invoices which were annexed to the claim and that those invoices bore the name Brian Singh c/o Framacad Ltd.
14. Having regard to the contradiction in the witness's evidence and the lack of supporting documentation from the defendant, the court had little regard to anything the defendant said and rejected his evidence as the court found that his position was highly improbable and/or implausible in the circumstances.

The Claimant

15. The case for the claimant was poorly pleaded and there was a lack of clarity as to who the contracting parties were. The amended statement of case at paragraph 8 stated that the claimant was told by the 1st defendant that the works were being sub-contracted to him by the 2nd defendant. The pleading also outlined that the 1st defendant represented that he was an agent. Although the pleading raised the issue of agency, the case did not

progress in that direction. The statement of case also went on to say that works were done based on the representations made.

16. The pleading stated that the 1st defendant was the agent of the 2nd defendant. Courts are however constrained to determine matters based on the case as pleaded and based on the evidence adduced in support of the pleaded case. The court found as a fact that Mr. Singh was actively involved in the management of these contracts. The court felt that it was likely that the contracts were tendered for by companies such as Framacad so as to mask the identity of the individuals who essentially discharge the contractual obligations. Notwithstanding what was on paper, the court felt that Mr. Singh was responsible for this contract. The court accepted the evidence of Mr. Bowrin who testified that he went to Tobago with Mr. Singh's truck and he was paid directly by Mr. Singh as he was an employee of Mr. Singh's company. This evidence was not challenged.

17. The court found as a fact that the contract, for all intents and purposes, was managed by Mr. Singh, although the contract was awarded to Framacad Ltd. The court had to examine the statement of case to determine the basis on which the claim was advanced and to ascertain whether a claim against Mr. Singh in his personal capacity was outlined. When one examined paragraphs 9, 12 and 13 of the statement of case, Mr. Ewing on behalf of the claimant, dealt with Mr. Singh in order to secure payment for performed or completed works and it was pleaded that the 2nd defendant in breach of the agreement, failed to issue payments to the claimant. There was no position outlined on the pleadings that placed the responsibility upon the first defendant although the reality was that it was Mr. Singh's contract. The certificate of truth was signed and Mr. Ewing demonstrated that he considered that the contract was between Framacad and the Ministry and payments would be made through Framacad.

18. The court is deeply sympathetic with the claimant in this matter and there was no doubt that he incurred the losses adduced at paragraph 15 of the statement of case. The court also strongly condemns Mr. Singh's conduct but the matter must be determined on the basis of the case as pleaded. The claimant's improperly pleaded a case of agency and unfortunately the court is constrained and has to dismiss the claimant's case.
19. Given the court's disapproval of Mr. Singh's conduct, it hereby exercises its discretion and orders that each party should bear their own costs.

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FRANK SEEPERSAD

JUDGE